

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

Petition: 57-011-14-1-5-10286-15
Petitioners: Samuel & Marianne Slone
Respondent: Noble County Assessor
Parcel: 57-04-15-100-018.000-011
Assessment Year: 2014

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2014 assessment appeal with the Noble County Assessor on October 22, 2014.
2. On May 18, 2015, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on August 24, 2015.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on October 29, 2015. She did not inspect the property.
6. Samuel and Marianne Slone appeared *pro se*. County Assessor Kim Miller appeared for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family rental property located at 1665 North Shore Drive in Rome City.
8. The PTABOA determined the total assessment is \$52,900 (land \$27,100 and improvements \$25,800).¹

¹ Ms. Miller testified that she changed the March 1, 2014, assessment after the PTABOA determination was issued to \$51,000 because "there was no attic." The subject property record card indicates a 2014 total assessment of \$51,000.

9. On their Form 131 the Petitioners requested a total assessment of \$30,000 (land \$7,600 and improvements \$22,400).²

Record

10. The official record for this matter is made up of the following:

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit A: “Estate Showcase” Orizon Real Estate, Inc., May 2015 newspaper listing for the subject property,
- Petitioners Exhibit B: Orizon Real Estate, Inc., September 2015 newspaper listing for the subject property,
- Petitioners Exhibit C: Orizon Real Estate, Inc., October 2015 newspaper listing for the subject property,
- Petitioners Exhibit 1: “Comparable Market Value” report prepared by Tim Hess, Associate Broker, ReMax Results, dated October 15, 2015.

- Respondent Exhibit 1: Phone record between the Respondent and Orizon Real Estate, Inc., dated October 28, 2015,
- Respondent Exhibit 2: Letter from Ms. Miller to the Petitioners dated February 5, 2015, regarding their pending appeals,
- Respondent Exhibit 3: Forms 131 and 130,
- Respondent Exhibit 4: Subject property record card, with corrections made for attic area as of March 1, 2014, issued after the PTABOA determination,
- Respondent Exhibit 5: Subject property record card, with March 1, 2014, PTABOA final determination,
- Respondent Exhibit 6: Zillow.com sale listing for the subject property,
- Respondent Exhibit 7: Aerial map of the subject property,
- Respondent Exhibit 8: Comparable property analysis prepared by the Respondent,
- Respondent Exhibit 9: Property record card and aerial photograph for the property located at 384 Spring Beach Road,
- Respondent Exhibit 10: Property record card and aerial photograph for the property located at 870 Lions Drive,
- Respondent Exhibit 11: Property record card and aerial photograph for the property located at 1635 North Shore Drive,
- Respondent Exhibit 12: Copy of subject property’s real estate listing,
- Respondent Exhibit 13: Aerial view of the subject property,

² At the hearing, the Petitioners requested a total assessment of \$25,000.

- Respondent Exhibit 14: Letter from Ms. Miller to the Petitioners, dated October 5, 2015, requesting their exhibit and witness list,
Respondent Exhibit 15: Tyler Technology land analysis spreadsheet for the subject property's neighborhood.
- Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Notice of hearing, dated August 24, 2015,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. Ms. Miller objected to all of the Petitioners' exhibits on the grounds that the Petitioners failed to provide copies of the exhibits prior to the hearing when requested by the Respondent. *See Resp't Ex. 14.*
12. In response, the Petitioners claimed that when they received Ms. Miller's request they were waiting on a response from their realtor who was out of town. Thus, the Petitioners did not have their evidence gathered at the time of Ms. Miller's request. Mr. Slone requested that the ALJ grant a continuance at the hearing for an additional ten days so Ms. Miller could properly view their evidence. The ALJ denied the Petitioners' request to continue the hearing and took the underlying objection under advisement.
13. Under the Board's procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits *if requested*. *See 52 IAC 3-1-5(d)* ("if requested not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence...at least five (5) business days before the small claims hearing.") Here, the Respondent requested "copies of all evidence" from the Petitioners in a letter dated October 5, 2015. The Petitioners failed to comply with that request. Thus, Ms. Miller's objection is sustained, and the Petitioners' evidence is excluded, pursuant to 52 IAC 3-1-5(d).
14. The Board's ruling on this objection, however, does not affect the final determination. For the reasons discussed below, even if the Board were to consider the Petitioners' evidence, the final determination would remain the same.

Contentions

15. Summary of the Petitioners' case:
 - a) The property's assessment is too high. The property is currently listed by Orizon Real Estate, Inc., for \$52,900. It has been listed in the local newspaper in May, September, and October of 2015. However, there has not been much interest in the property from potential buyers. The Petitioners claim they would "sell the property for the land value in itself." *Samuel & Marianna Slone argument: Pet'rs Ex. A, B, C.*

- b) In an effort to prove the property is over-assessed, the Petitioners presented a Comparable Market Value Report performed by Tim Hess, a Broker for ReMax Results. *Samuel Slone testimony; Pet'rs Ex. 1.*
- c) Mr. Hess' report features three sales of comparable properties. The first property, located at 3697 Goss Road-57 sold for \$48,000 on July 3, 2014. This property has lake access with two lots and three bedrooms. The second property, located at 4511 WG Drive sold for \$20,000 on July 14, 2014. This property has all new carpet, new paint, and a new roof, and electrical upgrades. Finally, the property at 2409 South Stone Street sold on July 9, 2014, for \$15,000. This lot features lake access and a three bedroom home. After an analysis of the three comparable properties, Mr. Hess valued the subject property at \$25,000. *Marianna Slone testimony; Pet'rs Ex. 1.*

16. Summary of the Respondent's case:

- a) The property is correctly assessed. It is a residential rental property located near Sylvan Lake. The assessment increased from 2013 to 2014 because of trending and a recent ratio study. *Miller argument; Resp't Ex 2, 7, 15.*
- b) Prior to the hearing the Respondent made a correction to the subject property record card removing the assessment of an attic.³ As a result, the 2014 assessment was lowered from \$52,900 to \$51,000. *Miller testimony; Resp't Ex. 4.*
- c) The Respondent contacted Orizon Real Estate, Inc., regarding the property's current listing. Ms. Miller was informed that "the property had been shown, but no one was interested." According to a representative from Orizon "there could be a possibility of the property selling at the beginning of the 2016 lake season." The current listing price supports the 2014 assessment. *Miller testimony; Resp't Ex. 1.*
- d) A recent ratio study and trending was performed in conjunction with Tyler Technologies for the subject property's neighborhood. By utilizing the abstraction method, they determined property values in the neighborhood were below market value. Utilizing all recent sales, a median land value of \$22,250 was established. Utilizing only vacant land sales, the study yielded a median land value of \$18,500. Finally, when utilizing the abstraction method, a median land value of \$29,250 was arrived at.⁴ The subject property's current land assessment is \$27,100. *Miller testimony; Resp't Ex. 2, 5.*
- e) To further emphasize that the assessed value was "within reason," the Respondent presented the per acreage value that Tyler Technologies utilized in their study. The

³ The subject property record card notes that this was accomplished via a Correction of Error (Form 133), although the Form 133 was not made part of the record.

⁴ The Respondent defined the "abstraction method" as "taking the same sales with land and improvements and subtracting the improvements."

study suggested a median acreage base rate value of \$117,000. This amount is higher than the rate used to determine the current land assessment on the subject property. This ultimately proves “the land is valued fairly and not too high.” *Miller testimony; Resp’t Ex. 15.*

- f) The Respondent also offered her own comparable sales analysis. Ms. Miller utilized three comparable properties and distinguished them from the subject property for differences in lot size, foundation type, structure size, year of construction, number of bathrooms, sheds, and garages. The first property, located at 384 Spring Beach Road sold for \$58,500 in 2013. This property sold again in 2015 for \$71,500. The second property, located at 870 Lions Drive sold for \$75,000 in 2010. This property also sold in 2014 for \$75,000 as well. The third property, located closest to the subject property, at 1635 North Shore Drive is currently listed for \$67,700. This property was utilized because of its proximity to the subject property. In addition, this is also a rental property. According to the analysis, the subject property is “under assessed.” *Miller argument; Resp’t Ex. 9, 10, 11, 12, 13.*

Burden of Proof

17. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
18. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
19. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

20. Here, the parties agree that the total assessed value increased by more than 5% from 2013 to 2014. In fact, the total assessed value increased from \$33,700 to \$52,900.⁵ Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2014 assessment is correct. To the extent the Petitioners seek an assessment below the 2013 level of \$33,700; they have the burden to prove that lower value.

Analysis

21. The Respondent failed to make a prima facie case that the 2014 assessment was correct.
- 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 a similar user, from the property.” Ind. Code § 6-1.1-31-6 (c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, 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). For a 2014 assessment, the date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Respondent had the burden to prove the 2014 assessment was correct. First, the Respondent argues that a correction in the land value triggered the increase. The Respondent attempted to support the land portion of the assessment by introducing a “study” she had completed. She arrived at three possible median values for the land portion of the assessment. One study included “all sales and listings” and indicated a median value of \$22,250. A second study was performed with “only vacant lots” and indicated a median value of \$18,500. Finally, a third study was performed utilizing the abstraction method and yielded a median value of \$29,250.
 - d) It appears the Respondent was using the ratio study to explain why the subject property’s assessment increased by more than 5% from 2013 to 2014. The

⁵Likewise, the Respondent would also bear the burden of proof if the Board were to use the 2014 value of \$51,000 indicated on the subject property record card.

Respondent, however, failed to offer any support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officials Standard on Ratio Studies, which 50 IAC 27-1-44 incorporates by reference, says otherwise:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . . **However, the ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.** Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added in italics in original).

- e) The Respondent also offered evidence regarding three purportedly comparable properties. In doing so, the Respondent essentially relies on a sales-comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also, Long*, 821 N.E.2d 466, 469.
- f) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g) In some respects she attempted to compare her three purportedly comparable properties to the subject property. She also offered estimated amounts for some of the adjustments she made. However, she failed to explain how she arrived at the adjustment amounts. Further, she failed to provide any indication that her analysis conforms to generally accepted appraisal principles and USPAP. Therefore, the sales data presented lacks probative value.
- h) For these reasons, the Respondent did not offer enough probative evidence to indicate the 2014 assessment was correct. Therefore the Petitioners are entitled to have their

assessment returned to its 2013 level of \$33,700. The Petitioners, though, sought an even lower assessment. The Board now turns to the Petitioners' argument.

- i) The Petitioners requested a value of \$30,000 on their Form 131, and ultimately requested a total valuation of \$25,000 at the hearing. However, because the Petitioners' evidence was excluded for the aforementioned reasons, the Petitioners failed to make a prima facie case for any further reduction in the assessment. Even had the Board considered the Petitioners' evidence, it suffers from the same shortcomings as the Respondent's evidence. Specifically, the Petitioners merely offered sales of other purportedly comparable properties without any explanation as to how they are comparable to the subject property. They failed to offer any analysis as to how the differences between their purportedly comparable properties and the subject property affect their relative values. Finally, they failed to provide any indication that the analysis they presented conforms to generally accepted appraisal principles and USPAP. Thus, their evidence lacks probative value.

Conclusion

22. The Respondent had the burden of proving the 2014 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioners sought an assessment lower than the 2013 level, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2014 assessment be reduced to the 2013 amount of \$33,700.

Final Determination

In accordance with these findings of fact and conclusions of law, the 2014 assessment must be changed to \$33,700.

ISSUED: January 26, 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>>.