

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

Petition Nos.: 49-700-21-1-5-00061-24
49-700-22-1-5-00062-24
Petitioner: Vicki Cross
Respondent: Marion County Assessor
Parcel No.: 49-09-10-115-019.000-700¹
Assessment Years: 2021 and 2022

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

PROCEDURAL HISTORY

1. Vicki Cross contested the 2021 and 2022 assessments of her property located at 358 Garden Grace Drive, Indianapolis, Indiana, by filing Marion County Appeal Short Forms on April 5, 2022 and April 14, 2023, respectively.
2. On December 15, 2023, the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued a final determination for 2021 valuing the subject property at \$141,000 (\$27,100 for land and \$113,900 for improvements). On the same day, the PTABOA issued a final determination for 2022 valuing the property at \$172,200 (\$27,100 for land and \$145,100 for improvements).
3. On January 25, 2024, Cross filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On June 26, 2024, Tammy Sierp, our designated Administrative Law Judge (“ALJ”), held a telephonic hearing on the petitions. Neither she nor the Board inspected the subject property.
4. Cross appeared pro se and called her daughter, Dana Hightshue, as a witness. Analyst Philip Raskosky appeared for the Marion County Assessor. They all testified under oath.

RECORD

5. Cross did not offer any exhibits.²

¹ The subject property is alternatively identified as Parcel No. 7039945.

² The ALJ took Cross’s oral request to submit photos post-hearing under advisement. The Board’s procedural rules provide that no post hearing evidence will be accepted unless requested by the ALJ or the Board. 52 IAC 4-6-15. We decline to exercise our discretion to take additional evidence in Cross’s appeal.

6. The Assessor submitted the following exhibits:

- Respondent Exhibit A: CMA Summary Report 2020
- Respondent Exhibit B: CMA Summary Report 2021
- Respondent Exhibit C: CMA Summary Report Cedar Springs
- Respondent Exhibit D: Property Record Card for Subject Property

7. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

FINDINGS OF FACT

8. The subject property is located at 358 Garden Grace Drive, Indianapolis, Indiana. It consists of a single-unit residential home constructed in 1997 on a 0.20-acre lot. The one level home has 1,376 square feet of finished living area, with four bedrooms, one bathroom, and an attached garage. The property also has a shed, two porches and a wood deck. *Cross testimony; Resp't Ex. D.*

9. Cross purchased the subject property for \$90,000 approximately 21 years ago and she has not updated it during the time that she has owned it. *Cross testimony.*

10. In 2021, the subject property was assessed for \$141,000, an increase of about 3.4% over its 2020 assessment of \$136,300. In 2022, its assessment increased to \$172,200, an increase of slightly more than 22% over its 2021 assessment. *Cross testimony; Raskosky testimony; Resp't Ex. D.*

11. In support of the 2021 assessment, the Assessor submitted a CMA Summary Report containing data on six residential properties that sold between February 2020 and December 2020 for a median sales price of \$152,500. The single-story homes were built between 1990 and 2006 and range in size from 1,340 SF to 1,360 SF. All six have 3 bedrooms, 2 bathrooms, and 2-car garages, and one has a fireplace. *Raskosky testimony; Resp't Ex. A.*

12. In support of the 2022 assessment, the Assessor submitted a CMA Summary Report containing data on five residential properties that sold between January 2021 and November 2021 for a median sales price of \$175,000. The single-story homes were built between 1990 and 1999 and range in size from 1,348 SF to 1,488 SF. Three of the homes have 2 bedrooms, while two of them have 3 bedrooms. All five have 2 bathrooms and 2-car garages, and one has a fireplace. *Raskosky testimony; Resp't Ex. B.*

13. As added support for the assessments, the Assessor submitted a CMA Summary Report containing data on four residential properties from the Cedar Springs subdivision. They sold between September 2021 and August 2023 for a median sales price of \$236,500. The single-story homes were built between 1997 and 1998 and range in size from 1,376 SF to 1,549 SF. All four have 3 bedrooms and two bathrooms. One has a single-car

garage while three of them have 2-car garages, and two of the homes have fireplaces. *Raskosky testimony; Resp't Ex. C.*

SUMMARY OF CONTENTIONS

14. **Cross's case:**

- a) Cross purchased the subject property for \$90,000 approximately 21 years ago, and she has not updated it during the time that she has owned it. Cross contends that her home's assessment is too high. It is the smallest in the area, and it should not be assessed as high as the 4- and 5-bedroom homes in the brand-new subdivisions down the road. It is unfair to increase her home's assessment just because someone down the road paid \$250,000 to \$300,000. *Cross testimony.*

15. **The Assessor's case:**

- a) The Assessor argued that the subject property's 2021 assessment is fair. The Assessor's CMA Summary Report for 2021 looked at the closest and best available comparable sales in terms of size and year built. Those sales had a median sales price of \$152,500, while the subject property's assessment is \$141,000. Thus, the market data supports the current assessment. *Raskosky testimony; Resp't Ex. A.*
- b) The Assessor similarly argued that the subject property's 2022 assessment is fair. The Assessor's CMA Summary Report for 2022 looked at five sales in the area that were as close as possible in terms of age, size, and number of levels. They had a median sales price of \$175,000. And in the last few years, prices for residential homes have been rising because of limited supply and high demand. Thus, the Assessor contends that the subject property's assessment of \$172,200 is fair and equitable based on what the market data suggests. *Raskosky testimony; Resp't Ex. B.*
- c) The Assessor's CMA Summary Report with data on recent sales in the Cedar Springs subdivision provides additional support for both of the assessments at issue. The median sales price for those sales was \$236,500. The market is robust and has been for the last few years, as reflected in the trending factors, and as supported by the sales used to develop the annual adjustments and arm's length transactions in the market. Regardless of whether there have been any improvements to the subject property, all properties are subject to annual trending based on what the market is doing. *Raskosky testimony; Resp't Ex. C.*

BURDEN OF PROOF

16. Generally, the taxpayer has the burden of proof when challenging a property tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value."

I.C. §6-1.1-15-20(a) (effective March 21, 2022).

17. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. §6-1.1-15-20(b). Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.*
18. If the burden has shifted, and "the totality of the evidence presented to the Indiana Board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).
19. Here, the 2021 assessment of \$141,000 was not an increase of more than 5% over the previous year's assessment of \$136,300. Cross therefore has the burden of proof for 2021.
20. The prior assessment means the final value "as determined by a reviewing authority." I.C. § 6-1.1-15-20(c)(3). Thus, deciding which party bears the burden of proof for 2022 depends on our determination for 2021. We will therefore address it after resolving the 2021 appeal.

ANALYSIS

21. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence before it." I.C. § 6-1.1-15-20(f). The Board's conclusion of a property's true tax value "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).
22. Real property is assessed based on its true tax value. I.C. § 6-1.1-31-5. 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), (e). Instead, it is determined under the DLGF's rules. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). 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 by a similar user, from the property." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
23. To meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the property's value. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal "methodology" of the "assessment regulations." *P/A Builders & Developers, LLC v. Jennings Cty. Ass'r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the "formalistic application" of the procedures and schedules from the

DLGF's assessment guidelines lacks the market-based evidence necessary to establish a specific property's market value-in-use. *Piotrowski*, 177 N.E.3d at 133.

24. Market-based evidence may include "sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles." *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that "another property is 'similar' or 'comparable' simply because it is on the same street are nothing more than conclusions...[and] do not constitute probative evidence." *Marinov v. Tippecanoe Cty. Ass'r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property's value as of the valuation date. *O'Donnell v. Dept. of Local Gov't. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For the 2021 and 2022 assessments at issue, the valuation dates were January 1st of each respective year. Ind. Code § 6-1.1-2-1.5.

A. 2021 Assessment

25. As explained above, Cross has the burden of proof for 2021. She contends that the subject property's assessment is too high because she has not updated her home in 21 years and because it is the smallest home in the area, but she failed to present any probative market-based evidence supporting a lower valuation. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). 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." *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
26. Because Cross failed to offer any probative market-based evidence demonstrating the subject property's correct market value-in-use for 2021, she failed to make a case for a lower assessment. Since the Assessor did not seek to change the 2021 assessment, our inquiry ends there.

B. 2022 Assessment

27. We now turn to the 2022 assessment. Because the 2021 assessment remains unchanged at \$141,000, the 2022 assessment of \$172,200 represents an increase of more than 5% over the previous year's assessment. Thus, the Assessor has the burden of proof for 2022.
28. In support of the 2022 assessment, the Assessor offered two CMA Summary Reports with sales data for five purportedly comparable properties in the subject property's general area and four purportedly comparable properties from its subdivision. He argued that the median sales prices he developed from those sales demonstrate that the subject property's assessment is fair and equitable. However, a party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal.

Long v. Wayne Twp. Ass 'r, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Conclusory statements that properties are "similar" or "comparable" do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.* They must similarly explain how relevant differences affect values. *Id.*

29. The Assessor did not offer the type of analysis contemplated by *Long*. The residential properties he selected for inclusion in his reports are all from the subject property's general area, and they also appear to be fairly similar to the subject property in terms of age, overall size, and number of stories. However, all of the purportedly comparable properties have fewer bedrooms than the subject property and a second bathroom. And we know nothing about the size of their lots or whether their garages are attached or detached. Thus, we are not convinced that any of the properties are truly comparable to the subject property.
30. Even if they are comparable, however, the Assessor still failed to offer any evidence or analysis demonstrating how their relevant differences affected values. He did not adjust any of his purportedly comparable properties to account for differences in the number of bedrooms, bathrooms, or garage spaces. Nor did he address how differences in lot sizes, or features such as fireplaces, sheds, porches, or decks impacted values. Consequently, the median sales prices the Assessor offered in support of the 2022 assessment are not probative evidence of the subject property's true tax value.
31. For her part, Cross relied on the same evidence and arguments she presented for the 2021 appeal, and we therefore reach the same conclusion—she failed to make a case for a lower assessment.
32. When, as here, the burden has shifted to the Assessor and the totality of the evidence presented by the parties is insufficient to determine the property's true tax value, I.C. § 6-1.1-15-20(f) mandates that the property's assessment revert to the assessed value from the previous assessment year. We therefore conclude that the subject property's 2022 assessment must revert to its assessed value from 2021.

FINAL DETERMINATION

33. In accordance with the above findings of fact and conclusions of law, we order no change to the 2021 assessment, and we order the 2022 assessment reduced to \$141,000.

ISSUED: 9/24/2024



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>.