

REPRESENTATIVE FOR PETITIONER: Keith Wheeler, *pro se*

REPRESENTATIVE FOR RESPONDENT: Andrew Baudendistel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Keith Wheeler,)	Petition:	15-018-18-1-5-01299-18
)		
Petitioner,)		
)		
v.)		
)	Parcel No.:	15-01-33-300-053.000-018
Dearborn County Assessor,)		
)	County:	Dearborn
Respondent.)		
)	Assessment Year:	2018

June 4, 2019

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. Keith Wheeler (“Wheeler”) appealed the 2018 assessment on his residence. He claimed that the increase in his assessment over the prior year was excessive and not supported by evidence from similar properties. The Dearborn County Assessor presented an appraisal of the property that supported the assessment. Wheeler did not sufficiently rebut the appraisal or offer reliable evidence to support another value. Thus, we order no change to the assessment.

PROCEDURAL HISTORY

2. Wheeler appealed the 2018 assessed valuation of his residential property. The Dearborn County Property Tax Assessment Board of Appeals (“PTABOA”) determined the

following assessment:

Land: \$38,200 Improvements: \$208,500 Total: \$246,700.

3. Wheeler timely appealed to the Board. On March 7, 2019, the Board's designated Administrative Law Judge ("ALJ"), David Smith, held a hearing on Wheeler's petition. Neither the Board nor the ALJ inspected the subject property. Keith Wheeler, Jeffrey D. Thomas, and Megan Acra, the Dearborn County Assessor, were sworn and testified.
4. The Parties offered the following exhibits, all of which were admitted without objection:

Petitioner's Exhibit 1:	Written presentation of Petitioner's arguments and evidence,
Petitioner's Exhibit A:	Table of assessment and sale information,
Petitioner's Exhibit B:	Table of assessment information,
Petitioner's Exhibit C:	Property Record Cards ("PRC") for subject and other comparable property,
Respondent's Exhibit 1:	PRC for subject property,
Respondent's Exhibit 2:	Thomas appraisal of subject property.
5. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

PETITIONER'S CONTENTIONS

6. Wheeler argued that the Assessor improperly used data from the "Hidden Valley" neighborhood to develop her market factor because that neighborhood contained newer homes and had significantly more amenities. He also argued that more similar comparables show that the subject property should be assessed at \$233,000. *Wheeler testimony; Pet'r Exs. 1, A, B, & C.*
7. In addition, he argued that the Assessor's data shows that homes are assessed for 6% less than their "sale values." Based on this data, he argued that the subject property should only be assessed for \$224,000. *Wheeler testimony; Pet'r Ex. 1.*

RESPONDENT'S CONTENTIONS

8. The Assessor testified generally about the assessment process, which includes the accumulation of property sales data, the development of a “market factor,” and the assessment of individual properties. The final list of all values is submitted to the DLGF for approval. *Acra testimony.*
9. The Assessor also presented the testimony of Jeffrey Thomas, a certified general appraiser, who appraised the subject property for the 2018 assessment date. He certified that his appraisal complied with USPAP. He did not inspect the interior of the subject property. *Thomas testimony; Resp. Ex. 2.*
10. Thomas valued the property using the sales comparison and cost approaches. He agreed with Wheeler’s contention that Hidden Valley was not comparable to the subject neighborhood so he did not use any Hidden Valley sales in his appraisal. Instead, he used three recent sales of properties within the subject’s neighborhood. They sold between June 2015 and April 2018 for prices ranging from \$215,000 to \$258,000. Wheeler questioned why Thomas did not use two other sales from the same neighborhood that sold for significantly less, but Thomas explained that he considered them significantly inferior in condition and quality. After adjustment, he concluded to a reconciled value of \$248,000 under the sales comparison approach. He also performed the cost approach under which he valued the property at \$248,409. He reconciled these to a value of \$248,000. Based on this appraisal, the Assessor asked the Board to uphold the assessment. *Thomas testimony; Resp’t Ex. 2.*

BURDEN OF PROOF

11. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeals represents an increase of more than 5% over the prior year’s assessment for the same property or (2) the taxpayer successfully appealed the prior

year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. §6-1.1-15-17.2(a), (b) and (d). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as corrected by an assessing official, stipulated to or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).

12. The assessed value of the subject property in 2018 was \$246,700, which represented an increase of more than 5% over the 2017 assessed value of \$207,100. Both parties agreed that the burden for 2018 was on the Assessor.

CONCLUSIONS OF LAW

13. Indiana assesses property based on its “true tax value,” which is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 3-1.1-31-6(f). True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). The DLGF defines “true tax value” as “market value-in-use” which it in turn defines as “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.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id.; see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).
14. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for

rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for the year under appeal was January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).

15. A taxpayer needs to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.* See also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is.).
16. The Assessor presented the Thomas appraisal, arguing that it supports the current assessment. Although Wheeler questioned why Thomas did not use certain sales, we find Thomas adequately explained why those sales were not comparable to the subject property. Wheeler did not significantly impeach the Thomas appraisal, and we find the Assessor presented a prima facie case sufficient to support the assessment. We now turn to Wheeler's evidence.
17. Wheeler primarily argued that the market factor used in his assessment was not based on reliable data. This argument goes solely to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking their methodology is insufficient. *Eckerling* at 678. Instead, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
18. While Wheeler did provide extensive data about sales and assessments he considered comparable, conclusory statements that properties are "similar" or "comparable" to another property is not sufficient. *Long*, 821 N.E.2d at 470. Instead, one 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.* Wheeler failed to do this.

19. We also address Wheeler’s contention that he should receive a reduction in his assessment because other properties are assessed at less than their “sale values.” This is essentially a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, “when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf*, 859 N.E.2d at 399 n.3. Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001).

20. When a ratio study shows that a given property is assessed above the common level of assessment, that property’s owner may be entitled to an equalization adjustment. *See Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). Although Wheeler did present some data of the relationship between sale prices and assessments for other properties, he failed to show that data was compiled with professional standards and constituted a statistically reliable sample. Thus, we can offer no relief on this ground.

CONCLUSION

21. The Assessor met her burden of proof by presenting a USPAP compliant appraisal that supports the current assessment. Wheeler failed to rebut the appraisal or present other reliable evidence supporting a different value. Thus, we order no change to the 2018 assessment.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order no change to the 2018 assessment of the subject property.

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>>.