

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

Petition: 43-023-14-1-5-00011
Petitioner: Jane W. Eyler
Respondent: Kosciusko County Assessor
Parcel: 43-08-07-200-902.000-023
Assessment Year: 2014

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 2014 assessment appeal by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) with the Kosciusko County Assessor on June 13, 2014.
2. On October 16, 2014, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board. She elected the Board's small claims procedures.
4. The Board initially scheduled a hearing for February 19, 2015. The Petitioner requested, and was granted, a continuance. Thus, on June 18, 2015, the Board issued a notice rescheduling the hearing.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on August 4, 2015. He did not inspect the property.
6. Jane W. Eyler appeared *pro se*. Attorney Jack C. Birch appeared for the Respondent. Ms. Eyler and County Assessor Susan Engelberth were sworn as witnesses.

Facts

7. The property under appeal is a lake cottage located at 55 EMS T45A Lane in Leesburg.
8. The PTABOA determined the total assessment is \$249,400 (land \$202,600 and improvements \$46,800).
9. The Petitioner requested a total assessment of \$218,200 (land \$171,400 and improvements \$46,800).

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 B:	Aerial photograph of the subject property,
Petitioner Exhibit D:	Various photographs of the roadway in front of the subject property,
Petitioner Exhibit E:	Multiple Listing Service (MLS) report for the property located at 25 EMS T42B Lane in Leesburg; assessment and tax data from the Beacon website and a property record card for the property located at 23 EMS T45A Lane in Leesburg,
Petitioner Exhibit G:	Letter from the Petitioner dated June 13, 2014, that accompanied her Form 131; and “Lease of Ground” from 1939.
Respondent Exhibit 1:	Screenshot from Respondent’s computer dated June 25, 2015,
Respondent Exhibit 2:	Property record card for the subject property,
Respondent Exhibit 3:	Property record card, aerial photograph, and MLS report for the property located at 23 EMS T45A Lane in Leesburg,
Respondent Exhibit 4:	Property record card, aerial photograph, and MLS report for the property located at 32 EMS T42B Lane in Leesburg.
Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of hearing, dated June 18, 2015,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance for Jack C. Birch.

- d) These Findings and Conclusions.

Objections

11. Mr. Birch objected to Petitioner’s Exhibit E on the grounds of relevance. He argued that the properties sold in 2015, while the assessment date under appeal is March 1, 2014. The Petitioner responded by arguing the properties were listed on the market during 2013 and 2014; however, it took two years to sell the properties.

12. At the hearing, the ALJ overruled Mr. Birch's objection. The ALJ explained that the objection goes to the weight of the evidence rather than its admissibility. The Board adopts the ALJ's ruling.
13. Mr. Birch also objected to a portion of Petitioner's Exhibit G as hearsay. Specifically, he pointed to the Petitioner's statement "[A] neighbor lady, Mary Prickett Price, two doors from our cottage can attest to this. She has been coming to Bigler's Landing (formerly Black's Landing) since 1918 and at the age of 102 still rides down in front on this roadway in vehicles driven by her children and grandchildren. The roadway loops from the cottage at 105 EMS T45B in front of the cottages on EMS T45A and exits through Black's Landing on up to TMS T42B." The Petitioner offered no response to the objection.
14. "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.

15. The section of Petitioner's Exhibit G referenced above is hearsay. Here, while it does nothing to either prove or disprove the subject property's market value-in-use, Petitioner's Exhibit G is admitted in its entirety. However because the Respondent objected to the exhibit, it cannot serve as the sole basis for the Board's decision.

Contentions

16. Summary of the Petitioner's case:
 - a) The assessment is too high. The property is located along the lake front; however, a road runs between the front of the cottage and the lake front affecting the value of this property. The Respondent failed to consider the negative effect the road has on the property's value. *Eyler argument; Pet'r Ex. B.*
 - b) The road negatively affects "at least" 13 other properties that are similarly situated along the lake. The road is utilized at all hours of the day. A portion of the road is paved, but some of it is gravel, dirt, and grass. Because of the composition of the

road, when it rains it becomes a “muddy mess” that is “unsightly to look out at.”
Eyler testimony, Pet’r Ex. B, D.

- c) Prior to 1970, all of the surrounding land was owned by the “Biglers.” They leased the land to individual cottage owners. Included in that lease was a right to utilize the road. After the Biglers sold the land to the individual cottage owners, the owners continued to utilize the road. Many of the individuals living along the road are “direct descendants of the original cottage owners.” Further, one individual “received a court ruling that allows her to use it to get to her house.” Thus, even though the road is “unsightly,” nothing can be done to prevent people from utilizing it. *Eyler testimony, Pet’r Ex. G at 3-4.*
- d) For several years, a 35% negative influence factor was applied to the subject property’s assessment. Ms. Eyler was under the impression that the previous township assessor applied that influence factor to account for the road. Now the negative influence factor has been removed. *Eyler testimony.*
- e) To further prove the property is over-assessed, Ms. Eyler presented two sales that occurred in the last six months. These properties were listed in 2013 and 2014. Ms. Eyler utilized these properties because “little has sold in the immediate area over the years.” The first property, located at 25 EMS T42B Lane sold for \$165,000 on July 2, 2015. While the second property, located at 23 EMS T45A Lane sold for \$227,000 on March 27, 2015. *Eyler testimony; Pet’r Ex. E.*

17. Summary of the Respondent’s case:

- a) The assessment is correct. Lakefront properties are generally valued on a front-foot basis, and those values are determined through property sales. In the process of investigating recent sales, the “pathway” in question does not detract from property values. *Birch argument; Engelberth testimony.*
- b) While the subject property’s assessment previously included a 35% negative influence factor, that factor was not to account for the roadway. It was applied because the Respondent was under the belief that the property lacked “septic and water.” Upon further inspection of the entire property, the Respondent discovered that the property does in fact have septic and water. Therefore, it was determined that the influence factor was applied in error and it was removed. No other properties along the road have a negative influence factor applied to their assessment. *Engelberth testimony; Resp’t Ex. 1.*
- c) Finally, the Respondent presented a sale from Black’s Landing which, according to the Petitioner, is “the very next neighborhood.” This property is located at 32 EMS T42B Lane and it sold for \$263,000 in April of 2014. Further, similar to the subject property, this property has a road running between the home and the lake. *Birch argument (referencing Eyler testimony); Resp’t Ex. 4.*

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 § 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 was effective March 25, 2014, and has application to all appeals pending before the Board.
21. Here, the evidence indicates the assessment increased by more than 5% from 2013 to 2014. Indeed, the assessment increased from \$176,200 in 2013 to \$249,400 in 2014, a 41.5% increase. The Respondent argued, however, that she did not actually increase the property’s value, but that she only removed a 35% negative influence factor from the land assessment. According to the Respondent, the negative influence factor was applied because, prior to the 2014 assessment, she was under the impression that the property lacked septic and water. Upon finding that to be incorrect, she removed the negative influence factor. The Respondent argued this is “similar to missing a structure and picking it up in the next assessment year.” Therefore, she argued the burden should remain with the Petitioner.
22. The Petitioner, however, disputed that the 35% negative influence factor was applied to account for a lack of water and septic. She testified that she had previously appealed her property’s assessment, and consequently had a meeting with the previous township assessor. According to the Petitioner, the township assessor at that time applied a 35% negative influence factor to account for the road’s negative impact on her property value. The negative influence factor remained in place until the 2014 assessment year.

23. At the hearing, the ALJ made a preliminary determination that burden of proof rests with the Respondent, but warned the parties the Board could ultimately overrule that determination, and advised both parties to present their best case.
24. First, notwithstanding the Respondent's contention to the contrary, the property's assessed value increased by more than 5%. In fact, it increased from \$176, 200 to \$249,400. The Respondent further argued, in effect, because she failed to account for septic and water prior to the 2014 assessment, she did not assess the same property in 2014 as she did in 2013. This is also incorrect. The record indicates that the Petitioner owned the subject property in 2013 and 2014. And the property had septic and water hook-ups in 2013 and 2014. In fact, neither party identified any changes to the property from 2013 to 2014. Thus, the Respondent assessed the same property in 2014 as she did in 2013. *See Lee and Sally Peters v. Lisa Garoffolo, Boone Co. Ass'r, and Ind. Bd. of Tax Rev.*, 32 N.E.3d 849, 850 n.2 (Ind. Tax Ct. 2015).
25. The Board adopts the ALJ's preliminary determination. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2014 assessment is correct.

Analysis

26. The Respondent did not make a prima facie case that the 2014 assessment was correct.
 - 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 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 method used, a party must explain how the 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 2014 assessments, the assessment and valuation date were March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Respondent explained that she removed a 35% negative influence factor from the property's assessment. That influence factor, according to the Respondent, was applied to account for a lack of septic and water hook-ups on the property. The

- Respondent stated that when she discovered that the property had septic and water the influence factor was removed. She also argued that no evidence exists to prove that the road or pathway running between the property and the lake affects the property's value. These arguments, however, do nothing to prove the property's market value-in-use. Again, the burden is on the Respondent to offer probative valuation evidence.
- d) The Respondent did offer evidence of a property that sold in a nearby neighborhood for \$263,000 in April of 2014. It appears the Respondent was attempting to prove the subject property's value through the sales-comparison approach.
 - e) To effectively use the sales-comparison 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.* Here, the Respondent failed to offer any authority suggesting that utilizing one purportedly comparable property suffices to establish a property's value. Further, her comparison lacked the type of analysis contemplated by *Long*. Therefore, the sales data presented lacks probative value.
 - f) Because the Respondent failed to offer enough probative evidence to show the market value-in-use, she failed to make a prima facie case that the 2014 assessment is correct. Therefore, the Petitioner is entitled to have her assessment returned to its 2013 level of \$176,200. However, on her Form 131, she requested that the property be assessed at \$218,200. Thus, the Board will accept the Petitioner's concession and set the 2014 assessment at \$218,200.¹

¹ The Board did consider the Petitioner's valuation evidence in this case. However, her evidence lacks probative value for the same reasons as the Respondent's evidence. Specifically, in her attempt to use sales-comparison approach, she failed to prove that the purportedly comparable properties were in fact comparable to the subject property. Further, she failed to adjust for differences between the purportedly comparable properties and the subject property as required by *Long*. Thus, her evidence fails to establish the property's value.

Conclusion

27. The Board finds for the Petitioner.

Final Determination

In accordance with these findings and conclusions, the 2014 assessment shall be reduced to \$218,200.

ISSUED: November 2, 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>>.