

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

Petition: 07-005-06-1-5-00004
Petitioner: Lois A. Waltman
Respondent: Brown County Assessor
Parcel: 07-07-19-100-410.000-005
(Alternate Parcel ID: 001144000)
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated December 24, 2008.
2. The PTABOA mailed notice of its decision, Form 115, on December 29, 2010.
3. On February 7, 2011, the Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on June 27, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 5, 2012. He did not inspect the property.
6. Certified tax representative Milo E. Smith represented the Petitioner and was sworn as a witness. Local Government Official Kay Schwade represented the Respondent and was sworn as a witness. Frank Kelly and Dean Layman were also sworn as witnesses.

Facts

7. The subject property is a single family residence referred to as a "tourist home". It is located at 145 Gould Street in Nashville.
8. The PTABOA determined that the 2006 assessed value is \$18,900 for the land and \$143,600 for the improvements (total \$162,500).
9. The Petitioner contends that the total assessed value should be \$119,400.

Record

10. The official record contains the following:
- a. Digital recording of the hearing,
 - b. Petitioner Exhibit 1– 2001 subject property record card (PRC),
Petitioner Exhibit 2– 2006 subject PRC,
Petitioner Exhibit 3– Real Property Assessment Guideline, Appendix F, page 5,
Petitioner Exhibit 4– Copy of Indiana Code 6-1.1-15-18,
Petitioner Exhibit 5– GIS map of subject area with data for each numbered parcel,
Petitioner Exhibit 6– International Association of Assessing Officers Appraisal
Uniformity position,
Petitioner Exhibit 7– State Board of Accounts (SBOA) Report on Special
Examination of Brown County,
Petitioner Exhibit 8– Email from Frank Kelly to “baueris” dated July 18, 2005,

Respondent Exhibit A – PRC for subject property with photos,
Respondent Exhibit B – Assessment Analysis,
Respondent Exhibit C – Map of subject area and comparable sales data,
Respondent Exhibit D – Comparable sales analysis grid with supporting data,
Respondent Exhibit E – Comparable assessment analysis with supporting data,

Board Exhibit A – Form 131 Petition and attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - c. These Findings and Conclusions.

Contentions

11. Summary of the Respondent’s case:
- a. The Respondent’s witness, Mr. Kelly, presented evidence regarding five sales of comparable properties located in close proximity to the subject property. All of the comparables are tourist homes. Each is comparable to the subject in size, condition, and effective age. The sale prices were adjusted to account for any differences that affect value. The adjusted values were all above the subject’s value. Two of the sales come from the same property, 176 West Mound Street, but the sales occurred at different times. This comparable sold in February 2004 for \$192,500 and again in July 2006 for \$207,500. Mr. Kelly testified that \$10,000 was deducted from this comparable’s sale price, because unlike the subject property, the comparable has a basement. Mr. Kelly testified he made no adjustment for the square footage of this comparable, because the subject’s square footage is only slightly smaller. *Kelly testimony; Resp’t Ex. C, D.*

- b. The next comparable is located at 206 West Mound Street and sold for \$185,000 on April 28, 2006. Mr. Kelly testified that he reduced this comparable by \$5000 because it included a garage while the subject did not. Mr. Kelly then added \$10,000 due to the presence of approximately 600 fewer square feet than the subject and arrived at an adjusted value of \$190,000. *Kelly testimony; Resp't Ex. D.*
- c. The comparable located at 425 Artist Drive, which is half a mile up the hill from the subject, sold for \$167,000 on May 9, 2005. Mr. Kelly subtracted \$5000 from the sale price due to the comparable's garage and added \$10,000 to adjust for the difference in square footage to arrive at a value of \$172,000. *Kelly testimony; Resp't Ex. D.*
- d. The comparable located at 215 West Gould Street, which sold on May 13, 2004, for \$175,000, is most comparable to the subject property. Like the subject, this comparable has a porch, but no garage or basement. The only real difference was the square footage. Therefore, Mr. Kelly added \$5000 to the sales amount to adjust for the difference in size, which resulted in the value of \$180,000. *Kelly testimony; Resp't Ex. D.*
- e. Considering the assessments of comparable properties is authorized by Ind. Code § 6-1.1-15-18. The Respondent presented a summary sheet and PRCs of eight other tourist homes in the area that did not sell and had similar finished square footage as the subject. The total assessed value of each comparable was divided by its square footage and the resulting value was then compared to the subject's assessed value per square foot. The comparables' assessed values ranged from \$79.66 to \$191.36 per square foot. The subject had an assessed value of \$86.94 per square foot. The comparable located at 3435 Grandma Barnes Road was the only comparable that had a lower assessment per square foot than the subject. *Kelly testimony; Resp't Ex. E.*
- f. The subject property is under-assessed based on the sales-comparison approach and is at the lower end of assessed value based on a comparison of the assessments of comparable tourist homes that did not sell. *Kelly testimony; Resp't Ex. D, E.*
- g. Unlike the Petitioner's sales-comparison approach which utilized commercial properties as comparables, the Respondent used properties that were classified residential, because the subject property is classified as residential. Therefore, any comparison analysis should have involved residential properties. *Kelly testimony; Resp't Ex. D, E; Pet'r Ex. 5.*
- h. In an effort to arrive at the correct market value-in-use of each property, one method is to adjust the effective age of many properties. This procedure is supported by the Department of Local Government Finance. *Kelly cross-examination.*

12. Summary of the Petitioner's case:

- a. One reason for the large increase in the assessment from 2005 to 2006 is an error in computing depreciation. The Respondent incorrectly changed the effective age. The PRC for 2001 shows an effective age computed from 1948. The PRC for 2006, however, shows an effective age computed from 1999, which is wrong. As there were no additions to the subject property, the effective age should be 1948. Furthermore, no depreciation was applied to the subject property to account for it being constructed in 1948. *Smith testimony; Pet'r Ex. 1, 2.*
- b. The Respondent changed the effective age to adjust the assessed value of the subject property. The Real Property Guidelines demonstrate the method used to compute effective age. *Smith testimony; Pet'r Ex. 3.*
- c. Indiana Code §6-1.1-15-18 allows one to use assessments of comparable properties to accurately determine market value-in-use. Mr. Smith presented the assessment data regarding seven comparable neighboring properties. Five out of seven of these properties have a different effective age from the year the comparables were actually built. *Smith testimony; Pet'r Ex. 4, 5.*
- d. The International Association of Assessing Officers (IAAO) requires equity within groups and between groups. *Smith testimony; Pet'r Ex. 6.*
- e. The SBOA issued a special examination of the 2002 reassessment contracts and subsequent tax billing, collection and distribution processes. The report says on page 9, "information presented for audit also indicates that the original assessed values for parcels were changed at some point with no supporting documentation or approval". On page 10 it states, "Unit officials should follow the rules, regulations, and standards for assessment that are in effect. Additionally, control procedures should be implemented to ensure that property is originally valued or subsequently valued correctly." *Smith testimony; Pet'r Ex. 7.*
- f. The Petitioner offered an email from Frank Kelly to the Brown County Assessor dated July 18, 2005, that states, "Acting on behalf of the township assessor, Nexus Group recommended that effective ages of many commercial structures in Brown County be adjusted so as to obtain a better measure of True Tax Value. In other words, to get property assessments closer to market value, the effective ages had to be adjusted upward in many cases. This adjustment recognizes the updates and maintenance to such buildings." This email cautioned the PTABOA about altering assessments on such properties without proof of underlying property value such as a sale or appraisal. *Smith testimony; Pet'r Ex. 8.*
- g. Condition rating should be used to adjust for updates and maintenance, not effective age. *Smith testimony.*

Analysis

13. 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 its 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.

I.C. §6-1.1-15-17.2.

14. Both parties agreed the 2006 assessment under appeal increased more than 5% from the assessor's 2005 assessment. Therefore, the Respondent had the burden of proving that the 2006 assessment is correct. In other words, the Respondent needed to prove the 2006 assessed value is an accurate measure of market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
15. The Respondent made a prima facie case that supports the assessment of the subject parcel under review.
 - a. Real property is assessed based on "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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Either party is permitted to offer evidence relevant to market value-in-use to sustain or rebut that presumption. 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. MANUAL at 5.

- b. The Respondent presented evidence regarding the sales of four comparable properties located in close proximity to the subject property. All of the comparable properties are tourist homes like the subject and are located in the downtown Nashville area, except for one that is located up the hill approximately a half mile. One of the properties, 176 West Mound Street, sold twice. The first sale took place in February 2004, and the second sale was in July 2006. The respective adjusted sale prices were \$182,500 and \$197,500. Both of those values are greater than the subject's assessed value.
- c. Mr. Kelly's sales analysis shows the similarities and the differences between each comparable and the subject property. All sales occurred from February 2004 to July 2006. The dates of the comparables sales are relevant because a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *See 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 NE2d 466, 471 (Ind. Tax Ct 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2006 assessments, the valuation date is January 1, 2005. 50 IAC 21-3-3 (2006). Therefore, the closer the comparable sale dates are to the valuation date, the more probative the evidence. Here, the comparable sale closest to the subject property had an adjusted sale price of \$180,000 and sold in May 2004. The sale prices of the comparables were adjusted to demonstrate what affect the differences would have on value and to arrive at an adjusted sale price for each comparable. All of the adjusted sale prices are greater than the assessed value of the subject property. Mr. Kelly, therefore, presented market value evidence that indicates the subject's assessment is below its market value-in-use.
- d. The Respondent also argued that the subject property was assessed correctly based on the assessed values of eight other tourist homes in the county. Pursuant to Indiana Code §6-1.1-15-18(c), "To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district...." The "determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *Id.* In support of his contention, Mr. Kelly submitted a summary sheet and property record cards for the subject property and other tourist homes in the area that did not sell, within the time frame considered relevant to the January 1, 2005, valuation date. He based his comparison on an assessed value per square foot basis. This was purportedly evidence as to the subject's market value. While it does demonstrate the subject tourist home was assessed at the low range of the other tourist homes used in the analysis and could have been persuasive to demonstrate the subject property is not over-assessed, the Respondent failed to successfully argue this point.
- e. In order to effectively use a comparison approach as evidence in an assessment appeal, a party must first demonstrate that the properties being examined are comparable to each other. Conclusory statements that a property is similar or

comparable to another property are not probative of the properties' comparability. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Instead, a party must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. The party must also explain how any differences between the properties affect their relative market values-in-use. *Id.*

- f. The Respondent did not offer the type of analysis contemplated by the Indiana Tax Court in *Long*. The only similarities mentioned between the subject and the comparables is that they are all tourist homes characterized as residential and located in Nashville. Mr. Kelly did little to quantitatively or qualitatively show how the differences between the properties affect their relative values. The property record cards provide no way to compare the assessed values of each of the properties. The subject property was assessed for \$162,500; whereas the "comparable" properties ranged from \$123,000 to \$350,700, with no explanation of how the assessor arrived at any of the values. This is not probative evidence that the subject's assessed value was correct or too low.
- g. As stated previously, the Respondent successfully established the comparability of the properties used in his sales comparison analysis. Mr. Kelly identified the characteristics of the subject property and explained how those characteristics compared to or differed from the characteristics of the purportedly comparable properties and then made the necessary adjustments in order to reach the relative market values-in-use. Because the Respondent has made a prima facie case, the burden of proof shifts to the opposing party to refute or disprove the evidence. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).
- h. Here, the Petitioner focused his attention and argument on the fact that the effective age of the subject had been changed to adjust its assessed value. He opined that the assessor can change only the condition of property to bring it to or closer to the market value.
- i. The Petitioner failed to offer substantial probative evidence about what would have been a more accurate market value-in-use. Mr. Smith merely focused on the use of changing the effective age to bring the true tax value closer to the market value-in-use. Essentially, he challenged the methodology used to develop the property's assessed value. Evidence and arguments regarding strict application of the Guidelines, however, are not enough to prove that an existing assessment must be changed. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating "when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") The Petitioner did not show how the assessor's methodology resulted in an assessment that fails to accurately reflect market value-in-use.

- j. Mr. Smith presented the assessments of six purportedly comparable properties. While he stated that the effective age was different than the year built for each of the comparables, two of them actually had the same effective age as the year built. Beyond the fact that Mr. Smith failed to present any meaningful analysis demonstrating how the comparables are actually comparable to the subject, his argument was focused on methodology and not on the actual market value. Therefore, this was not probative evidence of a relevant point to the outcome of this case. *See ¶15 (g) above.*
- k. The Petitioner stated that the IAAO requires equity within groups and between groups. He failed to explain, however, how this information affects the market value of the subject property. Mr. Smith illustrated that, like the subject property, many properties in downtown Nashville had their effective age changed to bring the true tax value closer to market value-in-use.
- l. Mr. Smith presented a State Board of Accounts special examination of the 2002 reassessment. He failed to relate this examination of a state agency, which has no authority in the mass assessments process, to his contention that the current assessment is in error.
- m. Finally, Mr. Smith introduced an email from Frank Kelly to the Respondent in which he recommends adjusting the effective age of many properties to obtain a better measure of true tax value. Mr. Kelly cautions that this should be done with proof of underlying property value, such as a sale or an appraisal. Again, Mr. Smith failed to relate this information to his contention that the current assessment is in error.

Conclusion

- 16. The Respondent made a prima facie case that supported the assessment. The Petitioner failed to rebut the prima facie case with any meaningful market value evidence. The Board finds in favor of the Respondent. The assessment will not be changed.

Final Determination

17. In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: December 21, 2012

Commissioner, Indiana Board of Tax Review

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- 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>