

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-004-12-1-5-00007
Petitioner: Kelli Pelinovich
Respondent: Lake County Assessor
Parcel: 45-08-33-279-008.000-004
Assessment Year: 2012

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioner appealed her 2012 assessment on February 15, 2013.
2. The Lake County Property Tax Assessment Board of Appeals failed to hold a hearing within 180 days as required by statute. Ind. Code § 6-1.1-15-1(k) (requiring a PTABOA to hold a hearing not later than 180 days after a taxpayer files notice for review). On July 7, 2014, the Petitioner exercised her option to file a Form 131 petition with the Board. I.C. § 6-1.1-15-1(o) (allowing a taxpayer to appeal to the Board after the maximum time for the PTABOA to hold a hearing elapses). She elected to have her appeal heard under our small claims procedures.
3. On September 14, 2015, our designated administrative law judge, Ellen Yuhan (“ALJ”), held a hearing. Neither she nor the Board inspected the property.
4. The following people were sworn and testified: the Petitioner; Katherine Pelinovich; and Robert Metz, a hearing officer for the Respondent.

Facts

5. The property under appeal contains a home located at 4755 Washington Street in Gary.
6. The property was assessed as follows:

Land: \$7,400	Improvements: \$62,700	Total: \$70,100
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7. On her Form 131 petition, the Petitioner requested the following assessment:

Land: \$7,400	Improvements: \$12,000	Total: \$19,400
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Record

8. The official record contains the following:
 - a. A digital recording of the hearing.
 - b. Exhibits:

Petitioner Exhibit 1: CMA 2 Line Report,
Petitioner Exhibit 2: Listing Summary for 4787 Adams Street,

Respondent Exhibit A: Property record card,
Respondent Exhibit B: Spreadsheet of sales.
 - c. All motions and documents filed by the parties as well as all orders and notices issued by the ALJ or Board.
 - d. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in specified circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
10. The subject property's assessment increased by 21.3% between 2011 and 2012, rising from \$57,800 to \$70,100. The Respondent acknowledged he had the burden of proof.

Contentions

11. Summary of the Respondent's case:
 - a. The Respondent conceded the assessment is too high. The Calumet Township Assessor had used the average price per square foot for sales from the subject property's area, but later conceded that the median value should be used. Based on that median value, the Respondent offered a corrected assessment of \$48,200. *Metz testimony: Resp't Ex. B.*

12. Summary of the Petitioner's case:
- a. Assessments in the subject property's subdivision are unrealistic compared to the prices for which homes sell. In 2013, Marilyn Tolhuizen of McColly Real Estate prepared a CMA 2 Line Report addressing sales and listings of single-family homes with detached garages within a .25-mile radius of the subject property. The report includes seven sales between September 28, 2012, and August 7, 2013, five of which occurred more than a year after the assessment date at issue in this appeal. The average sale price was \$36,044. *Kelli Pelinovich testimony; Katherine Pelinovich testimony; Pet'r Ex.1.*
 - b. The home at 4787 Adams Street is a duplicate of the subject home, except that it has 3 bedrooms and 1½ baths. The owners added a bath in the basement, which Petitioner cannot do. Unlike the subject property, the Adams Street property has a garage. That property was listed for \$40,000. Although the listing is from July 4, 2015, prices have not increased. If the owner could get \$60,000, he would have asked for it. *Kelli Pelinovich testimony; Katherine Pelinovich testimony; Pet'r Ex 2.*
 - c. A flood damaged the subject home's basement. It is no longer finished and it leaks. Katherine Pelinovich took photographs and a videotape of the basement to show people at the township assessor's office. *Katherine Pelinovich testimony.*

Analysis

13. The Respondent did not even attempt to support the assessment of \$70,100, conceding instead that it should be reduced to \$48,200. That is even lower than the previous year's level of \$57,800. To the extent the Petitioner seeks an assessment below what the Respondent has conceded, she has the burden of proving that lower amount.
14. The Petitioner failed to make a prima facie case for a further reduction. We reach this decision for the following reasons:
- a. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in an assessment appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

- b. In any case, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* The valuation date for the assessment at issue in this appeal was March 1, 2012. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. The Petitioner offered a CMA report that showed an average selling price of \$36,044 for properties within a .25-mile radius of the subject property. Most of the sales occurred more than a year after the relevant valuation date, and neither the report nor the Petitioner explains how the sale prices relate to the properties' values as of that date.
- d. More importantly, the CMA report does not purport to estimate a value for the subject property. While the report identifies some basic characteristics for the properties, it does not explain how relevant differences between the subject property and the sold properties affect their relative values. *See Long*, 821 N.E.2d at 471 (holding that taxpayers' comparative sales data lacked probative value where they failed to compare properties' relevant characteristics or explain how relevant differences affected value). The Petitioner points to the average sale price from the report. But she has not shown that valuing the subject property by simply picking the average of all sale prices for properties within a geographic radius complies with generally accepted appraisal principles.
- e. The Petitioner also points to a property on Adams Street that was listed for \$40,000 in July 2015. Again, that is more than three years after the relevant valuation date, and the Petitioner did nothing to explain how the listing related to the valuation date aside from broadly asserting that prices have not increased. The listing therefore lacks probative value.
- f. Finally, the Petitioner testified about flood damage to her basement. While that information is relevant, it does not itself show the property's value or even a range of values.

Conclusion

- 15. The Respondent conceded the assessment should be reduced to \$48,200. The Petitioner failed to prove she was entitled to a lower value.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value should be changed to \$48,200.

ISSUED: February 5, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.