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

Petition: **84-002-12-1-5-04961**
Petitioners: **Eugene F. & Phyllis A. O'Neal**
Respondent: **Vigo County Assessor**
Parcel: **84-06-36-353-025.000-002**
Assessment Year: **2012**

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

Procedural History

1. The Petitioners initiated their 2012 assessment appeal with the Vigo County Assessor on January 10, 2013.

2. On May 22, 2014, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.

3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.

4. The Board issued a notice of hearing on June 28, 2016.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 11, 2016. She did not inspect the property.

6. Eugene and Phyllis O'Neal appeared *pro se.* Harrison Township Assessor Donald Pruett appeared for the Respondent.[1] All of them were sworn.

Facts

7. The property under appeal is a single-family residence located at 2851 Winthrop Road in Terre Haute.

8. The PTABOA determined the total assessment is $218,500 (land $72,500 and improvements $146,000).

[1] Even though Mr. Pruett made the original assessment, the Harrison Township Assessor is not a party to this appeal. The Vigo County Assessor is the statutorily designated Respondent. *See* Ind. Code § 6-1.1-15-3(b). As the Board mailed the Notice of Hearing to the Vigo County Assessor, the Board will view Mr. Pruett's appearance as authorized by the County Assessor, as 52 IAC 2-2-4(2) provides. While Mr. Pruett failed to provide any evidence to that affect, the Petitioners did not object. For future hearings however, the Board cautions the County Assessor to make sure she is properly represented.

9. On their Form 131, the Petitioners requested a total assessment of $170,400 (land $20,400 and improvements $150,000).[2]

Record

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

a) Form 131 with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioners Exhibit 1:	Form 131 with attachments,
Petitioners Exhibit 2:	Appraisal of the subject property prepared by Teresa L. Fellows, dated October 3, 2012,
Petitioners Exhibit 3:	2012-2015 Notice of Assessments (Form 11),
Petitioners Exhibit 4:	Chart prepared by the Petitioners indicating the subject property's land assessments, improvement assessments, and property taxes for the years 2008-2015,
Petitioners Exhibit 5:	Copy of a sale listing for the property located at 4072 Ironwood Lane dated July 29, 2016,
Petitioners Exhibit 6:	Subject property assessment report from Beacon website dated July 28, 2016,
Petitioners Exhibit 7:	Beacon assessment report for the property located at 2954 Winthrop Road dated July 28, 2016,
Petitioners Exhibit 8:	Beacon assessment report for the property located at 2890 Winthrop Road.
Respondent Exhibit 1:	"Residential Neighborhood Valuation Form,"
Respondent Exhibit 2:	"Informational sheet on Vigo County Land Order,"
Respondent Exhibit 3:	"Land increase ratio,"
Respondent Exhibit 4:	"Polygon (line chart) of land increase."
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of Hearing dated June 28, 2016,
Board Exhibit C:	Hearing sign-in sheet.

d) These Findings and Conclusions.

[2] It appears the Petitioners erroneously listed the improvement value from their March 1, 2013, assessment on their Form 131 as they testified they have no issue with the improvement's current assessment.

Contentions

11. Summary of the Petitioners' case:

    a) The property's land assessment is too high. The land value increased from $20,400 in 2011 to $72,500 in 2012. The assessment attributable to the "improvements," however, is correct. *P. O'Neal argument; Pet'rs Ex. 3*.

    b) In support of their position, the Petitioners submitted an appraisal prepared by Teresa Fellows, a certified residential appraiser. The appraisal was performed in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). Ms. Fellows settled on a "total" indicated value of $225,000 as of October 3, 2012. However, the Petitioners are only disputing the land assessment, and Ms. Fellows valued the land at $24,290 as of October 3, 2012.[3] *P. O'Neal testimony; Pet'rs Ex. 2.*

    c) The Petitioners also point to a July 29, 2016, listing of a comparable lot in Vigo County. This lot is similar in size to the subject property as it measures 0.7 acres. This lot, however, is situated in a more "expensive suburb," but is listed for only $51,900. *P. O'Neal argument; Pet'rs Ex. 5.*

    d) The Petitioners also presented assessments of two neighboring properties. The first property's land assessment increased from $17,200 in 2011 to $59,900 in 2012. The second property, consisting of two lots, is similar to the subject property. The combined land assessment for this property was $61,600 in 2012. *P. O'Neal testimony; Pet'rs Ex. 7, 8.*

12. Summary of the Respondent's case:

    a) The property is correctly assessed. The 2012 assessment increased because of recent sales. A ratio study indicated that the land in the subject property's neighborhood "had been undervalued." Accordingly, a new Land Order effective for 2012 increased front foot values from $152 in 2011 to $599 in 2012. *Pruett testimony; Resp't Ex. 1, 2, 3, 4.*

    b) The Land Order was applied to all assessments in the neighborhood. Thus, "everyone's land assessment increased; the Petitioners were not singled out." *Pruett testimony.*

    c) The Petitioners' appraisal indicates a total value of $225,000, a value higher than the current assessment. *Pruett argument.*

Burden of Proof

13. 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.*

[3] This value appears to be from a Beacon website assessment summary rather than the work of the appraiser.

Ass'r, 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). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

14. 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).

15. 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." Under those circumstances, "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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the parties agree the total assessment increased by more than 5% from 2011 to 2012. In fact, the total assessment increased from $206,700 to $218,500. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

Analysis

17. The Board finds no change is warranted for the 2012 assessment.

    a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). 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, but other evidence is permitted to prove an accurate 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) Regardless of the method used, a party must explain how the evidence relates to 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 Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind.

Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

c) Here, the Respondent attempted to prove the property was correctly assessed by pointing to a Land Order and explaining the increase was the result of a recent ratio study. As for the ratio study, the Respondent failed to offer any support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officials Standard on Ratio Studies, which 50 IAC 27-1-44 incorporated by reference, says otherwise:

> Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . . **However, the ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.** Such statistics can be used to adjust assessed values on appealed properties to a common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES, Version 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

d) Here, the Respondent's burden is not merely to explain why the property's assessment increased. Instead, the Respondent must offer probative evidence proving the subject property's market value-in-use. *See* Ind. Code § 6-1.1-15-17.2.

e) For this reason, the Respondent's testimony regarding an increase in front foot values in accordance with the Land Order also lacks probative value. While it may help explain the methodology of computing the assessment, and even help explain why the assessment increased, it does nothing to prove the property's market value-in-use.

f) Because the Respondent did not offer enough probative evidence to prove the property's market value-in-use, it failed to make a prima facie case that the 2012 assessment is correct. Ordinarily, pursuant to Ind. Code §6-1.1-15-17.2, the Petitioners would be entitled to have their assessment reduced to the 2011 level of $206,700. This case, however, presents a unique circumstance. The Petitioners requested a value lower than the 2011 level and in support offered a USPAP compliant appraisal. Their appraisal, however, indicates a higher total value, but they contend, indicates a lower land value. As such, they are requesting a lower land assessment only. The Board will now turn to the Petitioners' evidence.

g) The Petitioners offered an appraisal completed by certified residential appraiser Teresa Fellows. Ms. Fellows estimated the "total" value of the property at $225,000 as of October 3, 2012. Given the appraisal's effective date is only seven months removed from the relevant valuation date, it at least gives some indication of the property's market value-in-use on that date. The Petitioners, however, have focused

only on the "land assessment" portion of the appraisal. Thus, while they agree with how the Respondent valued their improvements, they request that the land assessment be lowered to $20,400.

h) The overriding purpose of real property assessment in Indiana is to determine the market value-in-use of the entire property. Indeed, the 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." MANUAL at 2. Further, "true tax value may be considered as the price that would induce the owner to sell the real property, and the price at which the buyer would purchase the real property for a continuation of use of the property for its current use." *Id.* Here, the Petitioners' home is situated on the land. Thus, while the Petitioners' notice of assessment includes a separate value for land, the land value alone is somewhat immaterial as the Petitioners could not sell only their land. Generally, the Board does not consider the land and improvements in a piecemeal manner when the property forms a single economic unit. *See Koziarz v. Marshall Co. Ass'r,* Ind. Bd. Tax Rev. Pet. No. 50-017-12-1-5-00012 et. al. (May 22, 2014) ("While the Petitioner only appeals the land assessments and not the improvement, he fails to rebut the Respondent's evidence that the parcels form a single economic unit.")

i) In addition to their appraisal, the Petitioners also presented evidence of a current listing in Vigo County. A taxpayer may estimate the value of her property by comparing it to similar, or comparable, properties that have sold in the market; that is precisely the theory behind the sales-comparison approach to value. MANUAL at 9-10. But to use that approach, the taxpayer must both prove the properties are comparable and explain how any differences between the properties affect their values, using generally accepted appraisal principles. *Id.; Long*, 821 N.E.2d at 470-71. Here, the Petitioners only testimony regarding the purportedly comparable property was that it is similar in size but located in a more "expensive suburb." As the Petitioners failed to present any of the required analysis, this evidence lacks probative value.

j) Finally, the Petitioners pointed to land assessments of two neighboring properties. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district boundary. Ind. Code § 6-1.1-15-18(c)(1).

k) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly

comparable properties. *Id*. at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioners failed to provide any of the required analysis.

l) Based on the most probative evidence presented, that being the Petitioners' appraisal, the property's total value should be $225,000. However, the total current assessment is only $218,500, and the Respondent did not request an increase. As such, the Board will view this as a concession, and order the total assessment to remain at $218,500. [4]

Conclusion

18. The 2012 total assessment will remain at $218,500.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will not be changed.

ISSUED: November 7, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

[4] In this case, even if the Board were inclined to ignore the bulk of the Petitioners' appraisal and only consider the land value, they still failed to make a case for a lowering the land portion of the assessment. The appraiser's estimated "site" value of $20,000 appears on only one line of the appraisal under the cost approach. However, the appraiser did not develop the cost approach nor did she offer any underlying support for her "site" value.

- 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 of 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>.