

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

Petitions: 35-005-12-1-5-00244
35-005-13-1-5-00102
Petitioners: Yvonne C. Hiles & Von Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-729.400-005
Assessment Years: 2012 and 2013

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 and 2013 assessment appeals with the Huntington County Assessor on August 20, 2012, and August 16, 2013, respectively.
2. On April 26, 2013, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2012 assessment year lowering the assessment, but not to the level requested by the Petitioners.
3. On March 13, 2014, the PTABOA issued its determination for the 2013 assessment year denying the Petitioners relief.
4. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board. For both years, they elected the Board's small claims procedures.
5. The Board issued notices of hearing on December 5, 2014.
6. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on January 13, 2015. She did not inspect the property.
7. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. Kent Bowers was a witness for the Petitioners. All of them were sworn.

¹ The letter initiating review at the local level indicates that Yvonne C. Hiles and Von Inc., each have "undivided one-half interest" in the subject property.

² Mr. Hiles signed the 2012 and 2013 Form 131 petitions as the owner and Vice-President of Operations for Von Inc.

Facts

8. The property under appeal is a 60 foot by 145 foot vacant lot located on Lindley Street in Huntington.
9. The PTABOA determined the total assessment is \$700 for both 2012 and 2013.
10. The Form 131 petitions claimed the total assessment should be \$100 for each year under appeal.

Record

11. The official record for this matter is made up of the following:
 - a) Petitions for Review of Assessment (Form 131s) with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:

Petitioner Exhibit 1:	Description of the subject property,
Petitioner Exhibit 2:	Subject property record card,
Petitioner Exhibit 3:	Aerial photograph of the subject property,
Petitioner Exhibit 4:	Aerial photograph of the “flood zone,”
Petitioner Exhibit 5:	Aerial photograph of a lot on Brawley Street,
Petitioner Exhibit 6:	Property record card for Brawley Street lot,
Petitioner Exhibit 7:	Multiple Listing Service (MLS) sales report for 656 Court Street,
Petitioner Exhibit 8:	Property record card for 656 Court Street,
Petitioner Exhibit 9:	Parcel summary report with transfer history for 530 Court Street,
Petitioner Exhibit 10:	Property record card for 530 Court Street,
Petitioner Exhibit 11:	MLS sales report for 0 Frederick Street,
Petitioner Exhibit 12:	Parcel summary report with transfer history for 0 Frederick Street,
Petitioner Exhibit 13:	Property record card for 0 Frederick Street,
Petitioner Exhibit 14:	MLS sales report for 870 Frederick Street,
Petitioner Exhibit 15:	Property record card for 870 Frederick Street,
Petitioner Exhibit 16:	MLS sales report for 782 Frederick Street,
Petitioner Exhibit 17:	Property record card for 782 Frederick Street.

The Respondent did not submit any exhibits.

Board Exhibit A: Form 131 petitions with attachments,
Board Exhibit B: Notices of Hearing dated December 5, 2014,

Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

12. Summary of the Petitioners' case:

- a) The subject property's 2012 and 2013 assessments are too high. The lot is located in an undesirable neighborhood. The entire lot is in a flood zone. A drainage ditch runs diagonally through the lot. Nearly 80% of the lot has no street access. Consequently, the lot is unmarketable and has little or no value. The only individual who might be interested in the subject property is an adjoining neighbor, and only if they would be willing to pay the tax on an unusable lot. *Hiles argument; Bowers testimony; Pet'rs Ex. 1, 3, 4.*
- b) Fill dirt and concrete was added to the lot in an attempt to remedy the flooding issues. This attempt was unsuccessful. According to a flood map, at least 95% of the lot floods when it rains. Therefore, nothing can be built on the lot and it is basically unusable. *Hiles argument; Pet'rs Ex. 1, 4.*
- c) Unlike the subject property, a neighboring lot located on Brawley Street is not situated in a flood zone, and therefore is buildable. This lot also has good street access and visibility. Nevertheless, the subject property and the Brawley Street lot were initially assessed for the same amount. *Hiles testimony; Pet'rs Ex. 2, 5, 6.*
- d) According to Kent Bowers, a real estate broker with over twenty-five years of experience, there were no sales of unbuildable vacant parcels located in flood zones in a similar declining neighborhood. Thus, all of the comparable sales the Petitioners offered were for buildable lots. *Bowers testimony; Pet'rs Ex. 7, 8, 11, 12, 13, 14, 15, 16, 17.*
- e) The first comparable lot, located at 656 Court Street, sold for \$2,000 on September 18, 2009, and again for \$2,245 on April 30, 2010. This 60 foot by 120 foot lot was purchased for residential construction purposes. *Hiles testimony; Pet'rs Ex. 7, 8.*
- f) The second lot located, at 0 Frederick Street, sold for \$3,000 on March 18, 2011, and again on October 14, 2014 for \$1,200. This lot measures 207 feet by 119 feet. *Hiles testimony; Pet'rs Ex. 11, 12, 13.*
- g) The third lot, located at 870 Frederick Street, sold for \$4,900 on March 18, 2011. It is a 64 foot by 144 foot lot with a foundation. *Hiles testimony; Pet'rs Ex. 14, 15.*

- h) The fourth lot, located at 782 Frederick Street, sold for \$4,500 on March 31, 2011.³ This vacant lot is 90 feet by 144 feet. *Hiles testimony; Pet'rs Ex. 16, 17.*
- i) Finally, although it didn't sell, the vacant lot located at 530 Court Street was offered at a tax sale in 2012, 2013, and 2014. No bids were received. This lot has gone "back and forth between tax sale and the commissioner's sale several times." *Hiles testimony; Bowers testimony; Pet'rs Ex. 9, 10.*

13. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The property is currently "getting a 90% reduction in value." The Assessor does not control property taxes or what one pays in property tax. *Newsome argument.*

Burden of Proof

- 14. 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.
- 15. 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).
- 16. 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.

³ The address on this MLS report, 870 Frederick Street, was redacted and 782 Frederick Street was written in its place. The Petitioners also offered an MLS report for 870 Frederick Street. Apparently both parcels are land splits from the same parcel originally owned by Charlie Cox.

17. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2011 to 2012. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent. Thus, the Petitioners have the burden for the 2012 assessment year. The burden for the 2013 assessment year will depend on the Board's findings from the prior year's appeal.

Analysis

18. The Petitioners failed to make a prima facie case for reducing the 2012 and 2013 assessments.
- 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). For a 2013 assessment, the valuation date was March 1, 2013. *Id.*
 - c) First, the Petitioners offered an aerial plat map and a flood zone map of the subject property to establish the lot floods and is encumbered by a large drainage ditch. The Petitioners also claimed the property lacks any street access to the lot. But showing that a parcel floods, has limited access, or is unbuildable is not enough to establish that the assessments are in error. While these factors are likely detrimental to the subject property's value, they do not establish that the assessments are in error. The Petitioners did not offer anything to quantify their actual effect, or to quantify a more accurate value. The Petitioners needed to offer probative evidence that establishes the effect those factors have on the property's market-value-in-use as of the assessment date. Without more, the Petitioners' aerial and flood maps are not enough to make a prima facie case for changing the assessments.
 - d) The Petitioners also offered testimony regarding parcels that that the county offered in tax sales without procuring a single bid. Again, these claims fail to establish what a more accurate market value-in-use for the subject property should be.

- e) The Petitioners did, however, attempt to offer market-based evidence. Specifically, they pointed to sales of several lots on Frederick Street. In doing so, the Petitioners essentially rely on a sales-comparison approach to establish that the assessment should be lowered. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also, Long*, 821 N.E.2d 466, 469.
- f) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish that 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.*
- g) Here, the type of analysis required and the related adjustments are lacking from the Petitioners’ evidence. The Petitioners failed to make adjustments to the purportedly comparable properties. Further, their analysis failed to yield an indicated value. Thus, the evidence lacks probative value.
- h) The Petitioners also offered a comparison to other properties’ assessments. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those 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).
- i) 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 County 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. Again, the Petitioners failed to provide any of the required analysis, thus their evidence lacks probative value.
- j) Consequently, the Petitioners failed to make a prima facie case that the 2012 and 2013 assessments are 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

19. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2012 and 2013 assessments will not be changed.

ISSUED: April 13, 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>>.