

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

Petition: 84-004-18-1-5-00605-19
Petitioner: Brian José
Respondent: Vigo County Assessor
Parcel: 84-09-22-452-015.000-004
Assessment Year: 2018

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

PROCEDURAL HISTORY

1. Brian José contested the 2018 assessment of his property located at 35 S. Fawn Street in Terre Haute. On June 5, 2019, the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property at \$120,600 (\$39,300 for land and \$81,300 for improvements).
2. José timely filed a Form 131 appeal with the Board and elected to proceed under our small claims procedures. On July 29, 2020, David Smith, our designated Administrative Law Judge (“ALJ”), held a telephonic hearing on José’s petition. Neither he nor the Board inspected the property.
3. José appeared pro se. Michael West represented the Assessor. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:

Petitioner Exhibit OA:	Cover letter
Petitioner Exhibit OB:	Table with subject’s values (2014-2020)
Petitioner Exhibit 1A:	2016 Notice of Assessment
Petitioner Exhibit 1B:	Beacon listing of past assessed values and property taxes for subject
Petitioner Exhibit 1C:	Table showing assessed values and taxes for subject
Petitioner Exhibit 2A:	Source of 2015-2018 Table 4 numbers in Ex. OB
Petitioner Exhibit 2B:	Source of 2016-2019 Table 4 numbers in Ex. OB
Petitioner Exhibit 3:	Bureau of Labor Statistics publication

Petitioner Exhibit 4:	Consumer Price Index (“CPI”) table for Midwest and United States
Petitioner Exhibit 5A:	USA Today cost of living article
Petitioner Exhibit 5B:	Vigo County cost of living article
Petitioner Exhibit 5C:	Terre Haute cost of living article
Petitioner Exhibit 5D:	Housing cost table for Vigo County and Terre Haute
Petitioner Exhibit 6:	“The State of Indiana’s Housing Market” (2018)
Respondent Exhibit 1A:	2017 Property Record Card (“PRC”) for subject
Respondent Exhibit 1B:	2018 PRC for subject
Respondent Exhibit 2:	2018 GIS map of subject parcel
Respondent Exhibit 3:	June 20, 2016 Sales Disclosure Form
Respondent Exhibit 4:	Conley Appraisal Report

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

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 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, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year’s level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
7. Here, the assessment increased from \$97,700 in 2018 to \$120,600 in 2019—an increase of more than 5%. The Assessor stipulated that he bears the burden of proof.

SUMMARY OF CONTENTIONS

8. **The Assessor’s case:**
 - a. There were no changes to the data related to the improvements on the property between 2017 and 2018; the only changes were to the land value and the associated trending factor. Even though José is appealing the 2018 assessment, his purchase of the property in June 2016 for \$122,000 is somewhat relevant since it was only 18 months before the assessment date. *West testimony; Resp’t Exs. 1-3.*
 - b. The Assessor also commissioned an appraisal of the property from Brian Conley. The Assessor asked him to include three comps from within the subject’s

- neighborhood and three from outside the neighborhood. However, Conley also included three comparable property listings in the appraisal. Conley was only able to conduct a drive-by review of the property due to current circumstances. *West testimony; Resp't Ex. 4.*
- c. Conley is an Indiana General Certified Appraiser. He developed his appraisal in accordance with the Uniform Standards for Professional Appraisal Practice (“USPAP”). Conley considered all three approaches to value, but he did not develop the cost approach due to the age of the property. He also gave no consideration to the income approach due to the lack of good rental data and the fact that the typical buyer for this type of property is an owner/user, not a real estate investor. Conley therefore used the sales-comparison approach to develop his opinion of value. *Resp't Ex. 4.*
 - d. Conley identified three comparable properties located in the subject’s subdivision that sold in the 18 months preceding the effective date of his appraisal. He then expanded his search criteria to include sales within Honey Creek Township with 1,100 to 1,700 square feet of above-grade living area, which led to the inclusion of three additional comps. All six sales are similar to the subject in terms of location, age, quality, above-grade living area, bedroom and bathroom counts, and some amenities. Conley’s adjustments produced adjusted values ranging from \$93,500 to \$127,500, and an average value of \$113,909. He placed the most weight on Sales 1 and 4 due to their similarities to the subject. Conley placed less weight on Sale 3 due to the large adjustment needed for its above-grade living area. Sales 5 and 6 also received less weight due to their ages and locations. Additionally, he gave no weight to Sale 2 because its sales price appeared to be an outlier. Conley ultimately concluded to a value of \$124,000 as of January 1, 2018 under the sales-comparison approach. *Resp't Ex. 4.*
 - e. José did not present any evidence applicable to the 2018 assessment of his property, and he did not propose a value. The 2018 assessed value of \$120,600 is correct and should remain unchanged. *West testimony.*

9. **José’s case:**

- a. The subject’s assessed value increased 4.7% from 2014 to 2015, 1.8% from 2015 to 2016, and 2.0% from 2016 to 2017. These increases are comparable to, but less than, the rates of existing home sale price increases published by the National Association of Home Builders (“NAHB”) for the same periods. NAHB cited national increases of 5% from 2014 to 2015, 4.4% from 2015 to 2016, and 5.2% from 2016 to 2017. However, the Assessor claims that the subject’s value increased by 23.4% from 2017 to 2018 when the data from NAHB showed only a 4.2% increase. Something is clearly wrong with the Assessor’s claim of a 23% increase. *José testimony; Pet’r Exs. OA, OB, 1A, 1B, 1C.*

- b. The Consumer Price Index (“CPI”) published by the Bureau of Labor Statistics showed a 2.1% increase from January 2017 to January 2018. That is comparable to, but less than, the increase of 4.2% NAHB reported for the same period. While the CPI shows an increase of 2.1% for the cost of shelter, which is not exactly equivalent to home values, this is still less than the 5% increase reported by NAHB and nowhere near the Assessor’s 23% increase. These corroborated values show what reasonable increases in home prices should be. The CPI, cost of living, home prices, and income are lower or have increased less in the Midwest, Indiana, Vigo County, and Terre Haute than they have nationally. The CPI increase from January 2017 to 2018 was lower in the Midwest than it was nationally (1.6% compared to 2.1%). The largest proportion of cost of living is housing costs. Although it is not exactly equivalent to home values, it presumably takes home prices into account, and is lower in Terre Haute than it is nationally. The cost of living in Terre Haute is also 16% less than it is nationally, and median home prices in Terre Haute are among the lowest 10% in the nation. *José testimony; Pet’r Exs. OB, 1B, 3, 4, 5A, 5B, 5C.*
- c. Census Bureau statistics show that home prices are lower in Terre Haute than Vigo County, lower in Vigo County than they are in Indiana as a whole, and lower in Indiana than they are in the nation as a whole. These patterns hold for median housing costs, median household income, and per capita income. Indiana’s house price index has been lower than the national house price index for the past 15 years and has grown less than the national index over the past 6 years. Indiana home prices appreciated less than in the nation as a whole and median sales prices of homes in Vigo County increased only 2.1% from the end of 2016 to the end of 2017. This is lower than the previously cited NAHB national increase of 5.2% and comparable to the CPI increase for the same period. Vigo County’s larger increase in home prices at 2.1% than the Midwest at 1.6% can probably be attributed to the cost of shelter, which is not exactly equivalent, but is presumably related to home values. The Assessor’s 23% increase in value from January 1, 2017 to January 1, 2018 is inappropriate, unrealistic, and abusive. *José testimony; Pet’r. Exs. 3, 5D, 6.*
- d. The Assessor’s appraisal should result in a value closer to \$114,000 instead of the \$124,000 that the appraiser selected. The \$124,000 valuation is very similar to the \$123,710 average of the six comparable properties’ unadjusted values, but the appraised value should be based on the average of their adjusted sales prices. After adjustment, the six comparable sales had an average sales price of \$113,909. However, Conley excluded Sale 2, which had a sale price of \$93,500, calling it an outlier. An appraiser should not be allowed to throw out an authentic sales price unless there is something wrong with it. This is cherry picking data, and it resulted in a flawed numerical analysis. Sale 1 is more of an outlier and should be thrown out before Sale 2. Sale 2’s sales price only differed from the average by \$25,000, while Sale 1’s sales price differed by \$40,000. The way Conley weighted his comparable sales should not be given any consideration because he failed to offer any information specifying how he weighted them, making it difficult to refute. *José testimony.*

- e. What José paid for the property in 2016 is irrelevant because it has nothing to do with the 2018 value of the property. It also assumes that he got a good deal on the property, which may not necessarily be the case—he may have had reasons to pay a premium for the property. The evidence submitted from numerous sources shows how much a reasonable increase in value should be for 2018. There has been approximately a 2-3% local increase and 5% national increase in property values. José requests the Board value the subject 2-3% higher than its 2017 assessed value of \$97,700, or approximately \$100,000. *José testimony*.

ANALYSIS

10. The Assessor made a prima facie case supporting the assessment, and José failed to provide any probative valuation evidence in rebuttal. The Board reached this decision for the following reasons:
 - a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “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). It is instead determined under the rules of the DLGF. 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.” MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).
 - c. As discussed above, the Assessor has the burden of proving that the 2018 assessment is correct. He offered a USPAP-compliant appraisal report prepared by Conley, a certified general appraiser. Conley relied on the sales-comparison approach in estimating the subject’s value to be \$124,000 as of January 1, 2018.
 - d. In an effort to impeach Conley’s appraisal, José pointed to several alleged errors in Conley’s decision-making. However, José did not provide any evidence calling specific aspects of the appraisal into question—he just offered his own opinion of how Conley should have interpreted the data. But there is no evidence that José is a

certified appraiser, and he did not establish that he has any particular expertise in applying generally accepted appraisal principles. In contrast, Conley is a licensed appraiser that backs his decisions with education, training, and experience. Conley also certified that he developed his appraisal in accordance with USPAP. Thus, we can infer that he used reliable data and generally accepted appraisal principles in formulating his opinion of value. Because José failed substantially rebut the reliability of Conley's appraisal, we conclude it is probative evidence of the subject's market value-in-use. Accordingly, the Assessor made a prima facie case that the 2018 assessment should be \$124,000.¹ The burden therefore shifts to José to rebut the Assessor's valuation evidence.

- e. José submitted information regarding year-over-year changes in housing prices and other economic factors at the local and national level from a variety of sources. He determined that there was an increase in housing prices of 2-3% at the local level from 2017 to 2018. He then applied that increase to the subject's 2017 assessed value to reach his requested valuation of \$100,000 for 2018. However, José failed to demonstrate that his valuation method complies with generally accepted appraisal principles. Moreover, each tax year stands on its own. Jose' has only established that his property may have been undervalued in prior years. Thus, we conclude that it is not probative valuation evidence. *See Grabbe v. Duff*, 1 N.E.3d 226, 231 (Ind. Tax Ct. 2013) (stating that the probative value of an opinion depends on whether the proponent of that opinion has shown that he adhered to generally recognized appraisal principles in formulating the opinion).
- f. Because José did not offer any probative valuation evidence, he failed to rebut the Assessor's prima facie case that the 2018 assessment should be \$124,000. However, the Assessor requested that we leave the assessment unchanged. We therefore order no change.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2018 assessment.

¹ We give no weight to José's 2016 purchase price since the Assessor failed to relate it to the 2018 valuation date.

ISSUED: October 21, 2020

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>>.