

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

Petition: 10-009-18-1-5-00186-19
Petitioner: Diane Wragg¹
Respondent: Clark County Assessor
Parcel: 10-20-01-300-995.000-009
Assessment Year: 2018

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

PROCEDURAL HISTORY

1. Diane Wragg contested the 2018 assessment of her property located at 516 Old Creek Lane in Jeffersonville. On December 19, 2018, the Clark County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property at \$111,900 (\$26,000 for land and \$85,900 for improvements).
2. Wragg filed a Form 131 appeal with the Board and elected to proceed under our small claims procedures. On August 28, 2019, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on Wragg’s petition. Neither he nor the Board inspected the property.
3. Warren Wragg appeared as a witness for Diane Wragg. Attorney Ayn Engle represented the Assessor. Warren Wragg and Ken Surface, Senior Vice President of Nexus Group, were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:

Petitioner Exhibit 1:	516 Old Creek Lane description and photos
Petitioner Exhibit 2:	PTABOA hearing comparable properties
Petitioner Exhibit 3:	Garage value calculation estimate
Petitioner Exhibit 4:	Oak Park Conservancy drainage restrictions
Petitioner Exhibit 5:	Driveway estimates
Petitioner Exhibit 6:	Roof, front door, drywall labor costs

¹ Although Warren and Diane Wragg both signed the Form 131 petition as owners, Warren testified that Diane is the sole legal owner of the subject property.

Petitioner Exhibit 7:	Carpet replacement estimate
Petitioner Exhibit 8:	Fence estimate
Petitioner Exhibit 9:	Comparable homes
Petitioner Exhibit 10 ² :	40 photographs of the subject property
Respondent Exhibit 1:	Form 131 petition
Respondent Exhibit 2:	Property Record Card (“PRC”) for subject property
Respondent Exhibit 3:	Photos of subject property
Respondent Exhibit 4:	Value analysis prepared by Ken Surface
Respondent Exhibit 5:	Sales Disclosure Forms (“SDF”) for value analysis
Respondent Exhibit 6:	514 Old Creek Lane listing, PRC, SDF and pictures
Respondent Exhibit 7:	Wragg’s evidence from PTABOA hearing
Respondent Exhibit 8:	Indiana sales disclosure database searches
Respondent Exhibit 9:	Value analysis based on Wragg’s comparable sales
Respondent Exhibit 10:	PRCs for comparable homes presented by Wragg

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

OBJECTIONS

6. The Assessor objected to the admission of Petitioner’s Exhibits 1-9 because they contain hearsay. He also made numerous hearsay objections to portions of Warren’s testimony. Our ALJ took all of the objections under advisement. We agree that some of the exhibits contain hearsay. We also agree that the parts of Warren’s testimony the Assessor objected to are hearsay. However, our procedural rules allow us to admit hearsay provided we do not base our final determination solely on the hearsay evidence. 52 IAC 3-1-5(b). We therefore overrule the objections, and note that the exhibits and testimony do not serve as the exclusive basis for our final determination.
7. The Assessor also made a relevance objection to Warren’s testimony claiming that the PTABOA failed to account for the fact that the subject property only has a one-car garage. Our ALJ took the objection under advisement. While we agree that what happens at a PTABOA hearing is generally irrelevant given that our hearings are *de novo*, we find the information concerning the size of the subject property’s garage to be relevant. We therefore overrule the objection.

² Wragg submitted 40 photographs of alleged defects affecting the subject property with an exhibit coversheet identifying them as Exhibits 1-9. She also included a separate reference sheet titled “Picture Descriptions - Exhibit 1” that identifies the photos with nonsequential numbers ranging from 605 to 813. For ease of reference, we have relabeled the photos collectively as Petitioner Exhibit 10.

BURDEN OF PROOF

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
9. Here, the assessment increased from \$105,400 in 2017 to \$111,900 in 2018—an increase of more than 5%. The Assessor stipulated that he therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

10. The Assessor's case:

- a. Surface is a Senior Vice President for Nexus Group, a private contractor that has contracted with Clark County since 2006. He is a Level III certified appraiser as defined by the Department of Local Government Finance ("DLGF"), and he holds a Bachelor of Science degree from Indiana University. Over his 16-year career with Nexus, Surface has assessed hundreds of thousands of properties, and played a part in valuing the 58,000 properties in Clark County. *Surface testimony.*
- b. The subject property is a single-family ranch built in 2000. It has 1,103 square feet, with three bedrooms and two bathrooms situated on a 75' by 128' lot (0.22 acres). The Assessor valued the property's land on a front foot basis using a base rate of \$350 per front foot, resulting in a land value of \$26,000. And the property's total assessment for 2018 was \$111,900. *Surface testimony; Resp't Ex. 2.*
- c. Surface presented a sales comparison approach using three properties located within the subject's neighborhood. He searched for comparable properties that sold in the twelve months preceding the January 1, 2018 assessment date, but the DLGF Guidelines allow him to expand the search period beyond that timeframe. He therefore included sales from December 12, 2016 and October 31, 2018. All three of the properties he selected are located within 300 feet of the subject, and are either immediately behind or across the street from it. They are all ranch houses that were built on slabs around the same time. Their designs are very comparable to the subject, and all three are within 150 square feet of the subject's size. Like the subject, all three are C-grade construction quality in fair to average condition, and they all have central air. *Surface testimony; Resp't Ex. 4.*
- d. Surface trended the October 31, 2018 sale (Comp. No. 1) back to the assessment date

- using an adjustment factor published by the Indiana Association of Realtors in its Indiana Housing Market Update. According to the report, the median price change in Clark County over the 12-month period from February 2018 to January 2019 was +7.8%. Surface trended Comp. No. 1 back to the assessment date by applying -7.8% to its purchase price, producing a sales price of \$141,066. *Surface testimony; Resp't Ex. 4.*
- e. Surface made downward adjustments to all three comps for central air using dollar amounts derived from “our cost manual” to account for the comps’ larger sizes. He also used the cost manual to adjust Comp. No. 3 downward by \$600 due to its larger exterior features. And he made adjustments to Comp. Nos. 1 and 3 for differences in their garage sizes using the cost manual as well. Surface then reduced these adjustments using a 0.90% location cost multiplier. Next, Surface applied age/condition depreciation adjustments. He applied downward adjustments to Comp. Nos. 1 and 3 because they are newer than the subject. Although Comp. No. 2 is also newer, the amount of depreciation attributable to its age was offset by its inferior condition, so no adjustment was necessary. Finally, Surface made positive \$300 adjustments to all three comps to account for the subject’s shed. *Surface testimony; Resp't Ex. 4.*
- f. After adjustments, the comps ranged in price from \$102 to \$108/SF. Surface concluded that \$104/SF was the appropriate average. Applying that value to the subject’s 1,103 square feet produced a value of \$114,700 (rounded), which is slightly higher than the assessment under appeal. The Board should increase the 2018 assessment to that value. *Surface testimony; Engle argument; Resp't Ex. 4.*
- g. Surface also discussed the sale of a property located at 514 Old Creek Lane, which is next door to the subject. Like the subject, it was built in 2000, has the same drainage ditch running through the backyard, and does not have a fence. On the other hand, it is slightly bigger than the subject at 1,162 square feet, and it has a 2-car garage. However, it does not have a utility shed. The property sold on September 10, 2018 for \$128,000, or \$110.15/SF, while the subject’s assessed value is \$101.45/SF. *Surface testimony; Resp't Ex. 6.*
- h. The Assessor criticized Wragg’s analysis of comparable homes for including:
- sales that were more than one year from the assessment date;
 - properties with higher per square foot values;
 - properties outside of the trending neighborhood identified by Surface;
 - properties with basements and 2nd floor space; and
 - properties with additional unfinished space.

Additionally, the Assessor argued that Wragg failed to compare specific property attributes or to make adjustments for differences between the properties. Wragg’s

analysis also failed to comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”). Finally, the Assessor criticized Wragg for not providing a proposed value for her property. *Surface testimony; Engle argument; Resp’t Ex. 10; Pet’r Exs. 2, 9.*

11. **Wragg’s case:**

a. Wragg claims that the Assessor’s valuation fails to account for the following defects and issues with her property:

- the 20-year old roof is leaking and needs replacement;
- the driveway is cracked and sinking;
- the rear twenty feet of the lot cannot be fenced due to a drainage ditch easement that reduces the property’s value;
- the drainage ditch includes a 46” drop at the rear of the property;
- the property is not level, and there are large depressions behind the shed;
- the property has virtually no landscaping, with only one tree and a flower bed;
- the front door does not seal tight and needs to be replaced;
- the rear patio door was not properly installed;
- the flooring, fixtures, and appliances are old and need to be replaced;
- the drywall is damaged, with framing showing through the walls; and
- there are cracks in the foundation that need repair;

Given the problems with the property, there is no way Wragg could sell her property for its assessed value of \$111,900. And no one has completed an interior inspection of the property since 2006, which makes Wragg think the Assessor failed to properly account for depreciation. *Wragg testimony; Pet’r Exs. 1, 4-10.*

b. One of the properties the Assessor presented at the PTABOA hearing was 402 Old Creek Lane, but it did not actually sell. The property located at 514 Old Creek Lane that the Assessor compared to Wragg’s home did sell for \$128,000. However, it had three price drops in three months and sold for \$20,000 less than the original list price, which demonstrates that people overprice their properties. *Wragg testimony; Pet’r Ex. 2.*

c. Additionally, at the PTABOA hearing, the Assessor’s consultant stated that the difference in value between a one-car and a two-car garage is \$5,000. However, Wragg reviewed the values of 256 homes with two-car garages and 20 homes with one-car garages, and her garage value calculation showed that the average difference is \$7,802. *Wragg testimony; Pet’r Ex. 3.*

d. Wragg also compared her home with the sales or listing prices of eleven other homes in Jeffersonville. After making negative \$5,000 adjustments to the properties with two-car garages, most of the properties sold for prices between \$70/SF and \$90/SF.

However, Wragg did not otherwise adjust the comparable properties because she did not have the necessary information. Nor did she propose an assessed value for the property. *Wragg testimony; Pet'r Ex. 9.*

ANALYSIS

12. The Assessor failed to make a prima facie case supporting the 2018 assessment or his requested increase. And Wragg failed to prove that her assessment should be lower than the reversionary value. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "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). It is instead determined under the rules of the DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. 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 USPAP 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 this appeal is January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).
 - c. Here, the Assessor had the burden of proving that the 2018 assessment was correct. He offered a sales comparison approach and requested we increase the assessment to the \$114,700 value produced by that approach. However, there are a number of problems with the sales comparison approach that undermine its probative value.
 - d. While we agree that the three properties Surface used in his analysis are sufficiently comparable to the subject, he failed to establish that his adjustments comply with generally recognized appraisal principles. Surface relied almost exclusively on cost and depreciation information taken from the DLGF's Guidelines to calculate his adjustments. But he failed to explain how such wholesale borrowing of information intended for use in the mass-appraisal context complies with generally recognized appraisal principles when appraising an individual parcel. Thus, the Assessor's sales comparison approach is not probative valuation evidence. *See Grabbe v. Duff*, 1 N.E.3d 226, 231 (Ind. Tax Ct. 2013) (stating that the probative value of an opinion

depends on whether the proponent of that opinion has shown that he adhered to generally recognized appraisal principles in formulating the opinion).

- e. Additionally, Surface failed to provide sufficient support for using the Indiana Housing Market Update to trend Comp. No. 1 back to the assessment date. Even if he had, Surface's decision to apply the full 7.8% instead of a prorated percentage would leave us with little confidence in the adjustment. We also question why Surface felt it necessary to make adjustments to account for the comps' larger sizes with respect to central air, but not for the general differences in their sizes. And Surface offered no explanation for the lack of adjustment for the size of Comp. No. 2's garage—an adjustment that presumably would have resulted in a significant reduction to the comp's adjusted sales price.
- f. Although Surface also discussed the sale of the neighboring property at 514 Old Creek Lane, he did not include it in his sales comparison approach. Nor did he attempt to adjust for any differences between the properties. Consequently, its sales price lacks probative value.
- g. Because the Assessor did not offer any probative valuation evidence, he failed to make a prima facie case that the assessment (or his requested increase) was correct. Wragg is therefore entitled to have her 2018 assessment reduced to its 2017 assessed value of \$105,400. Wragg did not propose an assessed value for her property, let alone one lower than the reversionary value. Nevertheless, we will briefly address her contentions.
- h. Wragg compared her home with the sales or listing prices of eleven other homes in Jeffersonville. However, she failed to offer any evidence verifying the sales. She also did little to identify the properties' relevant characteristics or compare them to the subject property. And with the exception of her garage adjustments, she completely failed to explain how any relevant differences affected their values. Thus, Wragg's attempt at a sales comparison approach falls well short of providing the level of analysis the Tax Court has explained is necessary when relying on comparative sales data. Furthermore, all of the sales occurred more than a year after the January 1, 2018 valuation date, and Wragg failed to relate them back to that date as required by *Long*.
- i. Wragg also presented testimony and documentary evidence regarding numerous problems with her house. While the issues with her home likely have a negative effect on the property's value, her evidence does not support a particular valuation. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling*, 841 N.E.2d at 678.

- j. Because Wragg offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, she failed to make a prima facie case for a further reduction.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2018 assessment reduced to its 2017 assessed value of \$105,400.

ISSUED: November 25, 2019

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>>.