

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

Petition No.: 64-016-21-1-5-00177-22
Petitioner: John and Starla VanWormer
Respondent: Porter County Assessor
Parcel: 64-06-07-401009.000-016
Assessment Year: 2021

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

Procedural History

1. John and Starla VanWormer appealed the 2021 assessment of their property located at 2313 Samuelson Road, Portage, Indiana 46368 on June 14, 2021. On June 21, 2021, the Porter County Assessor issued a Form 113 increasing the assessment to \$182,500. On December 14, 2021, the Porter County Property Tax Assessment Board of Appeals (the “PTABOA”) issued a Form 115 determination for the 2021 valuation years. The PTABOA determined the following values:

Land: \$45,800 Improvements: \$136,700 Total: \$182,500¹

2. The VanWormers timely appealed to the Board, electing to proceed under the small claims procedures. On March 24, 2023, Natasha Marie Ivancevich, the Board’s Administrative Law Judge (“ALJ”), held an in-person hearing. Neither the Board nor the ALJ inspected the subject property.
3. John VanWormer appeared *pro se*. Peggy Hendron, Residential Real Estate Director, appeared on behalf of the Porter County Assessor. Both were sworn and testified.

Record

4. The official record for this matter is made up of the following:
 - a) Exhibits:

Petitioner Ex. 1: Portage, Indiana Ordinance 92-16
Petitioner Ex. 2: Portage, Indiana Ordinance 02-21
Petitioner Ex. 3: Portage, Indiana Ordinance 03-10

¹ Although the Assessor issued the Form 113 after the Petitioners filed their appeal, the PTABOA adopted that value in their ruling. Thus, the PTABOA’s determination of \$182,500 is the assessment of record.

Petitioner Ex. 4: Aerial photo of subject property
 Petitioner Ex. 5: GIS Map of area around Subject Property
 Petitioner Ex. 6: Plat of Survey
 Petitioner Ex. 7: 2002 Form 130 (Not File Stamped)
 Petitioner Ex. 8: 2002 Form 133 (Not File Stamped)
 Petitioner Ex. 9: 2002 Form 113
 Petitioner Ex. 10: Form 130-Page 2 (Unknown year)
 Petitioner Ex. 11: 2011 Form 133 Page 1 (Not File Stamped)
 Petitioner Ex. 12: Form 133 pages 2-4
 Petitioner Ex. 13: 2012 Form 133 Page 1 (Not File Stamped)
 Petitioner Ex. 14: Form 133 pages 2-4
 Petitioner Ex. 15: 2013 Form 133 Page 1 (Not File Stamped)
 Petitioner Ex. 16: Form 133 Page 2
 Petitioner Ex. 17: 2017 Form 130
 Petitioner Ex. 18: Pictures of the subject property with notes.

Respondent Ex. 1: 2021 Property Record Card
 Respondent Ex. 2: Aerial photo of Subject Property
 Respondent Ex. 3: Aerial photo of Subject Property
 Respondent Ex. 4: Aerial photo of Subject Property
 Respondent Ex. 5: 2020 Property Record Card
 Respondent Ex. 6: GIS Aerial Showing Vacated Streets
 Respondent Ex. 7: Portage, Indiana Amended Ordinance 92-16
 Respondent Ex. 8: Portage, Indiana Ordinance 03-10
 Respondent Ex. 9: 08/05/2021 CAMA Note
 Respondent Ex. 10: 2021 Form 113
 Respondent Ex. 11: 02/13/2018 CAMA Note
 Respondent Ex. 12: Valuation History of Subject Property
 Respondent Ex. 13: Appraisal of Subject Property
 Respondent Ex. 14: Property Record Card Comparable- 2716 Airport Road
 Respondent Ex. 15: Property Record Card Comparable- 6730 Laurel
 Respondent Ex. 16: Property Record Card Comparable- 2165 Stormy Street
 Respondent Ex. 17: Property Record Card Comparable-6460 Old Porter Road
 Respondent Ex. 18: Property Record Card Comparable- 2180 Kennedy Street

- b) 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

5. The Assessor objected to the admission of Petitioner's Ex. 18, several photographs of the subject property and the surrounding area, on the grounds that they did not sufficiently identify what was in the photos. The ALJ took the Assessor's objection under advisement. We find that VanWormer sufficiently laid a foundation as to the contents of the photos. Thus, we overrule the objection and admit the exhibit.

Findings of Fact

6. The subject property consists of a 1,680 sq. ft. single family home with 3 bedrooms on a platted lot. *Resp't Ex. 1.*
7. The Assessor presented a USPAP-certified appraisal prepared by licensed appraiser Ronald Boilini. He valued the property at \$215,000 as of January 1, 2021, using the sales-comparison approach. The supplemental addendum to the appraisal contains a note that states "Per County Assessor records, no lot sizes were available. This appraiser utilized the measuring tool supplied on the county GIS website and thus the lot dimensions are an approximation." He reported the site size as 32,500 sq. ft. and he made upward adjustments to account for smaller lot sizes to four of his five comparables. *Resp't Ex. 13.*

Contentions

8. Summary of the Petitioners' case:
 - a) The Petitioners argued the subject property's assessment is incorrect because the total lot size should be 0.55 acres. In support of this, VanWormer testified that the vacations² of public roads had already been applied to his property in years past, and the Assessor was attempting to apply those same vacations again. VanWormer also testified to several deficiencies in the subject property such as a deck and furnace in need of repair, and the poor state of the surrounding homes. He also stated that he did not have city water, storm sewers, or fire protection. *VanWormer testimony.*
9. Summary of the Respondent's case:
 - a) The Assessor argued that prior to the 2021 adjustment, the lot did not include all the vacations. Rather, the correct lot size was the .75 acres reflected in the property record card after the Form 113 correction. *Hendron testimony.*
 - b) Hendron testified the property does receive city sewer services, city water services, and has access to the fire department. *Hendron testimony.*
 - c) The Assessor requested the assessment be raised to \$215,000, the value from the Boilini appraisal. *Hendron testimony.*

Analysis

10. The Petitioner failed to make a prima facie case for reducing the property's 2021 assessment.

² "Vacation" is the process by which a local legislative body extinguishes a public road or right-of-way. I.C. § 36-7-3-12.

- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2021 Real Property Assessment Manual at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
- b) Real property is assessed based on its market value-in-use. Indiana Code § 6-1.1-31-6(c); 2021 Real Property Assessment manual at 2. Evidence in an assessment appeal should be consistent with that standard. 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 property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- c) 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 the 2021 assessment, the valuation date was January 1, 2021. *See* I.C. § 6-1.1-2-1.5.
- d) The Petitioners' primary argument is that the subject property's lot size is incorrect. VanWormer testified that his total lot size should be .55 acres. In contrast, the Assessor argued it should be .75 acres. We find that neither party has presented sufficient evidence for us to come to a conclusion. The subject property has a complicated history, included several city ordinances that vacated various public roads and rights-of-way. While there is a survey in the record, it is from 1997, prior to at least one of the vacations. And neither party walked the Board through the survey demonstrating what was and was not part of the subject property.³ "It is the taxpayer's duty to walk the [Board] through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). Under these circumstances, we cannot find that the Petitioner has made a prima facie case that the assessment is based on an incorrect lot size.
- e) In addition, it is insufficient to simply attack the methodology used to develop the assessment. Instead, the parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). But the Petitioners did not present any market-based evidence supporting a different value for the subject property.

³ The survey as presented to the Board also includes several deficiencies that inhibit our analysis such as cut-off text on the left side and poor resolution. *Pet'r Ex. 6*.

- f) VanWormer did allege some deficiencies in the subject property including issues with the deck, furnace, city services, and the neighbors. But the Petitioners did nothing to quantify the effect those deficiencies had on the overall value of the subject property. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- g) We now turn to the Assessor's evidence. The Assessor requested an increase based on the Boilini appraisal. As noted above, it does not appear that Boilini did any research to determine the effect of the vacations on the lot size, electing instead to rely on the GIS system. Under these circumstances, we find this undercuts the reliability of his opinion, especially given that he made upward adjustments to most of his comparables to account for smaller lot size. For these reasons, we do not find his opinion reliable enough to justify an increase in the assessment.

Final Determination

11. In accordance with the above findings and conclusions, the Board orders no change to the 2021 assessment.

ISSUED: JUNE 22, 2023



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.