

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

Petitions: 15-018-18-1-5-00294-19
15-018-18-1-5-00295-19
Petitioners: James and Mary Gaines
Respondent: Dearborn County Assessor
Parcels: 15-01-31-200-047.000-018
15-01-31-100-048.000-018
Assessment Year: 2018

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

PROCEDURAL HISTORY

1. James and Mary Gaines contest the 2018 assessments of their two parcels located at 5151 Steeple Chase Court in Guilford. On August 15, 2018, the Dearborn County Assessor issued Form 11 notices valuing their parcels as follows:

Parcel	Land	Improvements	Total
15-01-31-200-047.000-018	\$65,500	\$379,800	\$445,300
15-01-31-100-048.000-018	\$36,200	\$0	\$36,200

2. On February 27, 2019, the Gaines filed Form 131 petitions with the Board. The Assessor subsequently filed a Motion to Dismiss with Prejudice to which the Gaines responded in opposition. The Board did not issue an order addressing the Assessor’s Motion to Dismiss prior to hearing.
3. On January 28, 2020, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on the Gaines’ petitions under our small claims procedures. Neither he nor the Board inspected the parcels.
4. James Gaines appeared pro se. Attorney Andrew Baudendistel represented the Assessor. Mr. Gaines and Dearborn County Assessor Megan Acra were both sworn as witnesses.
5. After allowing both parties to present additional arguments and evidence regarding the Assessor’s Motion to Dismiss at the beginning of the hearing, our ALJ took the issue under advisement. Both parties then proceeded to address the merits of the valuation appeal.

RECORD

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

Petitioner Exhibit 1:	Comparable property list #1
Petitioner Exhibit 2:	Comparable property list #2
Petitioner Exhibit 3:	Surrender of Right of First Refusal
Petitioner Exhibit 4:	Contiguous Lot Form (notary page only)
Petitioner Exhibit 5:	Pictures of subject parcels
Petitioner Exhibit 6:	Original Form 130 for Parcel No. 15-01-31-100-048.000-18

7. 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.¹

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).
9. Here, the combined assessment for the Gaines' parcels increased from \$440,000 in 2017 to \$481,500 in 2018—an increase of more than 5%. The Assessor stipulated that she therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

10. **The Assessor's case:**

- a. The Assessor filed a Motion to Dismiss based on 52 IAC 2-10-2(a)(1) and Rule 12(b)(6) of the Indiana Rules of Trial Procedure because the Gaines never exhausted their administrative remedies by appealing their 2018 assessments to the Dearborn County Property Tax Assessment Board of Appeals ("PTABOA"). Indiana Code § 6-1.1-15-1.1(b)(1) provides that appeals for assessments predating January 1, 2019 must be filed by the earlier of 45 days following mailing of a Form 11 notice of assessment or 45 days following the date the tax statement is mailed. In this case, the Assessor mailed Form 11 notices on August 15, 2018 and the Treasurer mailed tax

¹ The Assessor did not submit any exhibits.

statements no later than April 1, 2019. Thus, the Gaines' deadline for initiating Form 130 appeals with the PTABOA was September 28, 2018. *Baudendistel argument; Acra testimony.*

- b. Although the Gaines indicated on their Form 131 petitions that the time for the PTABOA to act had passed, they never filed Form 130 petitions with the Assessor's office for the 2018 pay 2019 assessment year. Thus, the PTABOA had no appeals on which to act. Taxpayers are required to appear before the PTABOA before their case can be heard by the Board. Because the Gaines failed to do so, their Form 131 petitions are subject to dismissal. *Baudendistel argument; Acra testimony.*
- c. After the Gaines produced an original file-stamped Form 130 petition that they had mailed to the Assessor, the Assessor conceded that they had apparently filed an appeal. The Assessor would normally keep the original and return a copy to the taxpayer, but in this situation, Mr. Gaines somehow left with the original. Regardless, the statutory deadline was September 28, 2018 and the Gaines' Form 130 petition was stamped as received on October 5, 2018. *Acra testimony; Baudendistel argument; Pet'r Ex. 6.*
- d. The Assessor contracts with Tyler Technologies to perform her mass assessments. They come up with assessed values using similar sales that are adjusted and put into a software system. This process is approved by the State of Indiana and it follows Indiana's statutes. The Assessor inspected the Gaines' properties on January 27, 2020. She believes that the value of their properties is closer to the values the parties stipulated to as part of the Gaines' 2019 appeal. However, the assessed values for similar 5-acre lots with improvements in the area are all about the same. The sales in the surrounding area from the two years preceding the assessment date also support the 2018 assessments. Accordingly, she believes that the assessed values generated by the mass assessment are correct. In contrast, Gaines' comparable properties come from different parts of the county, and some have significant differences in lot size and finished area. *Acra testimony.*

11. **The Gaines' case:**

- a. As evidenced by Petitioner Exhibit 6, the Gaines did file a Form 130 petition with the Assessor appealing their 2018 assessment. They mailed the form via first class mail one week after receiving the Form 11s from the Assessor. Mr. Gaines did not receive notification that the appeal was received by the Assessor, let alone received after the deadline, until he went to her office to check the status of the appeal sometime after October 5, 2018. After searching for 15-20 minutes, the Gaines' Form 130 petition was found on a file cabinet and returned to Mr. Gaines with no documentation. He was told that it was too late to initiate the appeal process for 2018 and that he needed to appeal to the State of Indiana using a Form 131 petition. *Gaines testimony; Response to Assessor's Motion to Dismiss; Pet'r Ex. 6.*

- b. The Gaines submitted three lists of Dearborn County property sales that they think are similar to the subject. The table in Exhibit 1 shows lot size, finished space, appraised land and improvement values, sales price, and dates of sale. The table also compares each property's sales price to its assessed value. The sales show an average variance of \$81,000 between the sales price and assessed value. Exhibit 2 shows the adjusted sales prices of several other comparable properties. A hand-written list of four additional sales along with their respective sales prices and assessed values appears on the back of Exhibit 2 as well. *Gaines testimony; Pet'r Exs. 1, 2.*
- c. The prior owner of the Gaines' properties filed a contiguous lot form in 2009 under the assumption that the two lots were going to be combined and that the unimproved lot would not be built on. Since then, a 24'x36' detached brick garage was built across the property line between the two contiguous lots. The cost to move it over the property line would be substantial, and trees and lights would have to be removed as well. There is a shed on the unimproved lot, but the Gaines have no intention to build on it. They are maintaining the lot as excess acreage and want it treated as excess acreage. *Gaines testimony; Pet'r Exs. 4, 5.*

ANALYSIS

A. The Assessor's Motion to Dismiss

12. The Assessor moved to dismiss the Gaines' Form 131 petitions pursuant to 52 IAC 2-10-2(a)(1) and Rule 12(b)(6) of the Indiana Rules of Trial Procedure for failure to state a claim upon which relief can be granted. In her Motion and her attached affidavit, and throughout her direct testimony regarding her motion at our hearing, the Assessor maintained that the Gaines never filed Form 130 petitions initiating the required county-level appeal process. She therefore argued that the Gaines are not entitled to review of their Form 131 petitions before us because there is no "county board action" to be reviewed under Indiana Code § 6-1.1-15-3.
13. The Gaines filed a response in opposition asserting that they mailed Form 130 petitions to the Assessor one week after they received the Form 11 notices from her in August 2018. During our hearing, Mr. Gaines also submitted the original Form 130 petition that he mailed to the Assessor for Parcel No. 15-01-31-100-048.000-18. It was file-stamped by the Assessor's office as "Received" on October 5, 2018. After being confronted with the file-stamped petition, the Assessor conceded that the Gaines had filed an appeal. However, she argued that we should nevertheless dismiss the Gaines' Form 131 petitions because they filed their Form 130 petition after the statutory deadline.
14. Here, the Assessor mailed the Gaines' Form 11 notices on August 15, 2018. Under Ind. Code § 6-1.1-15-1.1(b)(1), the Gaines had 45 days after the date of mailing, or until

October 1, 2018, to initiate appeals.² Thus, the fact that the Gaines' Form 130 petition was stamped as received by the Assessor's office on October 5, 2018 would normally lead us to conclude that the Gaines' appeal was untimely as urged by the Assessor. However, the Assessor continued to assert that the Gaines had *never* filed Form 130 petitions initiating the required county-level appeal process with her office until she was confronted with an original Form 130 petition bearing her office's "Received" stamp. We conclude that her lack of knowledge regarding the existence of the Gaines' petition severely undermines her credibility, as well as the reliability of the October 5th date stamped on the Form 130 petition.

15. Additionally, the Assessor failed to challenge or rebut the Gaines' claim that they mailed their Form 130 petitions one week after receiving the Form 11 notices.³ Accounting for the 3 days contemplated by our procedural rules for delivery of U.S. Mail puts the Gaines in receipt of the Form 11 notices by no later than August 20, 2018. *See* 52 IAC 2-3-1(f). We therefore conclude that the Gaines filed their 130 petitions with the Assessor on or around August 27, 2018, more than a month before the October 1, 2018 deadline.
16. That conclusion also undermines the Assessor's related argument claiming that we cannot review the Gaines' appeal because taxpayers are required to appear before the PTABOA before they can appeal to us. Under Indiana Code § 6-1.1-15-1.2(k), taxpayers may appeal directly to us if the county board does not issue a determination within 180 days of the date the Form 130 notice of appeal was filed. In this case, the Gaines filed their Form 131 petitions with us on February 27, 2019—more than 180 days after filing their Form 130 petitions. Accordingly, we deny the Assessor's Motion to Dismiss and turn to the issue of valuation.

B. The Gaines' Form 131 petitions

17. The Assessor failed to make a *prima facie* case supporting the 2018 assessments. 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.

² The Assessor incorrectly asserted that the Gaines' statutory deadline was September 28, 2018. The 45-day period ran until September 29th, a Saturday. The Gaines' deadline was therefore Monday, October 1, 2018. 52 IAC 2-3-1(b).

³ The Gaines did not submit an original file-stamped Form 130 petition for Parcel No. 15-01-31-200-047.000-018 into evidence during the hearing. They did, however, attach a signed copy of a Form 130 petition appealing its 2018 assessment to the Form 131 petition they filed with us.

- 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 assessments are correct, but she failed to present any probative market-based evidence to support them. The Assessor offered only vague testimony regarding the assessed values and sales of unidentified, purportedly comparable properties from the surrounding area, and claimed they support the 2018 assessments. 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).
- d. The Assessor also briefly discussed how she performs her mass assessments, but simply highlighting the methodology employed in the mass-appraisal context is insufficient when attempting to support the assessment of an individual parcel on appeal. To successfully make a case, parties 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.
- e. Because the Assessor did not offer any probative valuation evidence, she failed to make a prima facie case that the 2018 assessments are correct. The Gaines are therefore entitled to have the 2018 assessment for their improved parcel reduced to its 2017 assessed value of \$403,800. The assessment for the adjacent, unimproved parcel did not change from the 2017 to 2018, however, so its \$36,200 assessment will remain unchanged. Because the Gaines did not request specific values, let alone values lower than the reversionary values, this ends our inquiry.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2018 assessment for Parcel No. 15-01-31-200-047.000-018 reduced to \$403,800. We order no change to the 2018 assessment for Parcel No. 15-01-31-100-048.000-018.

ISSUED: June 12, 2020

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>>.