

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

Petition: 35-005-12-1-5-00240
Petitioners: Yvonne C. Hiles & Von Inc.
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-259.000-005
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 Petitioners initiated their 2012 assessment appeal with the Huntington County Assessor on August 20, 2012.
2. On April 26, 2013, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued the notice of hearing on February 10, 2015.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on March 25, 2015. She did not inspect the property.
6. Tony L. Hiles appeared *pro se*.¹ County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All were sworn.

Facts

7. The property under appeal is a 60-foot by 132-foot vacant lot, legally described as Gephart's Addition Lot 32, located on Lindley Street in Huntington.
8. The PTABOA determined a total assessment of \$3,400.
9. On their Form 131 petition, the Petitioners requested a total assessment of \$500.

¹ Mr. Hiles signed the 2012 Form 131 petition as the owner and Vice-President of Operations.

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:

- Petitioners Exhibit 1: Description of the subject property,
- Petitioners Exhibit 2: Aerial photograph of the subject property,
- Petitioners Exhibit 3: Aerial photograph of the subject property,
- Petitioners Exhibit 4: Property record card for 430 Lindley Street,
- Petitioners Exhibit 5: Page 1 of the April 28, 2015, "Commissioners Certificate Sale,"
- Petitioners Exhibit 6: Page 2 of the April 28, 2015, "Commissioners Certificate Sale,"
- Petitioners Exhibit 7: Page 3 of the April 28, 2015, "Commissioners Certificate Sale,"
- Petitioners Exhibit 8: Property record card for 245 Jackson Street,
- Petitioners Exhibit 9: Property record card for 1632 East Market Street,
- Petitioners Exhibit 10: Property record card for 530 Court Street,
- Petitioners Exhibit 11: Property record card for Washington Street,
- Petitioners Exhibit 12: Property record card for 1632 East Market Street with notations made by the Petitioners.

- Respondent Exhibit 1: Hearing notice dated February 10, 2015,
- Respondent Exhibit 2: Form 131 petition,
- Respondent Exhibit 3: Form 115,
- Respondent Exhibit 4: The Petitioners' letter initiating the appeal dated August 20, 2012, and subject property record card,
- Respondent Exhibit 5: Aerial photographs of the subject property.

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Notice of Hearing dated February 10, 2015,
- Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Objections

11. The Respondent objected to the admittance of all of the Petitioners' exhibits. Ms. Newsome argued that the Respondent was not "granted a chance to review" the exhibits. She argued that she didn't want to "assume" that the Petitioners' comparables were

comparable without a chance to review them prior to the hearing. Mr. Hiles argued that his evidence consisted mainly of empty lots, and therefore they are comparable to the subject property. The ALJ took the objection under advisement.

12. Much of Ms. Newsome's argument refers to an earlier hearing involving the same parties. In this earlier hearing Ms. Newsome explained that the basis of her objection to the admission of the Petitioners' exhibits was not that they were untimely, but rather that the exhibits were not properly organized or labeled. According to Ms. Newsome, the Petitioners delivered their unlabeled prehearing evidence to the Respondent as loose papers in a single box. This same box also contained exhibits pertaining to several other hearings scheduled for the same hearing date. Ms. Newsome argued the Respondent was not obligated to go through the Petitioners' box of prehearing exhibits because those exhibits were not properly organized.
13. Mr. Hiles claimed that he provided the Respondent with copies of the Petitioners' pre-hearing evidence in a timely manner. Given the unique circumstances and the fact that the Petitioners were scheduled for multiple hearings on the same day, the Board incorporates by reference the evidence and Ms. Newsome's testimony regarding her objection from the prior hearing involving the following petition numbers: 35-005-12-1-5-00238, 35-005-13-1-5-00098 and 35-005-14-1-5-00048.²
14. Under the Board's procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits if requested. *See* 52 IAC 3-1-5(d) ("[I]f requested not later than ten (10) business days prior to hearing by any party, the parties shall provide copies of any documentary evidence...at least five (5) business days before the small claims hearing.") Here, the Respondent requested "copies of any and all evidence" from the Petitioners in an undated and unlabeled letter incorporated by reference from the prior hearing. According to Mr. Hiles' testimony in the earlier hearing, the pre-hearing exhibits were provided five business days in advance. While the Board has procedural rules regarding the labeling and organization of exhibits for Board hearings, those procedural rules do not address the labeling and organization of prehearing evidence.
15. Thus, the Board overrules the Respondent's objection. Mr. Hiles testified that all of the Petitioners' exhibits were presented to the Respondent in accordance with 52 IAC 3-1-5(d). Accordingly, the Petitioners' exhibits are admitted. The Board's ruling on the objection, however, does not change the final determination because the Petitioners failed to make a prima facie case for reducing the assessment.³

² The parties are advised that when there are multiple hearings scheduled for a petitioner in one day, each hearing is separate and each party to the appeal should offer a complete record for every appeal hearing without relying on the record from prior hearings.

³ In the future, to avoid questions of whether pre-hearing evidence was properly presented to the Respondent, the Board advises the Petitioners to label and organize each prehearing exhibit packet separately in the same manner they will be presented at the Board's hearings, especially when the Petitioners are scheduled for multiple hearings.

Contentions

16. Summary of the Petitioners' case:

- a) The subject property is assessed too high. A drainage ditch runs diagonally across the lot and "approximately 99% of the lot is in a flood zone." Further, the lot has "no access from the front or the back." *Hiles argument; Pet'rs Ex. 1, 2, 3.*
- b) A property located at 430 Lindley Street sold for \$2,000 on February 18, 2014. This vacant lot located near the subject property is "buildable." This sale indicates that values in the neighborhood are not increasing. *Hiles argument; Pet'rs Ex. 4.*
- c) Records from the Commissioners Certificate Sale, scheduled for April 28, 2015, indicate that there are numerous vacant lots for sale in the city for a minimum bid of \$50. Some of the vacant lots located near the subject property include:
 - 245 Jackson Street, a vacant, but "buildable lot," assessed at \$3,500. *Hiles testimony; Pet'rs Ex. 8.*
 - 1632 East Market Street, another "buildable lot" assessed at \$2,300. This lot has been included in numerous tax sales since 2009. *Hiles testimony; Pet'rs Ex. 9, 12.*
 - 530 Court Street, a "buildable lot" assessed at \$3,200. *Hiles testimony; Pet'rs Ex. 10.*
 - Washington Street, a "buildable lot" which has also been part of numerous tax sales since 2009, assessed at \$2,300. *Hiles testimony; Pet'rs Ex. 11.*
- d) Under cross-examination, Mr. Hiles testified that he occasionally utilizes the property as a place to park equipment. *Hiles testimony (referencing Resp't Ex. 5).*

17. Summary of the Respondent's case:

- a) An aerial photograph indicates that the Petitioners have equipment parked on the lot. Thus, the property has some use and value to the Petitioners. *Newsome argument; Resp't Ex. 5.*

Burden of Proof

18. 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.
19. First, Ind. Code § 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).
20. 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.
21. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2011 to 2012. In fact, the assessment went down from \$6,400 in 2011 to \$3,400 in 2012. 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

22. The Petitioners failed to make a prima facie case for reducing the 2012 assessment.
 - a) Real property is assessed based on its market value-in-use. 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 generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate 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 method used, a party must explain how the evidence relates to 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 a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
- c) Here, the Petitioners offered aerial photographs of the property to establish that the lot floods and is encumbered by a large drainage ditch or creek. The Petitioners also claimed the property lacks access from Lindley Street, and due to these factors, the property is unbuildable. But showing that a parcel floods, has limited access, or is unbuildable is not enough to establish that an assessment is in error. While these factors are likely detrimental to the subject property's value, they do not establish that the assessment is in error.
- d) The Petitioners' reliance on the vacant lot located at 430 Lindley Street that sold for \$2,000 on February 18, 2014, to support their argument that neighborhood property values "are not increasing" also falls short. Even if neighborhood values have decreased, that does nothing to prove that the 2012 assessment is excessive, especially considering the fact that the 2012 assessment decreased by \$3,000. Nevertheless, a single sale is not enough to establish whether property values are increasing, decreasing, or remaining stable. Further, a 2014 sale that has not been properly trended does not reflect the value for the subject property's 2012 assessment.
- e) If the Petitioners intended to offer the 430 Lindley Street property as a comparable sale to show the 2012 assessment is excessive, they are essentially relying on the sales-comparison approach. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f) The Petitioners' evidence lacks the type of analysis and related adjustments required for a probative comparison. The Petitioners failed to make adjustments to the purportedly comparable property. Their analysis also failed to yield an indicated value. Further, they failed to show how a property that sold in 2014 was relevant to a 2012 assessment. Thus, the evidence lacks probative value.
- g) The Petitioners' also relied on the assessments of four properties listed for sale at an upcoming Commissioners Certificate Sale. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing

district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).

- h) The determination of whether the properties are comparable using the “assessment comparison” approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. *Id.*; see also *Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).
- i) While the Petitioners introduced property record cards for the four purportedly comparable properties, they failed to offer any meaningful testimony relating each property's specific features and characteristics to the subject property. In fact, Mr. Hiles' mainly argues that his purportedly comparable properties are “buildable” while the subject property is not, but failed to make any adjustments for this difference. Thus, the Petitioners presentation of comparable assessments lacks probative value.
- j) Consequently, the Petitioners failed to make a prima facie case that the 2012 assessment is incorrect. 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

23. The Board finds for the Respondent.

Final Determination

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

ISSUED: June 23, 2015

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>>.