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

Petition:	**19-014-10-1-5-00014**
Petitioners:	**Herbert Huff, Katherine Huff, Bethany Huff, Kasey Huff, and Jordan Huff**
Respondent:	**Dubois County Assessor**
Parcel:	**19-16-05-100-008-000-014**
Assessment Year:	**2010**

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

Procedural History

1. The Petitioners timely appealed their 2010 assessment to the Dubois County Property Tax Assessment Board of Appeals (PTABOA).

2. The PTABOA mailed notice of its decision on March 16, 2011.

3. The Petitioners filed a Form 131 Petition with the Board on April 28, 2011. (It indicates the appeal is for the 2011 assessment year, but the other attached documents indicate the 2010 assessment year and at the hearing both parties agreed this appeal is for 2010.) They elected the Board's small claims procedures.

4. Administrative Law Judge Rick Barter held the Board's hearing on April 24, 2012. He did not inspect the property.

5. Petitioners Herbert Huff and Katherine Huff appeared pro se and were sworn as witnesses. County Assessor Gail Gramelspacher and Natalie Jenkins were sworn as witnesses for the Respondent. Attorney Marilyn Meighen represented the Respondent.

Facts

6. The property is a single family residence at 7713 East 625 South in or near Birdseye.

7. The PTABOA determined the assessment is $12,000 for land and $115,100 for improvements (total $127,100).

8. The Petitioners claim it should be $12,000 for land and $79,800 for improvements (total $91,800).

Contentions

9. Summary of the Petitioners' case:

   a. The residence consists of a home and an unfinished addition. The original home was built for about $30,000 around 1980. Herbert and Katherine Huff live in that part of the property. Construction began on the addition in approximately 2000. They spent about $30,000 on the addition before halting construction after the contractors got the walls up. *H. Huff testimony.*

   b. The addition remains unfinished. *K. Huff testimony*. There has been no further construction to the addition for the past 10 years. It is used only for storage. The rooms have no heat, no fixtures, and no finished floors. In addition, there are lots of problems with the quality of construction on the addition. *H. Huff testimony; Pet'rs Ex. 4.*

   c. Composite pictures of the interior of the addition show the interior is not yet 50% finished. *H. Huff testimony; Pet'rs Ex. 1*.

   d. The property is located in a very primitive area on a gravel road. There is no septic system, no computer connection, no internet, and no cell phone service. The property would be worth more if these amenities were present. *K. Huff testimony*.

   e. Jack Nelson lives nearby and has a very comparable property. His house is complete, but he is not paying as much tax. Many of the neighbors have lower assessments and pay far lower taxes. *H. Huff testimony; Pet'rs Ex. 2.*

   f. Staff in the assessor's office told the Petitioners to present three estimates of the cost to complete the addition when they appeared before the PTABOA. *H. Huff testimony*.

10. Summary of the Respondent's case:

   a. Admittedly, the 2010 assessment is more than 5% greater than the 2009 assessment. But the 2010 increase was based on inspecting the interior and the resulting percentage of completion. The Petitioners have the burden of proving their case because the same property was not assessed for 2010. Therefore, Ind. Code § 6-1.1-15-17 does not apply. *Meighen argument*.

   b. Due to the fact that the addition is unfinished, local assessing officials were unable to locate any sold properties that are comparable to the Petitioners' parcel to develop the sales comparison approach to value. The income approach to value also was not applicable because this is not an income producing property. Accordingly, the assessor relied upon the cost approach to determine the assessed value of the property. *Gramelspacher testimony.*

c. The assessment is correct because the original house was 936 square feet and they added 1,295 square feet in the early 2000s. That addition was first listed on the property record card in 2002 as unfinished. *Meighen argument; Resp't Exs. A, B.*

d. In 2009 the property was assessed at $12,000 for the land and $83,900 for improvements for a total of $95,900. After an interior inspection by Natalie Jenkins in 2010, the land assessment remained unchanged and the assessed value of the improvements increased to $135,400 for a total assessment of $147,400. Jenkins used a standard assessing checklist to determine the addition was 89% completed based upon her observations. She had not been in the addition prior to 2010. *Jenkins testimony*.

e. On appeal the PTABOA valued the addition as if completed and then (based on three estimates to complete the addition that averaged $53,500) it determined the home was only 64% complete. The PTABOA applied the 64% to the entire house, which reduced the assessment for the house to $99,100. (The improvements also include a detached garage valuation that is not in question.) *Gramelspacher testimony.*

Record

11. The official record contains the following:

a. Digital recording of the hearing,

b. Petitioners Exhibit 1 - Composite photograph sheet of addition interior,
Petitioners Exhibit 2 - Seven real property maintenance reports of nearby properties,
Petitioners Exhibit 3 - Plat map of the area,
Petitioners Exhibit 4 - Rehabilitation bid form,
Respondent Exhibit A - Property record card of the Huff property,
Respondent Exhibit B - Exterior photograph of the Huff house,
Respondent Exhibit C1 - Estimate of cost to finish the Huffs' addition,
Respondent Exhibit C2 - Estimate of cost to finish the Huffs' addition,
Respondent Exhibit C3 - Estimate of cost to finish the Huffs' addition,
Respondent Exhibit D - Board denial of appeal for parcel 19-16-05-100-010.008-014 and the appeal envelope,
Board Exhibit A - Form 131 Petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing sign-in sheet,

c. These Findings and Conclusions.

Objection

12. The Respondent objected to Petitioners' Exhibit 2 (seven real property maintenance reports to establish the amount of taxes paid on neighboring properties) because they attempt to raise an issue of disparity in tax liabilities which was not identified on the

Form 131. The objection also noted the Petitioners' failure to establish the properties were comparable and the records were for an inappropriate timeframe to be relevant in a 2010 tax year appeal.

13. The Form 131 identified both the current and proposed revised tax assessments, which is sufficient to put the Respondent on notice the true tax value of the property would be an issue at this hearing. To the extent the Petitioners introduce these documents to establish the value of their property, no new issue is raised. A party is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence was introduced at the PTABOA hearing. Ind. Code § 6-1.1-15(4)(k). Accordingly, the Board will admit the maintenance reports (*Pet'rs Ex 2*) into the record, but the Petitioners still need to demonstrate the relevance of these documents. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

14. To the extent that the Petitioners might be trying to contest their taxes, the Board lacks jurisdiction. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.,* 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs,* 705 N.E.2d 1093, 1096 (Ind. Tax Ct.1999)). The Board has authority over appeals from local assessing officials or PTABOAs concerning assessment valuations, deductions, exemptions, and credits. Ind. Code § 6-1.5-4-1(a). No statute authorizes the Board to review tax rates.

Analysis

15. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17.2 and in some cases it shifts the burden of proof:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

I.C. § 6-1.1-15-17.2.

16. The Respondent agreed the disputed assessment is more than 5% greater than her 2009 assessment. According to the Respondent, however, the increase is the result of greater percentage of completion so the property assessed in 2010 is not the same property assessed in 2009 and Ind. Code § 6-1.1-15-17.2 does not apply.

17. According to the Petitioners, the 2009 assessment and the 2010 assessment are for the same property because the construction did not progress during that time—it had not progressed for approximately ten years.

18. Undisputed evidence establishes that the partially built addition remains as it was when it was added to the property record card in 2002. It is clear that after the 2010 inspection of the property the Respondent concluded the addition was more complete than previously been determined, but the Respondent failed to present evidence about any specific changes.[1] Therefore, the Board concludes that the 2009 and 2010 assessments are for the same property and Ind. Code § 6-1.1-15-17.2 dictates that the Respondent has the burden to prove the $127,100 assessment is correct.

19. The Respondent failed to prove that assessment is correct. The Board reaches this conclusion for the following reasons:

    a. The record does not establish a single feature in the addition in 2010 that was not present in 2009 (or several years before then).

    b. Based on estimates that it would take approximately $55,000 to complete the addition, the PTABOA determined the addition was only 64% completed. The PTABOA then assessed the addition as if completed before subtracting $55,000 to adjust for the remaining work to be done. The Respondent failed to present any substantial argument or evidence to establish that this methodology for determining a value conforms to generally accepted appraisal principles. Such calculations and explanations do not help to prove what an accurate market value-in-use might be for the subject property.

    c. The Respondent's case focused on the methodology used to assess the property—primarily what the percentage of completion should be—even though the Indiana Tax Court has consistently found such cases to be insufficient. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). To successfully make a case a party must establish the subject property's market value-in-use. *Id.; see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (Proper focus is not on the methodology used, but instead on determining whether the assessed value is actually correct.)

[1] This situation is substantially different from a case where an assessor previously had been unaware of new construction and added that construction to the assessment upon becoming aware of it.

d. Because the Assessor did not offer substantial probative evidence of the market value-in-use, she failed to meet her burden of proof and the assessment reverts to what it was for March 1, 2009, reducing the total assessed value to $95,900.

20. The Petitioners had the burden of proof for any further reduction and they did not make that case. The Board reaches that conclusion for the following reasons:

a. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). A 2010 assessment must reflect the value of the property as of March 1, 2010. Ind. Code § 6-1.1-4-4.5. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long*, 821 N.E.2d at 471.

b. The Petitioners paid $30,000 for the original house and spent an additional $30,000 on the addition before halting construction. But they failed to relate these amounts to the required valuation date of March 1, 2010. And they failed to explain how that evidence supports their claim for $91,800.

c. The addition is unfinished, has condition problems, and lacks many amenities. These things almost certainly would have a negative impact on a potential selling price. But the Petitioners failed to present any probative evidence to quantify that impact or establish what a more accurate number might be. Again, those facts alone do not make a case for any lower assessment.

d. The Petitioners also argued that their property is over-valued based on the assessed values of other properties in their area. The Petitioners attempted to compare values, but they presented nothing to establish that the neighboring properties actually are comparable to their own. In order to effectively use a comparison approach as evidence, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long,* 821 N.E.2d at 470. Instead, the party must explain the characteristics of the property and how those characteristics compare to those of purportedly comparable properties. They must also explain how any differences between the properties affect their relative market value-in-use. *See Id.* at 470-71. Merely comparing assessed values was found to be insufficient to show an error in an assessment in *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). The Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other properties. Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect the property's market value-in-use. Like the Petitioner in *Westfield Golf,* the Petitioners argued that their assessment was not uniform, but they presented

no probative evidence about the market value-in-use. The Petitioners offered no explanation as to how the data for other assessment dates is relevant to their assessed valuation for March 1, 2010. Consequently, the purported lack of uniformity does not establish a basis for further reduction of the disputed assessment.

e. The Petitioners did not establish a case for their proposed assessed value of $91,800.

Conclusion

21. The Respondent failed to make a prima facie case for the current assessment. The Board finds the assessment should be reduced to the previous year's level of $95,900. The Petitioners failed to make a prima facie case for any additional assessment change.

Final Determination

The assessment must be changed to $95,900.

ISSUED: July 20, 2012

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at: http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html.