

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

Petition No.: 79-004-23-1-5-00679-23
Petitioner: Kathryn J. Miller
Respondent: Tippecanoe County Assessor
Parcel: 79-07-28-435-019.000-004
Assessment Year: 2023

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

Procedural History

1. On May 8, 2023, Kathryn J. Miller appealed the 2023 assessment of her property located at 905 South 24th Street in Lafayette. The Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) did not hold a hearing within 180 days. *See* Indiana Code § 6-1.1-15-1.2(k) (requiring a county PTABOA to hold a hearing within 180 days of a taxpayer filing written notice of review). On December 5, 2023, Miller opted to appeal to the Board rather than wait for the PTABOA to act. *See* I.C. § 6-1.1-15-1.2(k) (allowing a taxpayer to appeal to the Board once the maximum time for a PTABOA to hold a hearing has elapsed).
2. The parties agreed the assessment of record being contested is \$22,500 for land and \$68,600 for improvements for a total of \$91,100.
3. Miller elected to proceed under the Board’s small claims procedures.
4. On July 10, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Kathryn Miller, Appraiser Deborah Lewellen, and Tippecanoe County Assessor Eric Grossman all testified under oath.

Record

6. The parties submitted the following exhibits:

- Petitioner Exhibit 1: Assessment information for properties located at 905, 814, 820, 824, 904, 906, 908, 912, 918, 954, 1014, 1013, 1001, 915, 913, 911, 909, 907, and 821 South 24th Street,
- Petitioner Exhibit 2: Assessment information for properties located at 905 South 24th Street and 807, 811, 813, 903, 905, 907, 909, 911, 1009, 1015, 1012, 920, 916, 912, 904, 816, 808, and 804 South 23rd Street,
- Petitioner Exhibit 3: Assessment information for properties located at 905 South 24th Street and 1010, 1002, 924, 924 ½, 918, 916, 912, 908, 906, 904, 808, 806, 802, 723, 716, 714, 712, 710, 708, 929, 923, 919, 907, 905, 903, 811, 805, 803, 727, 725, and 711 South 22nd Street,
- Petitioner Exhibit 4: Assessment information for properties located at 905 South 24th Street and 2320, 2412, 2416, 2426, 2502, 2504, 2508, 2510, 2516, 2518, 2520, 2401, 2403, 2407, 2411, 2503, 2505, 2509, and 2515 Main Street,
- Petitioner Exhibit 5: Assessment information for properties located at 905 South 24th Street and 2400, 2406, 2410, 2414, 2420, 2424, 2428, 2317, 2321, 2307, 2223, 2205, 2401, 2407, 2415, 2423, and 2300 Lamb Street,
- Petitioner Exhibit 6: Assessment information for properties located at 905 South 24th Street and 2304, 2310, 2314, 2305/2307, and 2317/2321 Central Street,
- Petitioner Exhibit 7: Assessment information for properties located at 905 South 24th Street and 2321/2317, 2313/2311, 2307, 2320/2318, and 2312/2314 Butler Street,
- Petitioner Exhibit 8: Assessment information for properties located at 905 South 24th Street and 2203, 2205, and 2207 Kossuth Street,
- Petitioner Exhibit 9: *Kathryn J. Miller v. Tippecanoe County Assessor*, IBTR Pet. No. 79-004-22-1-5-00263-23 (March 12, 2024),
- Petitioner Exhibit 10: Thirty-one (31) photographs of the subject property,
- Petitioner Exhibit 11: Comparison of comparables from Lewellen appraisal and subject property.
- Respondent Exhibit 1: Respondent narrative,
- Respondent Exhibit 2: 2023 subject property record card,
- Respondent Exhibit 3: Appraisal report of the subject property prepared by Deborah Lewellen of Appraisals by Deb Lewellen, Inc.

- a) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Findings of Fact

7. The subject property is a two-story, 1,668 sq. ft. frame home built in 1940 with a detached 364 sq. ft. garage located on 0.2731 acres in Lafayette. The home has some deficiencies including deteriorated trim and siding, an aging roof, a caved-in patio, and cracks in the garage foundation. *Miller testimony; Pet'r Ex. 10; Resp't Exs. 1 & 2.*
8. The Assessor presented an appraisal prepared by Deborah Lewellen, a certified residential appraiser, that estimated the market value of the subject property as of January 1, 2023. Lewellen certified that her appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). She developed a sales-comparison approach based on an exterior inspection. She selected six comparable properties located less than a mile from the subject property that sold in 2022. Lewellen adjusted the comparables for factors such as site size, square footage, basement finish, number of rooms, and garage size. After adjustment, the sale prices ranged from \$148,500 to \$156,200. She reconciled these to a value of \$150,000 as of the assessment date. *Lewellen testimony; Resp't Ex. 3.*
9. The 2023 assessment under appeal of \$91,100 is an approximately 8.5% increase over the prior year's assessment of \$84,000. *Resp't Ex. 2.*

Contentions

10. Summary of the Respondent's case:
 - a) The Assessor argued that Lewellen's conclusion of \$150,000 was sufficient to support the current assessment of \$91,600. *Grossman testimony; Resp't Ex. 1- 3.*
11. Summary of the Petitioners' case:
 - a) Miller offered information regarding 117 properties showing how assessments had increased from 2018 through 2023. In particular, she compared the 2022 and 2023 percentage increase between the subject property and other properties from the same assessment neighborhood. Miller argued that business-owned rental properties saw smaller increases in assessed value than owner-occupied homes. She also claimed that the assessments of most of the properties in the same neighborhood did not increase as much as the subject property's assessment. She claimed this was in retaliation for previously appealing her assessment. In addition, she pointed out that one property's assessment did not increase at all from 2020 to 2023. She argued that

properties in the subject property's assessment neighborhood are not assessed fairly and accurately. *Miller testimony; Pet'r Exs. 1-8.*

- b) Miller argued that Lewellen's appraisal was flawed because five of the six comparable properties were not from the same assessment neighborhood as the subject property. She also argued that the comparables were in much better condition than the subject property. In addition, Miller claimed that in a previous hearing Lewellen had treated the subject property as having new siding and as "well-maintained," while neither of these were the case. Miller also claimed that Lewellen would have been incentivized to arrive at a higher value because she was hired by the Assessor. Finally, Miller compared the sale prices and the assessments of Lewellen's comparables, noting that the comparables were assessed significantly below their sale prices. *Miller testimony; Pet'r Ex. 11; Resp't Ex. 3.*

Burden of Proof

- 12. 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." Indiana Code § 6-1.1-15-20(a) (effective March 21, 2022).
- 13. 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.*
- 14. 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).
- 15. Here, the assessment under appeal is an approximately 8.5% increase over the prior year's assessment. Thus, the Assessor has the burden of proof.

Analysis

- 16. The Assessor met his burden of proof by providing a reliable appraisal of the subject property as of the valuation date. Because the Assessor did not ask to raise the assessment, we decline to do so.
 - a) 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).

- b) 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, true tax value is found under the rules of the Department of Local Government Finance ("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." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
- c) In order to meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the value of the property." *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 regulation." *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 Guidelines' procedures and schedules" lacks the market-based evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.2d at 133.
- d) 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. Assessor*, 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).
- e) The Assessor offered a USPAP-compliant appraisal prepared by Deborah Lewellen. Using the sales-comparison approach, Lewellen estimated the subject property's value at \$150,000 as of January 1, 2023. We find her opinion to be generally credible. Although Miller argued that Lewellen was inherently biased because she was hired by the Assessor, we find no support for this allegation. Although Miller pointed out some differences between the comparables and the subject property, she did not provide any reliable evidence showing how those differences affected their respective values, or that Lewellen failed to account for those differences in her

adjustments. Miller also argued that Lewellen made errors in a previous appraisal of the subject property, but did not demonstrate that Lewellen erred in this appraisal. Finally, Miller argued that Lewellen should not have used properties outside of the subject property's assessment neighborhood, but she pointed to no authority for this contention. When developing a sales-comparison approach, appraisers may use sales of any property that can be considered comparable under generally accepted appraisal principles. They are not limited to the subject property's assessment neighborhood.¹ For these reasons, we find Lewellen's appraisal to be persuasive evidence of value and sufficient for the Assessor to meet his burden of proof.

- f) We now turn to Miller's evidence. She argued that the home suffers from deferred maintenance such as deteriorating trim and siding, an aging roof, a caved-in patio, and cracks in the garage floor. But she did nothing to quantify the effect that these issues had on the overall value of the property. Miller needed to use market-based evidence to prove the value of the subject property as of the assessment date. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Likewise, our review of the photographs does not persuade us that Lewellen's appraisal incorrectly describes the property as "adequately maintained with no major items of deferred maintenance." Miller could have cross-examined Lewellen as to whether the items needing repair would affect the value, but she did not.
- g) Miller did offer some assessment information from the subject property's neighborhood. But conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). In addition, a party seeking to use sales or assessment comparables must identify the characteristics of the subject property, explain how those characteristics compare to the characteristics of the purportedly comparable properties, and explain how any differences affect the relative market values-in-use of the properties. *Id.* at 471. Miller testified regarding some differences between the purportedly comparable properties and the subject property, but she did not explain how the relevant differences affected their respective values. Without such analysis, this evidence is insufficient to support any value.
- h) Finally, we note that Miller claimed that the subject property's neighborhood was being unfairly assessed, and the subject property in particular was being targeted for higher assessments in retaliation for Miller's previous appeals. We interpret these claims as challenges to the uniformity and equality of the assessment. As the Tax

¹ At one point Miller claimed that she was told that she is only permitted to use evidence from the subject property's assessment neighborhood, making Lewellen's use of data from outside the neighborhood a double standard. This is not the case. Either party may present data from outside the subject property's assessment neighborhood. The reliability of such data to prove a value is contingent upon whether it is presented using generally accepted appraisal principles.

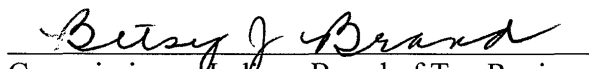
Court has explained, “when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n. 3 (Ind. Tax Ct. 2007 (emphasis in original)). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *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)). For her assessment comparison, Miller did not provide any objectively verifiable market data that demonstrated the value of the purportedly comparable properties. Although she did point to the sale prices of Lewellen’s comparables, she did not demonstrate this was a statistically reliable sample of properties.² For these reasons, she failed to make a prima facie case showing a lack of uniformity and equality in the assessment. In particular, we find no support for her claim that the subject property was being unfairly assessed in retaliation for her previous appeals or that rental properties were being treated differently than owner-occupied homes.

Final Determination

17. The burden of proof has shifted under I.C. § 6-1.1-15-20. The Assessor successfully met this burden with the Lewellen appraisal. Miller did not provide any reliable market-based evidence that supported a different value. Because the Assessor did not ask to raise the assessment, we decline to do so. Thus, we order no change to the January 1, 2023, assessment.

ISSUED: October 8, 2024


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

² We also note that because the Assessor did not ask to raise the assessment, the subject property will be assessed at approximately 60% of its indicated market value, lower than any of Lewellen’s comparables when comparing their 2022 sale prices to their 2023 assessments.

- 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>>.