

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

Petition No.: 12-012-12-1-1-00001
Petitioner: Phyllis J. Hoovler (Riggle)
Respondent: Clinton County Assessor
Parcel: 12-06-05-300-004.000-012
Assessment Year: 2012

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

Procedural History

1. The Petitioner initiated her 2012 assessment appeal with the Clinton County Assessor on December 17, 2012.¹
2. The Clinton County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on June 7, 2013, denying the Petitioner the relief she sought.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on July 22, 2013.²
4. The Board issued a notice of hearing on January 22, 2014.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on February 26, 2014. She did not inspect the property.
6. Phyllis Hoovler appeared *pro se*. County Assessor Dana Myers and Deputy Assessor Pamela Martin appeared for the Respondent. All were sworn as witnesses.

Facts

7. The property under appeal is a single-family home located at 6101 North County Road 300 West, in Frankfort.
8. The PTABOA determined the following assessment:

Land: \$38,000 Improvements: \$24,300 Total: \$62,300.

¹ The Petitioner informally initiated her appeal by filing a "Request for Review" on December 17, 2012. The Petitioner also formally initiated her appeal via a Form 130 petition on February 25, 2013.

² Because the Petitioner failed to either accept or opt out of the Board's small claims procedures, the Board placed this appeal on the small claims docket without objection from either side. *See* 52 IAC 3-1-2(a).

9. On her Form 131, Ms. Hoovler requested the following assessment:³

Land: \$37,600 Improvements: \$24,300 Total: \$61,900.

Record

10. The official record for this matter is made up of the following:

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1:	Aerial view of subject property,
Petitioner Exhibit 2:	Notice of Assessment (Form 11) dated December 14, 2012,
Petitioner Exhibit 3:	Neighborhood assessments from 2011 and 2012,
Petitioner Exhibit 4(1):	Request for Review filed December 17, 2012,
Petitioner Exhibit 4(2):	Attachment to Request for Review,
Petitioner Exhibit 5A1:	First page of 2012 subject property record card,
Petitioner Exhibit 5A2:	Second page of 2012 subject property record card,
Petitioner Exhibit 5B1:	First page of 2011 subject property record card,
Petitioner Exhibit 5B2:	Second page of 2011 subject property record card,
Petitioner Exhibit 5C1:	First page of 2010 subject property record card,
Petitioner Exhibit 5C2:	Second page of 2010 subject property record card,
Petitioner Exhibit 5D1:	First page of 2009 subject property record card,
Petitioner Exhibit 5D2:	Second page of 2009 subject property record card,
Petitioner Exhibit 6A:	Revised acreage amount created by the Petitioner,
Petitioner Exhibit 6B:	Map of soil overlay from Beacon,
Petitioner Exhibits 7A-7J:	Soil-type acreages from Beacon-Schneider website with coversheet created by the Petitioner,
Petitioner Exhibit 8:	Letter from Dana Myers to Petitioner, dated July 12, 2013,
Petitioner Exhibit 8A:	Map of subject property from Beacon,
Petitioner Exhibit 8B:	Subject property record card dated July 12, 2013,
Petitioner Exhibit 9(1-3):	Petitioner for Review of Assessment (Form 130) dated February 25, 2013,
Petitioner Exhibit 10A:	Second page of subject property record card prior to changes,
Petitioner Exhibit 10B:	Second page of subject property record card after year of construction was corrected,

³ At the hearing, Ms. Hoovler requested a total assessment of \$62,185.

Petitioner Exhibit 10C:	Second page of subject property record card with 2013 values,
Petitioner Exhibit 11(1-4):	Form 134, dated February 28, 2013,
Petitioner Exhibit 12A-12B:	Tax statement and bill for 2012-pay-2013
Petitioner Exhibit 13:	Exhibit coversheet for PTABOA meeting dated May 28, 2013,
Petitioner Exhibit 14A:	Spreadsheet created by the Petitioner claiming over-assessment amount for 2012,
Petitioner Exhibit 14B:	Spreadsheet created by the Petitioner claiming over-assessment amount for 2011,
Petitioner Exhibit 14C:	Spreadsheet created by the Petitioner claiming over-assessment amount for 2010,
Petitioner Exhibit 14D:	Spreadsheet created by the Petitioner claiming over-assessment amount for 2009,
Petitioner Exhibit 15(1-3):	Form 115, dated June 7, 2013,
Petitioner Exhibit 16(1-2):	Minutes from PTABOA hearing, dated May 28, 2013
Petitioner Exhibit 17:	Page 16 of Indiana Assessors' Operational Manual regarding Correction of Error,
Petitioner Exhibit 18:	Beacon-Schneider tax data for the subject property, dated October 4, 2013,
Petitioner Exhibit 19:	"Altered" tax statement dated October 4, 2013,
Petitioner Exhibit 19A-19B:	2013 Subject property record card,
Petitioner Exhibit 20:	"Altered" tax bill, dated October 4, 2013,
Petitioner Exhibit 21:	Form 133, dated July 17, 2013, ⁴
Petitioner Exhibit 22:	Revised tax analysis created by the Petitioner for 2012-pay-2013,
Petitioner Exhibit 23:	Revised tax analysis created by the Petitioner for 2011-pay2012,
Petitioner Exhibit 24:	Revised tax analysis created by the Petitioner for 2010-pay-2011,
Petitioner Exhibit 25:	Revised tax analysis created by the Petitioner for 2009-pay-2010,
Petitioner Exhibit 26:	Explanation of changes to subject property created by the Petitioner, dated October 4, 2013.
Respondent Exhibit R1:	Respondent's summary of exhibits and testimony,
Respondent Exhibit R2:	Request for Review with 2012 subject property record card,
Respondent Exhibit R3:	Letter from Respondent, dated February 22, 2013, with explanation of changes to subject property record card
Respondent Exhibit R4:	Form 130, dated February 23, 2013, with attachments,
Respondent Exhibit R5:	Form 134, signed February 28, 2013,
Respondent Exhibit R6:	Form 115, dated June 7, 2013,

⁴ It appears this is the same as Respondent Exhibit R13. This Form 133 was sent by the Assessor to the Auditor only to notify the Auditor of the changes to the subject property.

- Respondent Exhibit R7: Letter from Petitioner requesting PTABOA hearing minutes, dated June 17, 2013,
- Respondent Exhibit R8: Minutes of the PTABOA hearing, dated June 18, 2013,
- Respondent Exhibit R9: Letter from Respondent with subject property record cards from 2010, 2011, and 2012, dated June 21, 2013,
- Respondent Exhibit R10: Letter from Petitioner to the Respondent, dated June 28, 2013,
- Respondent Exhibit R11: Letter from Respondent to the Petitioner, dated July 12, 2013,
- Respondent Exhibit R12: Emails between the Respondent and Barry Wood of Department of Local Government Finance (DLGF) dated July 16, 2013,
- Respondent Exhibit R13: Form 133 filed by the Respondent, dated July 17, 2013,
- Respondent Exhibit R14: Letter from Petitioner to the Respondent, dated January 13, 2014,
- Respondent Exhibit R15: 2002 and 2011 REAL PROPERTY ASSESSMENT GUIDELINES, pages 95-102, and 117,
- Respondent Exhibit R16: Corrected 2012 subject property record card,
- Respondent Exhibit R17: Owen Township property record cards corresponding to Petitioner Exhibit 3.

Board Exhibit A: Form 131 Petition with attachments,
Board Exhibit B: Hearing notice, dated January 22, 2014,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:

- a) The subject property’s 2012 assessment is too high. The assessment originally increased 18.9% over the previous year’s assessment. Eleven properties within a mile of the subject property did not see this type of an increase. *Hoovler argument; Pet’r Ex. 1, 2, 3, 4(1), 4(2).*
- b) Next, the amount of acreage shown on the subject property record card is incorrect. The legal measurement of this parcel is 7.0 acres. Ms. Hoovler argues she has paid on an inaccurate amount of 9.44 acres for years. This was pointed out to the Respondent, and she did make changes to the acreage amount. However, when the Respondent changed the acreage, she only lowered it to 7.423 acres. Further, there are inaccuracies in the soil identifications and measurements on the property record card. As to the home, the grade, condition, year of construction, and basement-crawl space inaccuracies should be also corrected. Once these issues are corrected, this “would lower the improvement value.” Finally, the taxes should be recalculated, and

the excessive payment should be refunded. *Hoovler argument; Pet'r Ex. 5A-D, 6A-B, 7A-J, 8A-B, 9, 10A-C, 11, 12A-B, 13, 14A-D, 15, 16, 17, 18.*

- c) While the Respondent filed a Correction of Error (Form 133) requesting the assessment value be changed to \$62,300, the Petitioner did not sign or see this form. Ms. Hoovler argues the proper corrections were not made. Further, Ms. Hoovler attempted to file a Form 133 herself with the County Auditor on February 25, 2013.⁵ The County Auditor rejected it. Thus, Ms. Hoovler argues she is entitled to refunds going back four years. *Hoovler argument; Pet'r Ex. 19A-B, 20, 21, 22, 23, 24, 25, 26.*
- d) The proper 2012 assessment should be \$37,885 for the land and \$24,300 for the improvements, totaling \$62,185. *Hoovler argument; Pet'r Ex. 26.*

12. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The Respondent had Ad Valorem Solutions review the Petitioner's property and make any necessary corrections. After corrections were made, an informal conference document was sent to the Petitioner for approval. The Petitioner did not agree with the informal conference results and filed a formal appeal with the PTABOA. The PTABOA agreed with the total assessment derived from the informal conference, \$62,300 for the 2012 assessment. *Myers argument; Resp't Ex. R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12, R13.*
- b) Regarding the Form 133, the Respondent and the County Auditor merely use that form as a "tool" to document the changes by the PTABOA. The Respondent sent this form to the Auditor's office in order to assist the Petitioner in obtaining a refund. The Petitioner never properly filed a Form 133. *Myers argument; Resp't Ex. R13.*
- c) The amount of acreage assessed to the Petitioner has "always been correct at 7.0 acres." The breakdown of the land Ms. Hoovler owns is as follows: 1.0 acre home-site, .44 acre of roadway, and 5.56 acres of farmland. In an effort to "satisfy" Ms. Hoovler, the Respondent made changes to the way the acreage was shown on the property record. The Respondent attempted to explain to Ms. Hoovler that the price of agricultural land can fluctuate and is "based on an average pricing and that can vary." *Myers testimony; Resp't Ex. R14, R15, R16.*
- d) Finally, the Petitioner's purported comparables; are located in Ross Township. The subject property is located in Owen Township. Thus, different home-site values apply to these purported comparables. *Myers argument; Resp't Ex. R17.*

⁵ Ms. Hoovler did not file a Form 133 with the Board.

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code section 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
16. At the hearing Ms. Hoovler argued that the burden should be placed on the Respondent because the total assessment reflected an 18.9% increase from the previous year’s assessment. This argument is flawed. It is true the original assessment for 2012, as determined by the assessor, was an increase over the 2011 level. However, the PTABOA lowered the 2012 assessment as a result of the Petitioner’s appeal. In fact, the current 2012 assessment of \$62,300 is lower than the 2011 assessment, which was \$62,900. Thus, the burden remains with the Petitioner.⁶

Analysis

17. The Petitioner failed to make a prima facie case for reducing the 2012 assessment.
 - a) Real property is assessed based on its "true tax value," which means "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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three

⁶ On her Form 131, Ms. Hoovler indicated there was not a burden shift because the 2012 assessment did not increase by more than 5% over the 2011 value.

- generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.
- b) Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment is March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
- c) Here, the Petitioner argued that the property record card contains several errors, including the amount of acreage, soil classifications, and the age, grade, and condition of the house. But, as the Respondent explained at hearing, the errors claimed by the Petitioner were addressed and corrected by both the Assessor and the PTABOA. While the Petitioner repeatedly argued that these items had not been corrected, the evidence in this appeal indicates otherwise. *See Resp't Ex. R16*. As for the Petitioner's statement regarding soil classification, the Respondent provided the Petitioner with maps indicating her land was properly assessed according to the DLGF guidelines for assessing agricultural land.⁷ The Petitioner failed to offer probative evidence to rebut any inaccuracies in how the Assessor went about calculating the soil classifications, and therefore, the Assessor's valuation is presumed to be accurate. As stated before, the evidence presented at the hearing conflicts with the claims made by the Petitioner. In fact, it appears that all of her concerns were addressed and corrected by the Assessor prior to the Board's hearing.
- d) The Petitioner also offered documentation of other properties' assessments. Indeed, Ind. Code § 6-1.1-15-18 provides that taxpayers may attempt to prove the value of their property by offering the assessments of comparable properties. This statute, however, does not automatically make evidence of other assessments probative. The party relying on those assessments must apply generally accepted appraisal and assessment practices to show that the properties are comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *See Long*, 821 N.E.2d at 470. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the other properties. *Id.* at 471.

⁷ See 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Chapter 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *See* 2011 GUIDELINES, Chapter 2 at 77, 89, 98-99.

Similarly, one must explain how any differences affect the relative market values-in-use. *Id.*

- e) Here, the Petitioner simply offered purportedly comparable assessments without any related analysis. The only claim made by the Petitioner was that her assessment increased at a greater percentage in 2012 than the other purported comparable properties. That claim, however, does nothing to prove what her property's value should be.
- f) Ms. Hoover also claimed to be entitled to refunds going back to 2010. Generally, however, the Board lacks the authority to review refunds or order the issuance of a refund to a taxpayer. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, which provides as follows:

- (a) The Indiana board shall conduct an impartial review of all appeals concerning:

- (1) the assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions; or
 - (4) property tax credits;

- that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law.

- (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

Ind. Code § 6-1.5-4-1.

- g) Another statute gives the Board the authority to review claims for refunds in very limited circumstances. Specifically, Ind. Code § 6-1.1-26-1 provides as follows:

- A person, or his heirs, personal representative, or successors, may file a claim for the refund of all or a portion of a tax installment which he has paid. However, the claim must be:

- (1) filed with the auditor of the county in which the taxes were originally paid;
 - (2) filed within three (3) years after the taxes were first due;
 - (3) filed on the form prescribed by the state board of accounts and approved by the department of local government finance; and
 - (4) based upon one (1) of the following grounds:
 - (A) Taxes on the same property have been assessed and paid more than once for the same year.
 - (B) The taxes, as a matter of law, were illegal.
 - (C) There was a mathematical error either in the computation

of the assessment upon which the taxes were based or in the computation of the taxes.

Ind. Code § 6-1.1-26-1.

- h) If a taxpayer has complied with the provisions of Ind. Code § 6-1.1-26-1, then the Board has the authority to decide denials of claims under Ind. Code § 6-1.1-26-3(b), which provides:

[I]f the claim for refund is disapproved by either the county auditor, the county treasurer, or the county assessor, the claimant may appeal that decision to the Indiana board. The claimant must initiate the appeal and the Indiana board shall hear the appeal in the same manner that the assessment appeals are heard by the Indiana board.

Ind. Code § 6-1.1-26-3(b).

- i) It does not appear the present appeal involves any of the circumstances contemplated by Ind. Code § 6-1.1-26-1. Moreover, it is not evident the Petitioner followed the procedure required to initiate a review under either statute. While the Petitioner claimed she attempted to file a Form 133 petition with the County Auditor, she made no claim upon the denial of that petition. Thus, there is no Form 133 petition before the Board.
- j) Because the Petitioner failed to present probative evidence regarding the subject property's value as of March 1, 2012, she failed to raise a prima facie case that the 2012 assessment is incorrect. Further, the Petitioner did not follow the procedures required to trigger the Board's limited authority to hear and decide refunds.
- k) Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will not be changed.

ISSUED: August 22, 2014

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 of 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>>.