

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

Petition No.: 45-036-20-1-5-00533-23
Petitioners: Chris K. Rice & Sidney Wuellner-Rice
Respondent: Lake County Assessor
Parcel: 45-11-05-252-004.000-036
Assessment Year: 2020

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 appealed the 2020 assessment of their property located at 333 Cypress Drive in Schererville on April 5, 2021.
2. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) held a hearing on July 12, 2023. On July 14, 2023, the PTABOA issued a Form 115 reducing the assessment to \$64,600 for land and \$257,300 for improvements for a total assessment of \$321,900.¹
3. The Petitioners appealed to the Board on August 26, 2023, electing to proceed under the small claims procedures.
4. On June 4, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Chris Rice appeared *pro se*. Ayn Engle appeared as the Assessor’s attorney. John Yanek, Nexus LTD Project Coordinator for the Assessor, and Chris Rice testified under oath.

Record

6. The official record for this matter includes the following:²
Respondent Exhibit A: 2020 subject property record card,

¹ The Form 115 lists the date it was mailed as July 12, 2023, but the signatures are dated July 14, 2023. We infer the determination was actually issued July 14, 2023.

² The Petitioners did not offer any exhibits.

Respondent Exhibit B: Sales Comparison Analysis,
Respondent Exhibit C: 2020 property record cards for sales-comparison comparables.

- 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.

Objections

7. The Petitioners objected to all of the Respondent's exhibits, contending they were exchanged less than 24 hours prior to the hearing, and thus untimely. The Board's hearing instructions for telephonic hearings do not set a specific time at which evidence is to be exchanged. 52 IAC 4-8-2 does provide an earlier exchange deadline for small claims hearings, but that rule only applies if the parties request an exchange of evidence. The Petitioners did not assert that they made such a request. Thus, we overrule the objections.
8. The Petitioners also objected to all the Respondent's exhibits on the grounds that they were not properly labeled. We find the exhibits were sufficiently labeled and overrule the objections.
9. The Petitioners objected to Respondent's Exhibits A and C, the property record cards, as well as portions of Yanek's testimony about the exhibits, on the grounds of hearsay. The Assessor argued the property record cards are public records. While we do not strictly apply the rules of evidence, we find the property record cards fit within an exception to the hearsay rule and that Yanek's testimony was merely explaining the contents of the exhibits. In addition, our procedural rules allow us to admit hearsay, with the caveat that we cannot base our final determination solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). For these reasons, we overrule the objections.
10. Because we have overruled all of the Petitioner's objections, we admit Respondent's Exhibits A, B, and C.

Findings of Fact

11. The subject property is a two-story frame home built in 1989 with an attached garage and associated land. *Resp't Ex. A.*
12. The 2020 assessment under appeal of \$321,900 is an approximately 30% increase over the previous year's assessment of \$246,900. *Resp't Ex. A.*

Contentions

13. Summary of the Respondent's case:
- a) The Assessor presented a sales-comparison analysis prepared by John Yanek. He selected five comparable properties that sold within 14 months of the assessment date. The sale prices ranged from \$97.21/sq. ft. to \$138.84/sq. ft. with an average of \$119.11/sq. ft. and a median of \$116.29/sq. ft. The subject property was assessed at \$129.38/sq. ft. Yanek is not an appraiser, and he did not certify his analysis complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Yanek testimony; Resp't Exs. B & C.*
14. Summary of the Petitioners' case:
- a) The Petitioners argued that the assessment should automatically revert under Indiana Code § 6-1.1-15-17.2 because the Assessor had the burden of proof at the PTABOA hearing but failed to support the determined value of \$321,900. *Rice testimony.*
 - b) In addition, the Petitioners claimed the assessment had the wrong square footage for the house and instead should have used the square footage determined in a 2011 appeal. Finally, the Petitioners argued the Assessor should have used a grade of average instead of average plus two. *Rice testimony.*

Burden of Proof

15. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. I.C. § 6-1.1-15-17.2³ 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 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).
16. If the assessor has the initial burden to prove the original assessment was correct and fails to meet it, the burden shifts to the taxpayer to prove the correct assessment. If neither party meets its burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2 (b); *Southlake Ind., LLC v. Lake County Assessor*, 174 N.E.3d 177, 179 (Ind. 2021). Furthermore, the statutory term "correct assessment" referenced in I.C. § 6-1.1-15-17.2 refers to "an accurate, exact, precise assessment." *Southlake Ind., LLC v. Lake County Assessor*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). Thus, to meet the burden under I.C.

³ I.C. § 6-1.1-15-17.2 was repealed by P.L. 174-2022 on March 21, 2022. In *Elkhart Cty. Assessor v. Lexington Square, LLC*, 219 N.E.3d 236 (Ind. Tax Ct. 2023) the Tax Court held that I.C. § 6-1.1-15-17.2 continues to apply to appeals filed before that date.

§ 6-1.1-15-17.2, an assessor must provide probative, market-based evidence that the assessment is “*exactly and precisely*” correct. *Id.* (emphasis in original).

17. Here, the current assessment is an increase of approximately 30% over the prior year’s assessment. Thus, the Assessor has the burden to prove the 2020 assessment is exactly and precisely correct.
18. As noted above, the Petitioners argued that the assessment should automatically revert because the Assessor failed to meet her burden of proof at the PTABOA hearing. But the Board’s hearings are *de novo*, which means we do not review the PTABOA decision, but instead consider the evidence presented to us. I.C. § 6-1.1-15-1.2(h). Thus, the Assessor had an opportunity to present new evidence at our hearing to show the assessment is correct.

Analysis

19. The Assessor failed to make a prima facie case that the 2020 assessment is correct.
 - a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.⁴ Because the burden of proof has shifted in this case, the Assessor has the burden of proving the assessment is correct. I.C. § 6-1.1-15-17.2. In addition, the Petitioners may present their own evidence supporting a different value. *Id.*
 - b) Real property is assessed based on its true tax value. I.C. § 6-1.1-31-5. 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, it is determined under the DLGF’s rules. 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. Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Assessor*, 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 regulations.” *P/A Builders & Developers, LLC v. Jennings County Assessor*, 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

⁴ The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.3d at 133.

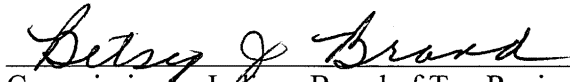
- d) Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ 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). For the 2020 assessment, the valuation date was January 1, 2020. See I.C. § 6-1.1-2-1.5.
- e) Here, the Assessor has the burden to prove the 2020 assessment is correct. The Assessor presented a sales-comparison analysis prepared by John Yanek. As discussed above, Yanek is not an appraiser, and he did not certify his analysis complied with USPAP. While Yanek selected properties for comparison, he failed to demonstrate that they were sufficiently comparable to the subject property. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence. *Marinov* at 1156. In addition, in order to be probative, a sales-comparison analysis 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 relevant market value-in-use of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Yanek did not perform the type of analysis required by *Long*. While he identified five properties in the area, he offered little or no evidence on the characteristics that affect market value-in-use. And he did not even attempt to explain how any relevant differences affected the properties’ values. For these reasons, the Assessor’s evidence is insufficient to support any value, much less that the assessment is exactly and precisely correct.
- f) We now turn to the Petitioners’ evidence. They argued that the Assessor used the wrong square footage, but they did not provide any reliable evidence showing the correct square footage. They also argued the assessment grade of the home was incorrect, but simply attacking the methodology used to develop the assessment is insufficient to establish a value. *Piotrowski*, 177 N.E.3d at 133. For these reasons, the Petitioners have failed to make a case for any specific value.
- g) Because the subject property’s assessment increased by more than 5% over the prior year’s assessment, the Assessor had the burden of proof. The Assessor failed to offer probative evidence to prove the 2020 assessment is correct and the Petitioner did not offer evidence supporting any value. Thus, the assessment must revert to the prior year’s value under I.C. § 6-1.1-15-17.2.

Final Determination

20. In accordance with the above findings and conclusions, we order the 2020 assessment reduced to the prior year's value of \$246,900.

ISSUED: SEPTEMBER 3, 2024


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>>.