

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

Petition: 45-004-17-1-4-01232-18
Petitioner: Northwest Real Estate, LLC
Respondent: Lake County Assessor
Parcel: 45-08-09-331-011.000-004
Assessment Year: 2017

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

PROCEDURAL HISTORY

1. Northwest Real Estate, LLC (“Northwest”) contested the 2017 assessment of its property located at 1564 Harrison Street in Gary. The Assessor valued Northwest’s gas station/convenience mart at \$222,200 (\$79,400 for land and \$142,800 for improvements).
2. On November 16, 2018, Northwest filed a Form 131 petition with the Board and elected to proceed under our small claims procedures.¹ On September 10, 2019, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Northwest’s petition. Neither she nor the Board inspected the subject property.
3. Northwest appeared by its tax representative, Peter Karagan. The Assessor appeared by its Hearing Officers Robert Metz and Joseph James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit 1:	Form 134 for the January 1, 2016 assessment date
Petitioner Exhibit 2:	Form 134 for the January 1, 2017 assessment date
Petitioner Exhibit 3:	Assessor’s sales information for the January 19, 2017 sale of the subject property
Petitioner Exhibit 4:	Sales Disclosure Form for the January 19, 2017 sale of the subject property

¹ Northwest elected to appeal its 2017 assessment directly to us after the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) failed to issue a determination within 180 days of the filing of its Form 130 notice of appeal. See Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).

- Petitioner Exhibit 5: Purchase agreement for the January 19, 2017 sale of the subject property
- Petitioner Exhibit 6: Form 131 petition for 2017
- Petitioner Exhibit 7: Form 113 notice of assessment change for the March 1, 2015 assessment date
- Petitioner Exhibit 8: Form 130 notice for the March 1, 2015 assessment date
- Petitioner Exhibit 9: Property record card for the subject property

- Respondent Exhibit 1: Appraisal prepared by Jeffrey R. Vale

- 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.

BURDEN OF PROOF

- 6. 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).
- 7. Here, the property’s assessment increased by more than 5% from 2016 to 2017. It also increased above the level determined in Northwest’s successful appeal of the 2016 assessment. The Assessor therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

- 8. The Assessor’s case:
 - a. The Assessor offered an appraisal prepared by Jeffrey R. Vale, MAI, SRA, an Indiana certified general appraiser. Vale prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). He developed a cost approach and a sales comparison approach, but he did not find the income approach to be applicable. The cost approach produced a value of \$242,500 and the sales comparison approach produced a value of \$238,800. In his reconciliation, Vale gave the sales comparison approach primary consideration and he ultimately valued the subject at \$238,800 as of January 1, 2017. The Assessor recommends the Board increase the assessment to that value. *Metz testimony: Resp’t Ex. 1.*
 - b. In response to Northwest’s argument concerning the purchase price, the appraiser explained that bulk sales are not always valid sales. Also, while Northwest suggests that the subject’s location is inferior, goodwill is generally calculated based on the income a property will generate. And the goodwill value assigned to the subject

- property is only \$10,000 less than the property located at 5208 Broadway (Parcel A). *Metz testimony; Resp't Ex. 1; Pet'r Ex. 5.*
- c. Northwest also complained that the Assessor corrected the 2015 assessment via a Form 113. However, the Assessor increased the assessment because he had erroneously omitted the 1,600 square foot convenience mart. The Assessor has the ability to go back six tax installments, and he increased the assessment before the November 2018 installment was due. *Metz testimony; Pet'r Ex. 7.*
9. Northwest's case:
- a. The property is an old Clark station that has been repurposed. The owners added a convenience store but the old building is still standing and is used for storage. This gas station/convenience store is located on a dead-end street. It is not where a gas station would typically be built today. *Karagan testimony.*
- b. Northwest purchased the property for \$115,000 on January 19, 2017. The property was part of a bulk sale comprising four properties. The actual cost of acquiring each property was calculated separately. In the purchase agreement, the real estate value was separated from the value of the inventory, goodwill, and non-compete covenants. *Karagan testimony; Pet'r Exs. 3-5.*
- c. The appraiser stated that bulk sales often entail a discount so the reported price may not be the same if the property had been sold separately. The other side of that argument might be that this was a junk property thrown into the sale in order to dispose of it. *Karagan testimony.*
- d. For 2016, Northwest and the Calumet Township Assessor agreed on a value of \$162,700. For 2017, they agreed on a value of \$158,600 but a township official never signed the Form 134 and it was apparently never processed. After visiting the site and viewing the condition of the property, he believes the \$158,600 value that Northwest agreed to for 2017 is more applicable than the \$115,000 purchase price. *Karagan testimony; Pet'r Exs. 1, 2.*
- e. On November 8, 2018, the Calumet Township Assessor issued a Form 113 increasing the subject's March 1, 2015 assessed value. The Township Assessor exceeded her authority by trying to increase an assessment beyond the three years allowed by statute. *Karagan testimony; Pet'r Exs. 7, 8.*

ANALYSIS

10. 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 Department of Local Government Finance (“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.

11. 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.* For 2017 assessments, the valuation date was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
12. As discussed above, the Assessor has the burden of proving that the 2017 assessment is correct. He offered a USPAP-compliant appraisal report prepared by Vale, a certified general appraiser. Vale primarily relied on the sales comparison approach in estimating the value to be \$238,800 as of January 1, 2017.
13. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. In this case, Northwest did not attempt to impeach or criticize Vale’s appraisal. We therefore find Vale’s value conclusion to be probative evidence of the subject property’s market value-in-use. Accordingly, the Assessor made a prima facie case that the 2017 assessment should be \$238,800. The burden therefore shifts to Northwest to rebut Vale’s valuation.
14. Northwest submitted evidence that it purchased the property for \$115,000 on January 19, 2017. The purchase price of a property can be the best evidence of its value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, Northwest did not demonstrate that the purchase was a valid arm’s-length transaction. Nor did it do much to dispel our concerns regarding the use of a single property purchased as part of a bulk sale. Nevertheless, Vale used two of the properties included in Northwest’s bulk purchase as comps in his sales comparison approach. He described them as arm’s-length sales of the fee simple interest, and he did not adjust their sales prices for property rights conveyed, financing, or conditions of sale. The sales prices Vale relied on for both comps also match the corresponding real property allocations reported in Northwest’s purchase agreement. Thus, we find Northwest’s purchase price to be probative valuation evidence.
15. Because the purchase price is direct evidence of how the market valued the utility of the subject property a mere 18 days after the relevant valuation date, we conclude that it is

the most persuasive evidence of the subject property's market value-in-use. However, Karagan conceded that the \$158,600 value Northwest agreed to for 2017 is a more appropriate valuation than the \$115,000 purchase price. Based on that concession, we conclude the 2017 assessment should be \$158,600.²

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for Northwest and order the 2017 assessment changed to \$158,600.

ISSUED: December 6, 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>>.

² Although Northwest briefly discussed issues relating to a Form 113 issued by the Calumet Township Assessor for the March 1, 2015 assessment date, the only assessment year properly before us is 2017. We therefore decline to address Northwest's claims regarding the property's 2015 assessment.