

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

Petitions: 82-022-17-1-5-00373-18
Petitioner: Robert Phillips, Sr.
Respondent: Vanderburgh County Assessor
Parcel: 82-05-11-003-073.029-022
Assessment Year: 2017

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

PROCEDURAL HISTORY

1. Phillips contested the 2017 assessment of his property located at 3322 N. St. Joseph Avenue in Evansville. The Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property as follows:

Year	Land	Improvements	Total
2017	\$81,200	\$22,400	\$103,600

2. A Form 131 was timely filed with the Board under the small claims rules. On March 27, 2019, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on Phillips’ petition. Neither he nor the Board inspected the subject property.
3. Jacqueline Doty-Fox, the Vanderburgh County Assessor Hearing Officer, Robert Phillips, Sr., and Magdalen Phillips testified under oath. The Assessor was represented by Counsel, Nick Cirignano.

RECORD

4. The official record includes the following¹:
 Petitioner’s Exhibit 1: Printout of property information screen,
 Petitioner’s Exhibit 2: Property diagram/map of area.
5. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) a digital recording of the hearing.

¹ The Assessor offered no exhibits.

MOTIONS AND OBJECTIONS

6. The Assessor moved to dismiss the petition because Phillips' son, Robert Phillips Jr., signed the Form 131 although he had no interest in the subject property. Although Phillips should have signed the Form 131 himself, there is no indication that it was filed without his knowledge or consent. Given our general preference to resolve cases on the merits, we decline to grant the Assessor's motion.
7. The Assessor also objected to Petitioner's Exhibit 2 on the grounds that it was hearsay. 52 IAC §3-1-5(b) allows the Board to admit hearsay as long as it does not form the sole basis for our final determination. Thus, we admit the exhibit, but do not base our determination on it.
8. Finally, the Assessor objected to the testimony of Magdalen Phillips, stating that she was not a proper "party" to present evidence. Our rules do not limit testimony solely to parties. Thus, the objection is overruled.

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 the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).

The subject property's 2016 assessment was \$52,200. In 2017, the assessment increased to \$103,600. Both parties agreed that the increase in assessment from 2016 to 2017 was greater than 5% of the 2016 value. The Assessor conceded the burden of proof. We agree and find the burden lies with the Assessor.

SUMMARY OF CONTENTIONS

10. **Assessor's case:**

The Assessor presented no evidence in support of the current assessment. Instead, the Assessor argued that neither party had presented a prima facie case, and that "at worst" the property should revert to the 2016 value.

11. **Phillips' case:**

Ms. Phillips testified about the flood issues with the property; that the property was “not usable ground”; and about the foreclosure sale of property at 3402 N. St. Joseph Avenue in early 2019 which sold for \$20,000. Phillips, Sr. stated that the property is in a flood zone, and the assessed value should be lower. *M. Phillips testimony; R. Phillips testimony.*

ANALYSIS

12. Indiana assesses property based on its “true tax value”, which is determined under the rules of the DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). The DLGF defines “true tax value” as “market value-in-use”, which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property. 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with the standard. For example, USPAP-compliant market value-in-use appraisals will often be probative. *See id.; see also, Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
13. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property’s value as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Even if the Assessor made errors, simply attacking her methodology is insufficient to rebut the presumption that the assessments are correct. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
14. The Assessor provided no evidence in support of the assessment, and thus failed to meet the burden of proof. The Phillips provided some evidence, including testimony about the flood plain and a 2019 foreclosure sale. But this evidence was insufficient to support any further reduction in value. Thus, I.C. § 6-1.1-15-17.2(b) requires that the assessment revert to the 2016 value.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order that the 2017 assessed value revert to \$52,200.

ISSUED: June 25, 2019

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>>.