

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

Petition No.: 06-002-13-1-5-00001
Petitioner: LeRoy Jackson, Jr.
Respondent: Boone County Assessor
Parcel No.: 002-03730-01
Assessment Year: 2013

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

Procedural History

1. Mr. Jackson appealed his property's assessment. On August 21, 2013, the Boone County Property Tax Assessment Board of Appeals issued a Form 115 Notification of Final Assessment Determination for the property's March 1, 2013 assessment.¹
2. On September 9, 2013, Mr. Jackson filed a Form 131 petition with the Board. He listed the assessment date under appeal as March 1, 2012. But he did not attach a Form 115 determination or anything else addressing that assessment date. He instead attached the Form 115 determination dealing with 2013 and a "Boone County Appeal Worksheet" listing an "effective date" of "2013/2014," in which he referred a prior appeal where the Board had reduced the property's 2011 assessment to \$103,000. *Bd. Ex. A.*
3. In light of those ambiguities, the Board's administrative law judge, Elizabeth Rogers, held a case-management conference to determine whether the assessment year under appeal was 2012 or 2013, and whether Mr. Jackson had timely filed his Form 131 petition. She found that Mr. Jackson had timely filed the Form 131 petition for the 2013 assessment year.
4. On July 23, 2014, the Board held a hearing through its designated administrative law judge, Dalene McMillen. Neither she nor the Board inspected the property.
5. The following people were sworn-in: Mr. Jackson; Boone County Assessor Lisa Garoffolo; and Peggy Lewis, a PTABOA member.

¹ Nobody signed that determination as a member of the PTABOA. The Assessor, who is the PTABOA's secretary, signed the portion of the form addressing the results of an informal preliminary meeting between the Assessor and taxpayer. *Bd. Ex. A.*

Facts

6. The property is a single-family home with a detached garage and utility shed located at 2845 East 750 North in Lebanon.
7. The property is assessed as follows:
Land: \$22,000 Improvements: \$116,800 Total: \$138,800.
8. At the hearing, Mr. Jackson requested a total assessment between \$118,000 and \$122,000.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
10. Indiana Code § 6-1.1-15-17.2, as amended,² creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal regardless of the amount of the increase..." I.C. § 6-1.1-15-17.2(d). These provisions may not apply if the assessment currently under appeal was based on structural improvements, zoning, or uses that were not considered in the previous year's assessment, or if the assessment was determined using the income approach to value. *See* I.C. 6-1.1-15-17.2(c) and (d).
11. The subject property was assessed for less in 2013 (\$138,800) than it was in 2012 (\$139,800). The first potential ground for shifting the burden of proof—an increase of more than 5% between assessment years—therefore does not apply. The same is true for the second potential ground—a successful appeal in the immediately preceding year. While Mr. Jackson successfully appealed the property's 2011 assessment, he admitted

² The amendments to Ind. Code § 6-1.1-15-17.2 became effective with the Governor's signature on March 25, 2014. *See* P.L. 97-2014. The statute, as amended, applies to "all appeals or reviews pending on the effective date of the amendments..." *Id.*; I.C. 6-1.1-15-17.2(e) (2014).

that he “probably” did not appeal the 2012 assessment. Mr. Jackson therefore retains the burden of proof.

Contentions

12. Summary of Mr. Jackson’s case:

- a. Mr. Jackson bought the property for \$103,000 in February 2011. The property was appraised twice before closing. The first appraiser told Mr. Jackson that he valued the property at \$112,000. The second appraisal was for \$108,000. Mr. Jackson did not offer either appraisal into evidence. *Jackson testimony; Pet’r Ex. 5.*
- b. The home was not habitable when Mr. Jackson bought it. To make it habitable, he repaired major plumbing damage and massive holes in the walls, replaced carpet that had been damaged by pets, and cosmetically updated the interior. He made many of the repairs himself and hired contractors for others. He “probably” spent \$6,800 for the carpet and \$8,000 to \$10,000 for the other repairs. Based on his purchase price and the repairs, Mr. Jackson believes that the property should be assessed for an amount between \$118,000 and \$122,000. *Jackson testimony; Pet’r Exs. 2-4, 5.*
- c. Mr. Jackson submitted a comparative market analysis prepared by his realtor, Lisa Parrett. That analysis contains data for three sales from 2011 and one listing from 2013. It identifies some basic features for each property, including: the home’s size, age, and number of levels; and the presence or absence of a basement. The analysis does not compare any of those features to the subject property. It similarly does not contain an opinion of value; it instead lays out the range of sale prices and computes an average. The sale prices ranged from \$27/sq. ft. to \$78/sq. ft. with an average of \$55/sq. ft. The listing was for \$59/sq. ft. While Ms. Parrett indicated that the subject home was in fair condition in 2011, she did not know its condition in 2013. *See Pet’r Ex. 4.*
- d. Finally, Mr. Jackson testified that his property was assessed too high in light of what he believed was a general decline in the housing market. For support, he pointed to articles dealing with national and state foreclosure rates and the resulting losses in home equity wealth. *Pet’r Ex. 1.*

13. Summary of the Assessor’s case:

- a. To support the assessment, the Assessor offered a comparative market analysis and multiple listing sheets for three purportedly comparable properties located in the area of Mr. Jackson’s property. Those properties sold for prices ranging from \$48 to \$83 per square foot of living area, with an average of \$63. That average price translates

\$137,592³ for the subject property, which Assessor argues supports the property's assessment of \$138,800. *Garoffolo testimony; Resp't Ex. 8.*

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

a. A digital recording of the hearing.

b. Exhibits:

- Petitioner Exhibit 1: Notice of Assessment of Land and Structures – Form 11 R/A for March 1, 2012, and two website articles: Chris Persaud, Bankrate.com, “June 2013: Top 10 states for foreclosure,” and Center for Responsible Lending, “The Cost of Bad Lending in Indiana” (updated August 2010),
- Petitioner Exhibit 2: Ten interior photographs of the subject property,
- Petitioner Exhibit 3: 2011/2012 Boone County Appeal Worksheet, two copies of Form 115 determination for March 1, 2011, July 12, 2010 Boone County Tax Report, *LeRoy Jackson, Jr. v. Boone County Assessor*, pet. no. 06-002-11-1-5-00169 (Ind. Bd. Tax Rev. Feb. 21, 2013), and Form 131 petition,
- Petitioner Exhibit 4: “Email Statement” from Lisa Parrett, Ms. Parrett’s comparative market analysis, and listing information for the subject property,
- Petitioner Exhibit 5: Subject property’s closing statement and settlement statement from Chicago Title Insurance Company,
- Respondent Exhibit 1: Boone County Appeal Worksheet,
- Respondent Exhibit 2: 2013 property record card for the subject property,
- Respondent Exhibit 3: Eleven interior and exterior photographs of the subject property,
- Respondent Exhibit 4: Two Multiple Listing Service (“MLS”) sheets for the subject property,
- Respondent Exhibit 5: Form 131 petition, Form 115 determination, and Boone County Appeal Worksheet for 2013/2014,
- Respondent Exhibit 6: November 23, 2013 Order Scheduling a Case Management Conference,
- Respondent Exhibit 7: June 5, 2014 hearing notice,
- Respondent Exhibit 8: Comparative market analysis and MLS sheets for 9808 West 350 North, Thorntown, 8998 North U.S. 52, Colfax, and 5125 North 150 West, Lebanon,

³ The Assessor multiplied the average price per square foot by 2,184 square feet. The property record card shows the house as having 2,832 square feet. *See Resp't Exs. 2, 8.*

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: November 23, 2013 Order Scheduling a Case Management Conference.

c. These Findings and Conclusions.

Analysis

15. Mr. Jackson did not make a prima facie case for reducing the assessment. The Board reaches this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “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, for the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in a tax appeal must be consistent with that standard. *Id.* For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 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 subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 2-3; *see also* Ind. Code § 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 its evidence relates to the property’s market value-in-use as of the relevant valuation date. *See 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2013 assessments, the valuation date was March 1, 2013. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Mr. Jackson bought the property for \$103,000 in February 2011. That sale took place more than two years before the March 1, 2013 valuation date. Mr. Jackson therefore needed to explain how that sale price related to the valuation date. His internet articles about foreclosure rates do little to show changes in the relevant market between the sale and valuation dates.
 - d. Also, Mr. Jackson significantly renovated the house between the time he bought it and the assessment date. And he did little to quantify how those renovations affected the property’s value. At most, he testified that he “probably” spent \$14,600 to \$16,600 on new carpet and repairs. But he also testified that he did much of the work himself.

- e. Because Mr. Jackson neither related the 2011 sale price to the relevant valuation date nor sufficiently quantified the extent to which his renovations increased the property's value after he bought it, the sale price has little or no probative weight. The same is true for the two appraisals he referenced, both of which valued the property before Mr. Jackson renovated it as of dates that were more than two years before the valuation date at issue in this appeal. More importantly, Mr. Jackson did not offer the appraisal reports or otherwise show how the appraisers formed their opinions.
- f. Finally, Mr. Jackson offered Ms. Parrett's comparative market analysis. Her analysis suffers from the same problems as the 2011 purchase price. It is based primarily on 2011 data without relating that data to the March 1, 2013 valuation date and it is necessarily tied to the pre-renovation condition of the home, as evidenced by Ms. Parrett's statement that she did not know the current condition of the home.
- g. Aside from those problems, Ms. Parrett's analysis does little more than offer raw data without applying generally accepted appraisal principles to convert that data into a reliable opinion of value. She simply gave some basic information about the purportedly comparable properties without comparing them to the subject property or adjusting their sale prices to account for any relevant differences. *See Long*, 821 N.E.2d at 471 (finding the taxpayers failed to make a prima facie case where they failed to explain how their property compared to other properties or how any relevant differences affected their values). She did not even offer an opinion of value.

Conclusion

- 16. Mr. Jackson failed to make a prima facie case for changing the subject property's 2013 assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property should not be changed.

ISSUED: October 21, 2014

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>>.