

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

Petition No.: 02-063-13-1-5-00006
Petitioner: Gregory E. Riley
Respondent: Allen County Assessor
Parcel: 02-08-12-304-022.000-063
Assessment Year: 2013

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

Procedural History

1. The Petitioner initiated his 2013 assessment appeal with the Allen County Assessor on July 23, 2013. On October 25, 2013, the Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief.¹
2. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on November 18, 2013. He elected the Board's small claims procedures.
3. The Board issued a notice of hearing on March 28, 2014.
4. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on May 8, 2014. She did not inspect the property.
5. Gregory Riley appeared *pro se*. Attorney John Rogers appeared for the Respondent. Mr. Riley and Deputy Assessor Renee Buettner were sworn as witnesses.

Facts

6. The property under appeal is a single family residence located at 8020 Tacoma Place, in Fort Wayne.
7. The PTABOA determined the 2013 assessment is \$31,600 for the land and \$113,000 for the improvements (\$144,600 total).
8. On the Petitioner's Form 131, he requested a 2013 assessment of \$31,600 for the land and \$99,000 for the improvements (\$130,600 total).

¹ The Form 115 issued by the Allen County PTABOA lists the property owner as Gregory E. and Elizabeth A. Riley. However, the Form 131 submitted to the Board, only lists Gregory E. Riley as the property owner.

Record

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit 1: A printout from Zillow.com for the property located at 8014 Tacoma Place,
- Petitioner Exhibit 2: A printout from Zillow.com for the property located at 8015 Tacoma Place,
- Petitioner Exhibit 3: A printout from Zillow.com for the property located at 8020 Tacoma Place,
- Petitioner Exhibit 4: Page two of the subject property record card.

- Respondent Exhibit 1: “Respondent’s position statement,”
- Respondent Exhibit 2: Page one of subject property record card,
- Respondent Exhibit 3: Page two of subject property record card,
- Respondent Exhibit 4: Photograph of the front of the subject property,
- Respondent Exhibit 5: Photograph of the back of the subject property,
- Respondent Exhibit 6: Subject property record card with field inspection notes dated July 31, 2013,

- Respondent Exhibit 7: Subject property building permit,
- Respondent Exhibit 8: Page one of sales comparison analysis of Chapman’s Bridge and Fiddlers Creek,
- Respondent Exhibit 9: Page two of sales comparison analysis of Chapman’s Bridge and Fiddlers Creek,
- Respondent Exhibit 10: Page one of sales comparison analysis of Fiddlers Creek,
- Respondent Exhibit 11: Page two of sales comparison analysis of Fiddlers Creek,
- Respondent Exhibit 12: Ratio study for Chapman’s Bridge,
- Respondent Exhibit 13: Ratio study for Fiddlers Creek.

- Board Exhibit A: Form 131 Petition with attachments,
- Board Exhibit B: Hearing notice dated March 28, 2014,
- Board Exhibit C: Notice of appearance from John Rogers,
- Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

10. Summary of the Petitioner’s case:

- a) The subject property is over assessed. In order to value the subject property, the Respondent relied on comparable properties that are not comparable. The purportedly comparable properties have different amenities, are higher-scale and are located in better subdivisions. In fact, some of the comparable properties sold for less than their respective assessments. *Riley argument.*
- b) The subject property's value, as estimated by Zillow.com, is \$133,470. This estimate is a more accurate valuation than the Respondent's assessment of \$144,600. *Riley argument; Pet'r Ex. 3.*
- c) According to Zillow.com, the property located at 8014 Tacoma Place sold for \$129,000. However, this property is assessed at \$140,500. The assessed value is not in line with the sale price. *Riley argument; Pet'r Ex. 1.*
- d) The property at 8015 Tacoma Place was listed for sale at \$125,000. This property did not sell and is currently in foreclosure. According to Zillow.com the property is valued at \$119,663. This value is more in line with the current market. *Riley testimony; Pet'r Ex. 2.*
- e) Finally, the Respondent valued the subject property's basement in 2013 at \$18,000. The 2012 assessment for this same basement was \$12,000. There is no justification for a 50% increase. *Riley argument; Pet'r Ex. 4.*

11. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The assessment is well-supported by the Respondent's evidence. Field inspectors from the assessor's office viewed the subject property on July 31, 2013, and found the house had been updated and well maintained. *Rogers argument; Buettner testimony; Resp't Ex. 2, 3, 4, 5, 6.*
- b) The Respondent offered two sales comparison analyses. In the first analysis, six different sales were used. Two of these sales were from Chapman's Bridge, the subject neighborhood, and four from Fiddlers Creek subdivision, an adjoining and similar neighborhood. The second analysis utilized properties solely from Fiddlers Creek. In both analyses, the Respondent made negative or positive adjustments derived from the cost schedules in the Guidelines. These adjustments were made to account for the differences between the comparable properties and the subject property. *Buettner testimony; Resp't Ex. 8, 9, 10, 11.*
- c) Both analyses rendered a value that was in line with the 2013 assessed value. The first analysis indicated a value for the subject property at \$145,400. The second analysis came in at \$146,600. Both analyses confirm that the 2013 assessment should remain at \$144,600. *Buettner argument; Resp't Ex. 8, 9, 10, 11.*

- d) In addition, the Respondent offered two ratio studies that show several sales in the neighborhood and two adjoining subdivisions. The sales indicate that the assessed value of the subject property is accurate and in accordance with the Department of Local Government Finance (DLGF) rules. *Buettner testimony; Resp't Ex. 12, 13.*
- e) Finally, the Respondent presented the building permit for the subject property from 2005. According to this, the cost to build the home was \$140,000. Further, the permit indicated the land was purchased for \$35,900. *Buettner testimony; Resp't Ex. 7.*

Burden of Proof

- 12. 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. 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 13. First, Ind. Code section 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).
- 14. Second, Ind. Code section 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 is effective March 25, 2014, and has application to all appeals pending before the Board.
- 15. At the hearing, the parties agreed that the 2013 assessed value increased by more than 5% over the 2012 value. In fact, the assessment increased from \$135,100 to \$144,600. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2013 assessment is correct. To the extent that the Petitioner seeks an assessment below \$135,100, the 2012 assessment, he bears the burden of proving that lower value.

Analysis

- 16. The Respondent failed to make a prima facie case that the 2013 assessment was correct.

- a) In Indiana, real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 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. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed 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 appealed 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 Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2013, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).
- c) In support of the current assessment, the Respondent presented two sales comparison analyses and two ratio studies. In the sales-comparison analyses, the Respondent attempted to compare the purportedly comparable properties to the subject property and adjust for differences. In fact, she made adjustments for things such as amount of living space, basements, recreation rooms, fireplaces, central air, plumbing, garage size, and exterior features. She based the adjustments on the costs indicated in the Guideline's cost schedules.
- d) However, the Respondent's mixture of market and cost-based methodologies does not persuade the Board the evidence is based on generally accepted appraisal or assessment practices. Furthermore, she does not reference any authorities that might confirm that the methodology and data were applied according to accepted appraisal practices. The Board therefore finds that the Respondent's sales-comparison analysis insufficiently reliable to be probative of the subject property's market value-in-use.
- e) To further support her argument, the Respondent also submitted two ratio studies based on the DLGF mass appraisal rules. According to the Respondent, the sales from the ratio studies were within the valuation date and supported the assessed value of the subject property. However, the ratio studies presented are of little value in arriving at the correct assessed value for the subject property. The Respondent offered no authority for her argument that a ratio study can be used to prove that a property's assessment reflects its market value-in-use. Further, the International Association of Assessing Officers Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, states:

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, 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 the common level. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS STANDARD ON RATIO STANDARDS VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

- f) The Respondent implied that the subject property's 2013 assessment draws validity from the fact that the disputed assessment is within an acceptable range for mass appraisals. However, an appeal of an individual assessment is an entirely different thing. Indeed, every assessment in Indiana is the product of a DLGF-approved ratio study. But here, the Respondent failed to provide any authority or substantial explanation for the conclusion that an approved ratio study means all individual assessments within that study are correct. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Commr's*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - g) The Respondent also presented a building permit for the subject property from 2005. At best, the Respondent has shown the Petitioner "may have" spent \$140,000 to construct the subject property in 2005. But that does nothing to prove the subject property's value in 2013, or prove the property's 2013 assessment is accurate. Thus, the Respondent failed to offer probative evidence to prove the 2013 assessment is correct.
 - h) Because the Respondent did not offer probative evidence to show the market value-in-use, she failed to make a prima facie case that the 2013 assessment is correct. Therefore, the Petitioner is entitled to have that assessment returned to its 2012 level of \$135,100. The Petitioner, though, sought an even lower assessment. The Board now turns to the Petitioner's evidence.
17. The Petitioner failed to make a prima facie case for reducing the subject property's assessment below the 2012 value.
- a) The Petitioner offered value estimates of two purportedly comparable properties and the subject property from the Zillow.com website. The Petitioner contends the assessments of these properties do not match the Zillow.com values, and therefore they are not assessed correctly.
 - b) The Petitioner, however, offered nothing to substantiate that Zillow.com holds any professional qualifications to value real estate, and nothing to indicate what evidence and methodologies it employed in estimating the properties' values. Further, nothing in the evidence indicates that Zillow.com utilizes any generally accepted appraisal or assessment practices. Consequently, the evidence carries little, if any, probative

value. Further, to the extent that the Petitioner was attempting to show the subject property's value by contending that the two other properties are comparable to the subject, one must establish through probative evidence that the properties are truly comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470.

- c) Finally, the Petitioner argued that there is no justification for the 50% increase in the value of his basement from 2012 to 2013. To make a case, the Petitioner was required to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). However, the Petitioner failed to do so.
- d) The Petitioner failed to make a prima facie case for lowering the subject property's 2013 assessment below the 2012 assessed value.

Conclusion

- 18. The Respondent had the burden of proving the 2013 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2012 value, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2013 assessment be reduced to the 2012 amount of \$135,100.

Final Determination

In accordance with these findings of fact and conclusions of law, the 2013 assessment must be changed \$135,100.

ISSUED: August 6, 2014

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>>.