

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

Petition: 47-005-11-1-5-00003
Petitioner: Jimmy Johnson
Respondent: Lawrence County Assessor
Parcel: 47-14-01-302-011.000-006¹
Assessment Year: 2011

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Lawrence County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 on April 20, 2012.
2. The PTABOA failed to hold a hearing within 180 days after receiving the Form 130. Based on that fact, the Petitioner appealed to the Board by filing a Form 131 on October 29, 2012. He elected to have this case heard according to small claims procedures.
3. Administrative Law Judge Paul Stultz held the Board's administrative hearing on October 8, 2014. He did not inspect the property.
4. Jimmy Johnson, Assessor April Collins, and Kirk Reller were sworn as witnesses.

Facts

5. The subject property is a single-family residential rental located at 771 South 6th Street in Mitchell.
6. The Assessor determined the assessed value is \$6,500 for land and \$41,200 for improvements (total \$47,700). The PTABOA issued a Form 115 on December 5, 2012, purporting to reduce the total assessed value to \$44,500; however, *the PTABOA took that action after the appeal was filed with the Indiana Board*. The Respondent offered no substantial argument to support the PTABOA's authority to act at that point. Consequently, we conclude that the PTABOA no longer had authority to change the disputed assessment on December 5, 2012. The Board will disregard that action in determining burden of proof and making the final assessment determination.
7. The Petitioner contends the total assessment should be \$35,000.

¹ The Form 131 indicates the parcel number ends with a 6. Some of the evidence indicates that the parcel number for the subject property ends with a 5. Neither party addressed this discrepancy or attached significance to it.

Record

8. The official record for this matter contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner's Exhibit A – Two pages from the Lawrence County assessment ratio study for 2012,
Petitioner's Exhibit B – List of comparable sales,
Petitioner's Exhibit C – Property record card (PRC) for the subject property,
Petitioner's Exhibit D – Eleven copies of comparable property realtor listings,
Petitioner's Exhibit E – Photograph of subject property,
Petitioner's Exhibit F – Photograph of subject property,
Petitioner's Exhibit G – Photograph of subject property,
Respondent Exhibit 1 – Form 130,
Respondent Exhibit 2 – Form 115,
Respondent Exhibit 3 – PRC for the subject property,
Respondent Exhibit 4 – Three photographs of the subject property,
Respondent Exhibit 5 – Statement concerning timeliness of PTABOA hearing and Board hearing,
Respondent Exhibit 6 – Instructions on how to figure effective age,
Respondent Exhibit 7 – Narrative of effective age of the subject property,
Respondent Exhibit 8 – Spreadsheet of comparable sales,
Respondent Exhibit 9 – PRC for 455 North 7th Street,
Respondent Exhibit 10 – Photographs of 455 North 7th Street,
Respondent Exhibit 11 – Sales disclosure for 455 North 7th Street,
Respondent Exhibit 12 – PRC for 912 Lawrence Street,
Respondent Exhibit 13 – Photographs of 912 Lawrence Street,
Respondent Exhibit 14 – Sales disclosure for 912 Lawrence Street,
Respondent Exhibit 15 – Sales disclosure for 912 Lawrence Street
Respondent Exhibit 16 – PRC for 1201 West Main,
Respondent Exhibit 17 – Photographs of 1201 West Main,
Respondent Exhibit 18 – Sales disclosure for 1201 West Main,
Respondent Exhibit 19 – PRC for 1226 West Warren Street,
Respondent Exhibit 20 – Photographs of 1226 West Warren Street,
Respondent Exhibit 21 – PRC for 1225 West Warren Street,
Respondent Exhibit 22 – Photographs of 1225 Warren Street,
Respondent Exhibit 23 – Sales disclosure for 1225 Warren Street,
Respondent Exhibit 24 – PRC for 180 Rabbitsville Road,
Respondent Exhibit 25 – Photographs of 180 Rabbitsville Road,
Respondent Exhibit 26 – Sales disclosure for Rabbitsville Road,
Respondent Exhibit 27 – PRC for 605 North 9th Street,
Respondent Exhibit 28 – Photographs of 605 North 9th Street,
Respondent Exhibit 29 – Sales disclosure for 605 North 9th Street,

Respondent Exhibit 30 – PRC for 1120 Orchard Street,
Respondent Exhibit 31 – Photographs of 1120 Orchard Street,
Respondent Exhibit 32 – Sales disclosure for 1120 Orchard Street,
Respondent Exhibit 33 – PRC for 1008 Crawford Street,
Respondent Exhibit 34 – Photographs of 1008 Crawford Street,
Respondent Exhibit 35 – Sales disclosure for 1008 Crawford Street,
Respondent Exhibit 36 – PRC for 1118 Oak Street,
Respondent Exhibit 37 – Photographs of 1118 Oak Street,
Respondent Exhibit 38 – Sales disclosure for 1118 Oak Street,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet.

- d. These Findings and Conclusions.

Contentions

9. Summary of the Respondent's case:

- a. The subject property has a 12 foot by 24 foot area that originally was a carport. The carport was converted to additional living space in 2005. The Respondent added this additional living space to the 2006 assessment, but the effective age based on this conversion was not changed until the 2011 assessment, when the effective age for the house was changed to be based on 1970 rather than 1968 construction. *Reller testimony; Resp't Ex. 2, 5, 6, 7.*
- b. The Respondent prepared a comparables spreadsheet listing the 2011 assessed values, square footage, assessed value per square foot, age of construction, effective age, sale date, list price, sale price, and sale price per square foot. The list starts with the subject property followed by ten sales of comparable properties. *Reller testimony; Resp't Ex. 8.* The spreadsheet is supported by PRC, photos, and sales disclosures. *Reller testimony; Resp't Ex. 9-38.*
- c. The assessed value of the subject property is \$42.14 per square foot. The comparable properties sold in a range from \$31.59 to \$81.73 per square foot. The median sale price of the comparables is \$64.33 per square foot. *Reller testimony; Resp't Ex. 8.*
- d. Property located at 1226 West Warren Street is comparable in that it also had a 15 foot by 24 foot carport that was converted to living area. The conversion and additional living space changed the effective age of that property. *Reller testimony; Resp't Ex. 19.*
- e. The Petitioner's comparables include distressed sales that should not be considered as valid comparables. *Reller testimony; Pet'r Ex. B.*

10. Summary of the Petitioner's case:
- a. The Respondent assessed the subject property for \$47,700. The Respondent presented properties that have assessed values of \$71,000, \$80,000, \$77,000, \$58,000, \$77,000, \$97,000, and \$79,000 as comparables, but they are not really comparable to the subject property. *Johnson testimony; Resp't Ex. 8.*
 - b. The Lawrence County ratio study shows property values increasing 9% from 2007 to 2011. This conclusion is not what happened during that period across the United States, and definitely not in Mitchell, Indiana. Property values were crashing in Indiana during this period. The Respondent is not considering foreclosures. *Johnson testimony; Pet'r Ex. A.*
 - c. Properties are selling for a lower value than the assessments on this list. The Respondent is assessing all property a little high. *Johnson testimony; Pet'r Ex, A.*
 - d. The Petitioner presented a list of ten sales in Mitchell. Eight out of ten of those properties have an assessment that is higher than the selling price. *Johnson testimony; Pet'r Ex. B.*
 - e. The maximum sale price for the subject property has been \$40,460. The assessed value has continued to increase since the Petitioner purchased it. *Johnson testimony; Pet'r Ex, C.*
 - f. The Petitioner presented a realtor's listing for 11 comparable properties. Their listing prices range from \$35,000 to \$40,000. Mr. Johnson testified that each of those properties is comparable to the subject. *Johnson testimony; Pet'r Ex. D*
 - g. Mr. Johnson testified that the construction of the addition is not the same quality as the original structure. The addition does not have an overhang. The siding of this area goes down level to the ground, but it should be one or two blocks up. The studs go down to and under the ground. This situation causes the water to run down the siding and wall and then onto the floor. *Johnson testimony; Pet'r Exs. E, F, G.*

Burden

11. 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. 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). A burden-shifting statute, however, creates exceptions to that rule. For this case, the most relevant part of that statute "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." IC 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.” IC 6-1.1-15-17.2(b).

12. As previously explained, the Board will not consider the PTABOA’s purported change to the disputed assessment while this case was pending with the Board. The 2010 assessment for the subject property was \$42,500. The 2011 assessment for it was \$47,700. This increase was more than 5%. Therefore, the Respondent has the burden to prove the assessed value of \$47,700 is correct.

Analysis

13. The Respondent did not make a prima facie case that the 2011 assessment is 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. Other evidence relevant to market value-in-use also may be used to prove a correct 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. To be relevant, the record must somehow establish how valuation evidence relates to market value-in-use as of the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2011 assessment, the valuation date was March 1, 2011.
 - c. Mr. Reller testified the 2011 assessment increased based on changing the effective age of the structure because of a 12 foot by 24 foot addition.² He testified that a property at 1226 West Warren Street had a carport conversion to living area and the Assessor changed the effective age on that property, too. Merely establishing the methodology the Assessor used and establishing that methodology was used on another property, however, is not sufficient to prove the resulting assessed value is correct.
 - d. The Respondent presented evidence regarding 11 other properties. Purportedly they are comparable sales and assessments. But to effectively use any kind of comparison approach to value a property, one must establish that the properties are comparable. Conclusory statements that properties are “similar” or “comparable” are not sufficient. *Long*, 821 N.E.2d at 470 (explaining that one who relies on comparables is responsible for providing factual data and then

² The evidence establishes that the “addition” is more accurately described as a converted carport.

analyzing it in a meaningful way—the Board is not responsible for reviewing all the evidence presented to determine whether properties are indeed comparable). The Respondent presented an “Analysis” (Respondent Exhibit 8) that was a step in the right direction in that it points out the square footage and year of construction for each of the properties. These points, however, show that the square footage on several of the other properties ranges from 855 square feet to 1560 square feet. And the year of construction for each property ranges from 1900 to 1996. Meaningful analysis of these differences is lacking. The Respondent focused entirely on the fact that the subject property is assessed at \$42.14 per square foot and the purported comparables sold for \$31.59 per square foot to \$81.73 per square foot. The values (selling price or assessment) per square foot, however, have no relevance without meaningful analysis of how the specific features of the properties compare.

- e. The Respondent needed to identify the subject property’s characteristics, explain how those characteristics compare to the purportedly comparable properties with specifics about how they are similar. And she needed to recognize differences between the properties and explain how they affect market value-in-use. *Id.* at 471. The Respondent provided no such analysis for any of the properties. Therefore, the purported comparables do not prove anything meaningful about the actual market value-in-use of the subject property.
14. The Respondent failed to prove the 2011 assessment is correct. Therefore, the disputed assessment must at least be reduced to the 2010 value, which was only \$42,500. But the Board’s inquiry does not end there because the Petitioner sought an even lower value. The Petitioner has the burden of proving that part of his claim.
15. In several cases the Board has recognized that the selling price of the subject property can be good evidence to prove its market value-in-use. The top selling price for the subject property is \$40,460 in 2009. Although the Petitioner offered some conclusory testimony about property values “crashing” between 2007 and 2011, his unsupported, conclusory statements on that point provide no substantial support for his claim. Furthermore, no substantial evidence or argument relates the 2009 price for the subject property to its market value-in-use as of March 1, 2011. Therefore, that evidence does not help to prove the assessment should be anything less than \$42,500.
16. Mr. Johnson also presented a list of 10 sales and 11 listings of purportedly comparable properties. He needed to identify the subject property’s characteristics, explain how those characteristics compare to the purportedly comparable properties with specifics about how they are similar. Moreover, he needed to recognize differences between the properties and explain how they affect market value-in-use. The Petitioner provided no such analysis for any of the comparables. Therefore, his comparable evidence does not prove the actual market value-in-use of his property.
17. Mr. Johnson also argued the additional 12 foot by 24 foot living area (converted from a carport) is not of the same quality as the original structure for several reasons. It does not

have an overhang. It is not elevated on a block foundation and this fact creates water problems. The siding goes down to the ground level. Some of the studs are even below ground level. This undisputed evidence creates serious doubt about the justification for changing the effective age of the house. Nevertheless, as noted earlier, the accuracy of the effective age is only a tangential issue related to assessment methodology that is not determinative. More importantly, the Petitioner did not quantify the effect of these construction problems on the value of the subject property. Therefore, the construction problems fail to help make a case for any further reduction.

18. Finally, the Petitioner offered evidence that some Lawrence County properties had assessments for more than their actual selling prices. This evidence amounts to a very simplified sales/assessment ratio study. To draw any legitimate conclusion from that kind of evidence, however, the proponent must prove that it was prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Such studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). The Petitioner made no attempt to prove that his evidence satisfies these requirements. Therefore, the fact that a few properties sold for less than their assessed values does not help to determine the outcome of this case.

Conclusion

19. Neither party made a prima facie case to more accurately value the subject property. Therefore, the 2011 assessed value must simply revert back to the 2010 assessed value.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to \$42,500.

ISSUED: December 11, 2014

Commissioner, Indiana Board of Tax Review

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- 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>>.