

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

Petition No.: 64-019-14-1-5-00115-15
Petitioners: Sandra and Greg Schafer
Respondent: Porter County Assessor
Parcel No.: 64-08-24-478-004.000-019
Assessment Year: 2014

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

Procedural History

1. Petitioners filed their appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) which issued its final determination on August 7, 2015. Petitioners then filed their Form 131 with the Board, electing to have the matter heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.
2. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on March 29, 2016. Neither the ALJ nor the Board inspected the property.
3. Greg Schafer, Petitioner and owner of the property, was sworn and testified. Jon Snyder, Porter County Assessor, and Russell Gower, Hearing Officer, were sworn and testified for Respondent.

Facts

4. The property under appeal is a single-family home located at 200 Wexford Road in Valparaiso.
5. For 2014, the PTABOA determined the assessed value of the property was \$48,100 for the land and \$210,900 for the improvements, for a total assessed value of \$259,000.
6. For 2014, Petitioners requested an assessed value of \$187,000.¹

¹ The Form 131 indicates the year under appeal is 2015, but the parties agreed on the record that the year actually at issue is 2014.

Record

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

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A:	List of renovation costs,
Petitioner Exhibit B:	Parcel information for the subject property,
Petitioner Exhibit C:	Multiple Listing Service (MLS) information for 147 Brockton Place, 141 Brockton Place, 221 Shorewood Drive, 209 Scarborough Court,

Respondent Exhibit 1:	MLS listing of the subject property-2011,
Respondent Exhibit 2:	MLS listing of the subject property-2013,
Respondent Exhibit 3:	MLS listing of the subject property-2014,
Respondent Exhibit 4:	MLS listing history of the subject property,
Respondent Exhibit 5:	Complete list of sales in Shorewood neighborhood from 1/1/2013 to 3/1/2014,
Respondent Exhibit 6:	List of Shorewood sales with sales price as a percentage of list price,
Respondent Exhibit 7:	Sales disclosure form for the subject property 2010,
Respondent Exhibit 8:	Sales disclosure form for the subject property 2011,
Respondent Exhibit 9:	Subject property record card (PRC) for 2013,
Respondent Exhibit 10:	Subject property PRC for 2014,
Respondent Exhibit 11:	Copy of 131 petition, ²

Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Objections

8. Mr. Snyder objected to Petitioner Exhibits A and C because Petitioners failed to exchange the exhibits prior to the hearing. Respondent requested copies of the exhibits ten business days before the hearing.

9. Petitioners acknowledged they did not exchange the exhibits but claimed they had previously submitted the exhibits at the PTABOA hearing. Mr. Snyder testified that he

² Respondent incorrectly listed Respondent Exhibit 11 as the Form 115.

did not believe Petitioner Exhibit A, the list of renovations, was presented at the PTABOA hearing. Further, although Petitioners may have presented comparable properties at the PTABOA hearing, Mr. Snyder does not know if the sales presented at the Board hearing, which comprise Petitioner Exhibit C, are the same as the comparable properties presented previously.

10. 52 IAC 2-7-1(d) provides “If requested not later than 10 business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five business days before the small claims hearing.” The Board may waive the deadlines for any materials that had been submitted or made part of the record at a PTABOA hearing. See 52 IAC 2-7-1(d).
11. The parties disagree as to whether Petitioners’ evidence was submitted at the PTABOA hearing. The Form 115 shows Petitioners submitted comparable properties but does not list them. However, the comparable properties submitted at the Board’s hearing were printed on August 4, 2015, the day before the PTABOA hearing, giving support to Petitioners’ claim that they were the same properties. The Form 115 does not show that a list of renovations was submitted at the PTABOA hearing. The Board, therefore, admits Petitioner Exhibit C and excludes Petitioner Exhibit A.
12. Petitioners objected to Respondent Exhibits 5 and 6 because they do not know if those are complete lists of sales or if the data is accurate. The objections go to the weight of the evidence rather than to its admissibility. Consequently, the Board admits Respondent Exhibits 5 and 6.

Burden of Proof

13. 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.
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 Ind. Code § 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).

16. The assessed value decreased from \$270,500 to \$259,000 from 2013 to 2014. Petitioners therefore have the burden of proof.

Contentions

17. Summary of Petitioners’ case:
 - a. Petitioners contend that the value of the subject property should be \$187,000. They purchased the property in 2011 for \$150,000 after it had been on the market for 197 days. The property needed renovation and that cost amounted to approximately \$37,000 *Schafer testimony*.
 - b. The assessed value has increased from \$164,700 in 2011, when they bought the property, to \$270,500, which has been reduced, but still reflects an increase of \$103,000. Petitioners contend that Respondent has disregarded the purchase price in making the assessment and has relied on the MLS listing price as justification for the value. *Schafer testimony*.
 - c. Petitioners have made numerous reductions on the price of the house but have never received an offer. They also had an auction-type sale and received zero bids on the property.
 - d. Petitioners contend that one of the issues with the property is that it is a three-bedroom home in a community where four-bedroom homes are more typical. Another issue is that the property is on a corner lot and there is no backyard. Petitioners are of the opinion that, because the property has not sold in five years, Respondent would be inclined to reduce the assessment rather than continue to increase it. *Schafer testimony*.
 - e. Petitioners contend that there are numerous houses in the community that are worth well under \$300,000. Five properties recently sold for between \$160,000 and \$198,000³. *Schafer testimony; Pet’r Ex. C*.

³ Mr. Schafer referred to five sales in Petitioner Exhibit C, but there were only four sales. There were two copies of 147 Brockton Place.

- f. Petitioners disagree with the premise that foreclosures and short sales should not be recognized when considering value. They believe that when one does not analyze the lower end of the market, property values are artificially inflated. *Schafer testimony.*

18. Summary of Respondent's case:

- a. Respondent contends that Petitioners' sales 1, 2, and 4 are outside of the range for the valuation date. In addition, sale 4 is an "REO" sale, which is generally a foreclosure. Foreclosure sales are typically not used because they are not representative of the market. *Snyder testimony; Gower testimony; Pet'r Ex. C.*
- b. Respondent contends that the subject property's sale was a foreclosure. The listing from the sale shows it was bank-owned, sold as is, and that only pre-approved buyers were considered. The sale is not representative of the market but of what the bank decided it needed from an economic standpoint. *Gower testimony. Resp't Exs. 1, 7, & 8.*
- c. Respondent contends that the property is currently listed for \$315,000. The listing states that it has been completely remodeled. It has a new kitchen with granite countertops and stainless steel appliances, new bathrooms, windows, and new floor coverings throughout the house. Respondent contends that it is essentially not the same property that was purchased as a foreclosure. *Gower testimony; Resp't Ex. 2.*
- d. Respondent contends that there were 37 sales in the Shorewood subdivision between January 1, 2013 and March 1, 2014. For those 37 sales, the average sale price as a percentage of list price was 94%. The median was 94.3%. The lowest of the sales was 80% of the listing price. For the subject property, if one applied the average of 94%, the sale price would be \$296,100. Using the lowest percentage of 80%, the sale price would be \$252,000. The PTABOA used 82.2% of the list price. Petitioners are claiming the property is worth \$187,000, which would be 59.4% of the list price, and significantly out of the range of any property in the neighborhood that sold during 2013 and the first two months of 2014. *Gower testimony; Resp't Exs. 5 & 6.*

Analysis

19. Petitioners failed to establish a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:

- a. 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. 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. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Petitioners contend the value of the property should be \$187,000 based on the purchase price and the cost of renovations. They purchased the property on February 16, 2011, three years before the valuation date. Petitioners failed to relate this purchase price to the valuation date. Therefore, this evidence is not probative as to what the assessment should be. *Long*, 821 N.E.2d at 471.
- d. Petitioners presented sales of four properties in the subject's neighborhood to show that there were homes valued under \$300,000. Two of the sales occurred after the assessment date. More importantly, however, is the fact that Petitioners did not present any comparison of the other properties to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *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.* Because Petitioners made no attempt to identify or value the differences between the properties, Petitioners' sales have no probative value.
- e. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 20. Petitioners failed to establish a prima facie case for a reduction in the assessed value. The Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2014 assessed value should not be changed.

ISSUED: June 27, 2016

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.