

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

Petition No.: 57-003-15-1-5-01491-16
Petitioner: Glenn Minser
Respondent: Noble County Assessor
Parcel No.: 57-09-12-200-010.000-003
Assessment Year: 2015

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

Procedural History

1. Petitioner initiated his appeal with the Noble County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130 dated October 8, 2015. On June 3, 2016, the PTABOA issued its Notification of Final Assessment Determination. Petitioner then timely filed a Form 131 petition on July 13, 2016, with the Board.
2. Petitioner elected to have his appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On January 31, 2017, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:
 - Glenn Minser, Owner,
 - Kyle Bolyard, Appraiser for Petitioner,
 - Robert Bohde, Appraiser for Petitioner,
 - Kim Carson, Noble County Assessor,
 - Gavin Fisher, Appraiser for Respondent.

Facts

5. The property under appeal is a single-family home located at 11669 East 415 North in Kendallville.
6. The PTABOA determined the following values:

Land: \$103,700 Improvements: \$83,900 Total: \$187,600.

7. Petitioner requested a total assessment of \$140,000.

Record

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

- a. A digital recording of the hearing,

- b. Exhibits:

Petitioner Exhibit 1: Residential appraisal report prepared by Kyle Bolyard of Hosler Appraisal, Inc., dated September 14, 2015,

Respondent Exhibit 1: Corrected land and square footage adjustment analysis,

Respondent Exhibit 2: Land adjustment support,

Respondent Exhibit 3: Square footage support (appraiser's sketch),

Board Exhibit A: Form 131 petition and attachments,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet,

- c. These Findings and Conclusions.

Objections

9. Petitioner objected to Respondent's Exhibits 1, 2, and 3, arguing that they are incorrect. Petitioner's objection goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules Petitioner's objection and Respondent's Exhibits 1, 2, and 3 are admitted.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong 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 creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "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." Ind. Code § 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.” Ind. Code § 6-1.1-15-17.2(b).

12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value increased from \$145,400 in 2014 to \$187,600 in 2015 which, the parties agree, is an increase in excess of five percent. Respondent therefore has the burden of proving that the 2015 assessment is correct. To the extent that Petitioner seeks an assessment below the previous year’s level, however, he bears the burden of proving that lower value.

Summary of the Parties’ Contentions

15. Petitioner’s case:
 - a. Petitioner contends that the assessment is too high in light of an appraisal report prepared by Kyle Bolyard, an Indiana licensed appraiser. Mr. Bolyard certified that he appraised the property and prepared his report in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Bolyard testimony; Pet’r Ex. 1.*
 - b. Mr. Bolyard described the home as consisting of 1,171 square feet of gross living area and in poor condition. He claimed that the home needed flooring and trim on both levels, and that the second floor also needed drywall, doors, and electrical utilities. *Bolyard testimony; Pet’r Ex. 1.*
 - c. Mr. Bolyard relied on the sales comparison approach to value. To determine the land site adjustment, he analyzed three comparable land sales. The sales were located within nine miles of the subject property. They were similar in appeal and topography and had sale prices ranging from \$3,270 per acre to \$3,987 per acre. The sales were weighted equally, which resulted in a land site adjustment of

\$3,500 per acre. Multiplying that value by the subject property's 22.8 acres results in a rounded site value of \$80,000. *Bolyard testimony; Pet'r Ex. 1.*

- d. Mr. Bolyard next considered four comparable sales and one listing, all located within 20 miles of the subject property. He claims that market conditions were stable at the time of the appraisal. He adjusted the sales to account for various differences among the properties, such as land size, condition, gross living area, basement area, wood stoves, decks, and sheds. The adjusted sale prices ranged from \$140,100 to \$149,300. As a result, he estimated the property's value at \$140,000 as of September 14, 2015. *Bolyard testimony; Pet'r Ex. 1.*

16. Respondent's case:

- a. Respondent offered the testimony of Gavin Fisher, an Indiana licensed appraiser. He contends Petitioner's appraisal should be given limited weight. *Fisher testimony.*
- b. On one hand, Fisher testified that he agrees with the sales comparison approach and the choice of comparable properties the appraiser used to value the subject property. He also agrees that most of the appraisal was completed using appropriate appraisal standards and was undertaken in compliance with USPAP. *Fisher testimony.*
- c. On the other hand, Mr. Fisher contends that the appraisal fails to adequately explain how the \$3,500 per acre land site adjustment was developed. In addition, he claims the appraiser appears to have used only land sales that were at least ten acres larger than the subject property. In doing so, he believes the appraiser failed to account for the diminishing marginal utility of a larger tract of land. Alternatively, Mr. Fisher developed what he believes is an appropriate land adjustment using ten vacant land sales that occurred between September 30, 2011, and August 1, 2014, which resulted in a value of \$5,500 per acre. He noted the size of the comparable properties he used were within five acres of the size of the subject property. *Fisher testimony; Resp't Ex. 2.*
- d. Mr. Fisher also disagrees with the appraiser's description of the 521 square foot second floor area as an unfinished attic. According to Fisher, the home is a "Cape Cod" and therefore the entire upper level would typically be viewed as gross living area. As a result, he recalculated the subject property's gross living area to include the 521 square foot area. He then recalculated the differences between the gross living areas of the comparable properties and the subject property. Finally, he applied the appraiser's \$25 per square foot adjustment for differences in living area to the comparable properties. *Fisher testimony; Resp't Ex. 3.*
- e. Fisher claims that as a result of making the correction for the land site and the correction for the gross living area, the adjusted sale prices of the comparable

properties should range from \$188,000 to \$206,700. Consequently, he argues that the market value-in-use of the subject property should be between \$190,000 and \$200,000. *Fisher testimony; Resp't Ex. 1 & 3.*

Analysis

17. Respondent failed to provide sufficient evidence to establish a prima facie case that the 2015 assessed value was correct. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the 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." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township 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 property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *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. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Mr. Fisher made no attempt to argue that the 2015 assessment is correct. Instead, he offered an analysis by making two changes to Petitioner's appraisal. First, Mr. Fisher contends that the land adjustment of \$3,500 per acre is incorrect. He recalculated the land adjustment for purposes of his analysis using ten vacant land sales which resulted in the application of a value of \$5,500 per acre. He also claims that the appraiser's classification of 521 square feet of unfinished attic is incorrect and proposes that area should be classified as gross living area. By applying those two changes, Mr. Fisher argues that the appropriate market value-in-use of the subject property for 2015 should be between \$190,000 and \$200,000.

- d. In his land analysis, Mr. Fisher did not attempt to account for any relevant differences among the properties. As a result, his analysis has little or no probative value. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), “the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions, and conclusory statements do not constitute probative evidence.
- e. Mr. Fisher also contends that the appraiser’s classification of 521 square feet as unfinished attic is incorrect. He claims the 521 square foot area should be classified as gross living area. There is no evidence, however, that the area is classified incorrectly or what, if any, impact it would have on the value of the property. Statements that are unsupported by probative evidence are also conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax C. 1995).
- f. Thus, Mr. Fisher failed to establish a prima facie case that the 2015 assessed value was correct. Because he failed to meet the burden of proof, the 2015 assessment must be reduced to the previous year’s level of \$145,400. That, however, does not end the Board’s inquiry because Petitioner requested a value of \$140,000. As explained above, Petitioner has the burden of proving that he is entitled to that additional reduction. The Board therefore turns to Petitioner’s evidence.
- g. Petitioner offered an appraisal estimating the value at \$140,000 as of September 14, 2015. Respondent sought to impeach the appraisal for the reasons discussed above. By merely offering an alternative land site calculation and finished area calculation without offering adequate support, Respondent failed to substantially impeach the appraisal. There is no evidence in the record to indicate the appraiser used erroneous data. Furthermore, he conducted the appraisal pursuant to USPAP and arrived at his opinion using the sales comparison approach, which is a generally recognized appraisal method. Consequently, the Board finds the appraisal is sufficient to make a prima facie case for changing the assessment to \$140,000.

Conclusion

18. Respondent had the burden of proving the 2015 assessment was correct and failed to do so. Ordinarily, the assessed value would revert to the previous year’s value. However, Petitioner requested a further reduction and bore the burden of proving that lower value. The Board finds that Petitioner met that burden.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed value of Petitioner's property must be changed to \$140,000 for 2015.

ISSUED: April 5, 2017

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>>.