

REPRESENTATIVES FOR THE PETITIONERS: Lawrence and Yolanda Vierra, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|----------------------------------|---|---------------------------------------|
| Lawrence A. & Yolanda A. Vierra, |) | Petition Nos.: 20-015-22-1-5-00391-23 |
| Co-Trustees, |) | |
| |) | Parcel No.: 20-11-14-351-044.000-015 |
| Petitioners, |) | |
| |) | County: Elkhart |
| v. |) | |
| |) | Assessment Year: 2022 |
| Elkhart County Assessor, |) | |
| |) | |
| Respondent. |) | |

March 28th, 2024

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds, and concludes the following:

INTRODUCTION

1. The Petitioners appealed the 2022 assessment of their residential property in Elkhart County. The Assessor had the burden of proof and conceded that the assessment should be reduced to the prior year’s assessment of \$421,600. The Petitioners did not present probative evidence supporting a different value. Thus, we order the assessment reduced to \$421,600.

PROCEDURAL HISTORY

2. On June 13, 2022, the Petitioners appealed the 2022 assessment of their property located at 1912 Woodstone Court in Goshen. The Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) failed to hold a hearing within 180 days. *See* Indiana Code § 6-1.1-15-1.2 (k) (requiring a county PTABOA to hold a hearing within 180 days of a taxpayer filing written notice of review). On May 31, 2023, the Petitioners opted to appeal to the Board rather than wait for the PTABOA to act. *See* I.C. § 6-1.1-15-1.2 (k) (allowing a taxpayer to appeal to the Board once the maximum time for a PTABOA to hold a hearing has elapsed).
3. The assessment of record is \$48,000 for land and \$447,000 for improvements for a total of \$495,000. On January 9, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property. Lawrence Vierra, Yolanda Vierra, and Elkhart County Assessor Cathy Searcy, testified under oath.
4. The Petitioners offered no exhibits.
5. The Respondent offered the following exhibit:

Respondent Exhibit 1: *Lawrence A. & Yolanda A. Vierra, Co-Trustees v. Elkhart County Assessor*, IBTR Pet. Nos. 20-015-20-1-5-00467-22 & 20-015-21-1-5-00468-22 (April 26, 2023).
6. 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) the digital recording of the hearing.

FINDINGS OF FACT

7. The subject property is a two-story partial brick, partial frame home located on a 219 ft. by 147 ft. lot in Goshen. *Resp’t Ex. 1.*

RESPONDENT'S CONTENTIONS

8. The Assessor conceded the subject property's assessment should be reduced to the prior year's value of \$421,600. *Searcy testimony; Resp't Ex. 1.*

PETITIONERS' CONTENTIONS

9. The Petitioners claim that USAA's monitoring service valued the subject property at \$383,000, while the assessment of record for the subject property was \$495,000. They argued this demonstrated that the subject property was over assessed. *Y. Vierra testimony.*
10. The Petitioners also claimed their home suffers from numerous deficiencies such as cracked tiles in the kitchen and hallway, leaking toilets, an inadequate electric system, and windows in need of replacement. Lawrence Vierra testified that due to these deficiencies "[t]his house basically has no value." *L. Vierra testimony.*

BURDEN OF PROOF

11. Generally, the taxpayer has the burden of proof when challenging a property tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).
12. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.*
13. If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).

14. Here, the current assessment of \$495,000 is an increase of more than 5% over the previous assessment of \$421,600. Thus, the Assessor has the burden of proof.

ANALYSIS


15. Real property is assessed based on its market value-in-use. I.C. § 6-1.1-31-6(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. 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.
16. 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 2022 assessment, the valuation date was January 1, 2022. *See* Ind. Code § 6-1.1-2-1.5.
17. In this case, the Assessor has the burden of proving the 2022 assessment is correct. The Assessor did not offer any evidence, but instead conceded that the assessment should be reduced to the prior year's assessment of \$421,600. We now turn to whether the Petitioner provided evidence supporting a different value.
18. The Petitioners failed to make a case for any specific value. Although they testified to several deficiencies in the subject property, they failed to present reliable evidence quantifying the effect those deficiencies had on the overall value of the property as of the valuation date. 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). They also cited to a value from a USAA monitoring service, but they failed to show who exactly developed

the value, what expertise they had, what methodology they used, or what research they did. For these reasons we find this evidence to be unreliable.

SUMMARY OF FINAL DETERMINATION

19. Because the burden of proof shifted and the totality of the evidence was insufficient to support any value, the prior year's assessment is presumed correct. I.C. § 6-1.1-15-20(f). Thus, we order the 2022 assessment reduced to the prior year's value of \$421,600.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.


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>.