

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

Petition: 45-027-09-1-5-00002
Petitioners: Gus & Terry Tsirtsis
Respondent: Lake County Assessor
Parcel: 45-07-20-328-004.000-027
Assessment Year: 2009

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioners initiated their assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on December 15, 2010.
2. The PTABOA issued notice of its determination on April 30, 2012, denying the appeal.
3. The Petitioners filed a Form 131 petition with the Board on June 7, 2012. The Petitioners elected to have this appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on November 21, 2013.
5. On January 13, 2014, the Administrative Law Judge (ALJ), Ellen Yuhan held the administrative hearing. The ALJ did not inspect the subject property.
6. Gus Tsirtsis, owner, Robert Metz and Jennifer Drew, Lake County Hearing Officers, were sworn and testified at the hearing.

Facts

7. The subject property is a single-family dwelling located at 8517 Crestwood Avenue, Munster, Indiana.
8. For 2009, the PTABOA determined the assessment was \$58,900 for land and \$168,500 for improvements for a total assessed value of \$227,400.
9. The Petitioners requested an assessment of \$55,900 for land and \$134,100 for improvements for a total assessed value of \$190,000. The issue on appeal is whether the 2009 assessment exceeds the value of the property. *Board Exhibit A.*

Record

10. The official record contains the following:
- a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Comparative market analysis,
Petitioner Exhibit 2 – Real estate ad from the Times, January 12, 2014,
Petitioner Exhibit 3 – List of sales on Crestwood,

Respondent Exhibit A – Comparable sales,
Respondent Exhibit B – Average price per square foot of comparable properties,
Respondent Exhibit C – Sales ratio analysis,
Respondent Exhibit D – Assessments of comparable properties,
Respondent Exhibit E – Subject property record card,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

- d. These Findings and Conclusions.

Burden

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

12. The assessment increased from the assessed value of \$215,000 in 2008 to \$227,400 in 2009, an increase of more than 5%. *Respondent Exhibit E*. Therefore, Indiana Code section 6-1.1-15-17.2 applies and the Respondent has the burden of proof.

Contentions

13. Summary of the Respondent's case:
- a. Jennifer Drew found six sales of comparable properties that sold in the subject neighborhood. Most of the properties were smaller than the subject property which is 2,101 square feet. The property most similar to the subject property is 8416 Crestwood Avenue. It has 2,275 square feet and no basement. This property sold for \$240,000 or \$80.35 per square foot on June 12, 2008. Using this price per square foot, the subject property would be \$168,815 plus \$58,900 for the land or \$227,715. *Drew testimony; Respondent Exhibits A and B*.
 - b. A ratio study of the comparable properties shows the assessments are relatively close to the sale prices. *Drew testimony; Respondent Exhibit C*.
 - c. There is no date on the Petitioners' comparative market analysis and the sales used are not in the relevant time period for the assessment date. Further, the sales in Petitioner Exhibit 3 are from 2001-2004. *Drew testimony; Petitioner Exhibits 1 and 3*.
 - d. The Petitioners' property is a large ranch with plenty of room for another bedroom. While a two-bedroom home may not sell as well as a three-bedroom, an adjustment of \$30,000 for a bedroom is excessive. Further, the construction of townhomes has increased and many of them are built with only two bedrooms, making the subject property more marketable. *Drew testimony; Metz testimony*.
14. Summary of the Petitioner's case:
- a. The Respondent's sales on Parkview are three bedroom homes that sold for \$160,000 and \$165,000. All the homes in the Respondent's exhibits are three bedroom homes, not a two bedroom like his home and they likely sold for less than the assessed value. *Tsirtsis testimony; Respondent Exhibits A and B*.
 - b. A \$227,000 assessment is excessive compared to other comparable properties in the neighborhood. The assessed value is supposed to be based on what your house is worth. *Tsirtsis testimony*
 - c. A comparative market analysis estimated the market value of the home to be approximately \$190,000. In the analysis, the realtor stated that the subject property is a nice home in a great location but the fact that it has only two bedrooms, and no

basement, would keep the resale value at about \$190,000. Homes that sell in excess of \$200,000 have full basements and three bedrooms. *Tsirsis testimony; Petitioner Exhibit 1.*

- d. A home in his immediate area is listed for \$229,900. This home is a quad-level with three bedrooms and a 2 ½-car garage. This property would definitely be more appealing on the market than the subject property. *Tsirsis testimony; Petitioner Exhibit 2.*
- e. Exhibit 3 shows houses that sold on the Respondent's street, the selling price, the listing price, and the descriptions. *Tsirsis testimony; Petitioner Exhibit 3.*

Analysis

- 15. The Respondent failed to establish a prima facie case that the assessed value is correct. The Petitioners failed to prove they were entitled to a lower assessed value than that of the previous year. 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 a similar user, from the property.” Ind. Code § 6-1.1-31-6(c). 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. Other kinds of permissible evidence 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 type of evidence, a party must explain how its evidence relates to the required 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). For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to the value as of that date. *Long*, 821 N.E.2d at 471.
 - c. Here, the Respondent contends the property is properly valued based on the sales of comparable properties. *Respondent Exhibits A, B and C.* In making this argument, the Respondent relies on the sales comparison approach. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. 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.*

- d. In support of her argument, the Respondent submitted sales information for six properties that sold between January 2008 and February 2009. *Respondent Exhibits A, B*. Yet the Respondent made no attempt to show how the properties compared to the subject property and offered no explanation as to how any differences may have affected the properties' values. Thus, the Respondent's evidence was not probative of the subject property's market value-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
- e. Next, the Respondent claimed a ratio study shows the assessments of the sold properties are relatively close to their sales prices. *Respondent Exhibit C*. This study is of no value in arriving at the correct assessed value for the subject property because 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. To be sure, the International Association of Assessing Officers Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates 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, 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 assessment draws validity from the fact that the disputed assessment is within an acceptable range for mass appraisals. But an appeal of an individual assessment is an entirely different thing. The Respondent provided no authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).
- g. The Respondent did not support the accuracy of the existing assessment with any meaningful market value-in-use evidence. Accordingly, the Respondent failed to meet the burden of proof. In other cases where the Respondent had the burden of

proof and failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the year before. Therefore, the parcel's March 1, 2009, assessment must be reduced to the 2008 assessed value of \$215,000.

- h. That, however, does not end the Board's inquiry because the Petitioners sought an even lower assessed value of \$190,000 for March 1, 2009. The Petitioners presented a comparative market analysis to support the requested value. The comparative market analysis is not dated and all the sales occurred in 2009 and 2010, well after the January 1, 2008, valuation date. Additionally, the real estate broker that prepared the analysis did not make any adjustments to the sold properties to account for differences between them and the subject property. For these reasons, the comparative market analysis is not probative evidence for a reduction in assessed value.
- i. Next, the Petitioners presented a real estate listing for a property in their immediate neighborhood. The property was advertised on January 12, 2014, which is almost six years after the valuation date and is not indicative of the value of the subject property for March 1, 2009.
- j. Finally, the Petitioners submitted a list of eight sales that occurred on their street, Crestwood Avenue. These sales took place between April 2001 and March 2004. Again, the sales are not within the required time frame for the March 1, 2009, assessment date and the Petitioners did not make any meaningful attempt to compare the properties to the subject property. The Petitioners failed to make a prima facie case for a lower value.

Conclusion

- 16. The Respondent failed to make a prima facie case that supported the assessed value of the subject property. The Petitioners failed to support the lower assessment they sought. The assessment will be changed to the prior year's (2008) assessment of \$215,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should be changed.

ISSUED: March 14, 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>>.