

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

Petition No.: 15-020-10-1-5-00573
Petitioners: Steven W. & Teresa A. Weltzin
Respondent: Dearborn County Assessor
Parcel: 15-06-23-301-007.000-020
Assessment Year: 2011¹

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

Procedural History

1. The Petitioners initiated their assessment appeal with the Dearborn County Assessor on November 4, 2011.
2. The Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on December 27, 2011, denying the Petitioners relief because the appeal was untimely filed.
3. The Petitioners filed a Petition for Review of Assessment (Form 131) with the Board on January 23, 2012. The Petitioners elected the Board's small claims procedures.
4. The Board issued a notice of hearing on February 7, 2014.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on April 9, 2014. She did not inspect the property.
6. Steven Weltzin appeared *pro se*. Attorney Andrew Baudendistel represented the Respondent. Mr. Weltzin, County Assessor Gary Hensley, Jim Davis, and Mark Neff were sworn as witnesses.

Facts

7. The property under appeal is a residence located at 20432 Matterhorn Drive, in Lawrenceburg.
8. The PTABOA determined the following assessment:
Land: \$104,400 Improvements: \$371,600 Total: \$476,000

¹ While the petition number above indicates the assessment year under appeal is 2010, at the hearing both parties agree the actual year under appeal is 2011.

9. The Petitioners requested the following assessment on their 131 Petition:²
- | | | |
|-----------------|-------------------------|------------------|
| Land: \$104,400 | Improvements: \$270,600 | Total: \$375,000 |
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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:	Appraisal performed by Robert A. Collins, dated August 16, 2011.
Respondent Exhibit 1:	Form 11, notice of assessment for the subject property,
Respondent Exhibit 2:	Copy of “Notice to Dearborn County Real Property Owners” sent to the local newspaper,
Respondent Exhibit 3:	Copy of “Notice to Dearborn County Real Property Owners” posted at county annex,
Respondent Exhibit 4:	<i>Helen J. Kirk vs. Dearborn County Assessor</i> , pet. no. 15-006-11-1-5-00564 (Ind. Bd. Tax Rev. February 20, 2013),
Respondent Exhibit 5:	<i>Tom and Laura Crone Huisman vs. Dearborn County Assessor</i> , pet. no. 15-007-11-1-5-00579 (Ind. Bd. Tax Rev. February 13, 2013).

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Notice of hearing dated February 7, 2014,
Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Objection

11. Mr. Baudendistel objected to the admission of Petitioner Exhibit 1, the appraisal, because the appraiser was not present to testify. While Mr. Baudendistel did not specifically use the term “hearsay,” the Board infers his objection to be a hearsay objection. The ALJ took the objection under advisement.

² At the hearing, the Petitioners requested the subject property be valued according to the appraisal, which indicated a total value of \$390,000.

12. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

13. Petitioner Exhibit 1 is hearsay. Nevertheless, the exhibit is admitted, subject to the limitations in the Board’s procedural rules. In other words, the final determination cannot be based entirely on the appraisal.

Contentions

14. Summary of the Petitioners’ case:

- a) The Petitioners argue the subject property is assessed too high. The Petitioners presented an appraisal prepared by Robert A. Collins, an Indiana certified appraiser. Mr. Collins valued the subject property at \$390,000, as of August 16, 2011. Mr. Collins certified that he performed the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Weltzin argument; Pet’r Ex. 1.*
- b) The Petitioners did not take possession of the subject property until September 22, 2011. Further, they were not aware of any Notice of Assessment (Form 11) mailings or deadlines that occurred prior to that date. They never received a Form 11. The Petitioners filed their original appeal within 45 days of taking possession of the subject property. *Weltzin testimony.*

15. Summary of the Respondent’s case:

- a) The Petitioners’ appeal was not timely. The PTABOA denied the appeal for this reason. The 2011 Form 11 notices were mailed on September 14, 2011. Indiana statute grants taxpayers 45 days from the date the notice was mailed to file a Form 130 to initiate an appeal. Thus, the deadline to file a Form 130 was October 28, 2011. The Petitioners did not file their appeal until November 4, 2011. *Baudendistel argument; Hensley argument; Resp’t Ex. 1.*

- b) The Respondent mailed the subject property's Form 11 to the owner of record, Jacob Lustig, on September 14, 2011. The Form 11 was mailed to Mr. Lustig's address in Cincinnati, Ohio. Additionally, county officials placed a deadline notice in local newspapers and posted the deadline notice in the county annex building. *Hensley testimony; Resp't Ex. 1, 2, 3.*
- c) The Respondent consistently follows state guidelines regarding filing deadlines, and treats all citizens equally in that regard. Accordingly, those practices have been upheld by the Board in the past. *Hensley testimony; Neff testimony; Resp't Ex. 4, 5.*

Burden of Proof

- 16. 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. Ass'r*, 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.
- 17. 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).
- 18. 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).
- 19. Those provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
- 20. Here, the parties agreed that there was no change to the assessment from 2010 to 2011. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

Analysis

21. Even if the Board reached the merits of this appeal, the Petitioners failed to make a prima facie case for reducing the assessment.
- a) In Indiana, assessors value real property based on the property's true tax value, which the Department of Local Government Finance (DLGF) defines as the property's market value-in-use. Thus, a party's evidence in a tax appeal must be consistent with that standard. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how its evidence relates to the appealed 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 Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2011, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Before reaching the merits of this case, the Board must first determine whether the Petitioners had standing to bring this appeal, and, if so, whether they filed their original appeal in a timely fashion.
 - d) Under the Board's regulations, a "Party" includes the "(1) owner of the property; [or] (2) The taxpayer responsible for the taxes payable on the subject property..." 52 IAC 2-2-13. The Petitioners admittedly did not own the property on March 1, 2011; their purchase was not final until September 22, 2011. However, neither party addressed whether the Petitioners were responsible for the taxes resulting from the 2011 assessment.
 - e) The Respondent did not offer an argument regarding the Petitioners standing to bring an appeal. Thus, absent any argument to the contrary, the Board can only conclude that the Petitioners must have been responsible for the taxes payable on the subject property. Thus, the Petitioners had standing to appeal the property's 2011 assessment.
 - f) The Board now must determine if the Petitioners' Form 130 was timely filed. The Respondent mailed the Form 11 to the subject property's owner of record on September 14, 2011. Indiana Code § 6-1.1-15-1(c) sets out that a taxpayer who disagrees with the assessed value on this document can begin the appeal process by filing a written notice within 45 days of receipt of the Form 11. *See* Ind. Code 6-1.1-15-1(c). Given the Form 11 was mailed on September 14, 2011; the deadline to

initiate an appeal would have been October 29, 2011. The Petitioners did not file their appeal until November 4, 2011. The Petitioners clearly missed the deadline to initiate their appeal. Thus, the Petitioners appeal is not properly before the Board. However, as discussed below, even had the Petitioners timely initiated their appeal, they still failed to raise a prima facie case for reducing the subject property's 2011 assessment.

- g) The Petitioners based their case solely on the appraisal prepared by Robert A. Collins. As discussed above, however, because the Respondent objected to the appraisal as hearsay, the Board's final determination cannot rest solely on it. In other words, even though the appraisal appears to support a lower value for the subject property, the Board cannot change the assessment unless other evidence that is not hearsay also would support such a change. The Petitioners provided no other testimony or documentary evidence to prove that the assessment is wrong.
- h) The Petitioners statement and related attachment to their Form 131 petition indicating that they purchased the subject property for \$375,000 did not go unnoticed. However, neither the Form 131 petition nor any attachments to that petition constitute "evidence." The Form 131 is included in the record to help document the procedural history of the Petitioners' appeal. As the Petitioners' hearing notice clearly stated, they were required to present any evidence they wished the Board to consider at the hearing. *See* 52 IAC 2-7-1. At the hearing, the Petitioners only made reference to the fact that they took possession of the subject property on September 22, 2011. They did not present any probative evidence to substantiate the purchase nor did they prove it was in fact a valid arms-length transaction. Therefore, the Petitioners failed to make a prima facie case.
- i) 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

22. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions of law, the 2011 assessment will not be changed.

ISSUED: July 1, 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 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>>.