

REPRESENTATIVE FOR PETITIONER: Thelma Hatke, *pro se*

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Esq.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Thelma & Richard Hatke,)	Petition:	61-015-19-1-5-00102-20
)		
Petitioners,)	Parcel:	61-12-21-301-008.000-015
)		
v.)	County:	Parke
)		
Parke County Assessor,)	Assessment Year:	2019
)		
Respondent.)		

October 27, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

INTRODUCTION

1. Richard and Thelma Hatke appealed the 2019 land assessment of their property located on Raccoon Lake. They provided some market-based evidence but failed to demonstrate how that evidence related to the subject property and the relevant valuation date. The Assessor requested that the Board raise the land value to \$100,000 based on an appraisal. Because the appraiser failed to relate his evidence to the relevant valuation date, we find that such an increase is not warranted.

PROCEDURAL HISTORY

2. Richard and Thelma Hatke appealed the 2019 assessment of their property located at 8017 East Oak Drive in Rockville. The Parke County Property Tax Assessment Board of

Appeals (“PTABOA”) determined the assessment at \$87,700 for land and \$148,500 for improvements for a total of \$236,200.

3. The Hatkes appealed to the Board, seeking only to contest their land assessment. The Assessor filed a Motion to Dismiss, and a Motion to Enter Upon the Land. The Board denied these motions. At the Assessor’s request, the Board removed the matter from the small claims docket.
4. The Board’s Administrative Law Judge, Jennifer Thuma (“ALJ”), held a telephonic hearing on July 30, 2020. Thelma Hatke appeared *pro se*. Marilyn Meighen represented the Parke County Assessor. Mrs. Hatke, Appraiser Geoffrey Lady, and Parke County Assessor Katie Potter were sworn as witnesses.
5. The parties submitted the following exhibits¹:
 - Petitioner’s Ex. A: 1959 US District Court Order-Barnaby, et. al.
 - Petitioner’s Ex. B: Pages from Chapter 2—DLGF Guidelines
 - Petitioner’s Ex. C: “Flowage Easements”- Larry Kunzler
 - Petitioner’s Ex. D: Property Record Card-Subject (2019)
 - Petitioner’s Ex. E: Form 115 (9/16/2019)
 - Petitioner’s Ex. F: Form 115 (12/19/2019)
 - Petitioner’s Ex. G: Form TS-1A
 - Petitioner’s Ex. H: IBTR Frequently Asked Questions Page 2
 - Petitioner’s Ex. I: Email Exchange regarding Yearly Lake Levels
 - Petitioner’s Ex. J: Letter from Assessor to the Hatkes (2019)
 - Petitioner’s Ex. X: 4 Emails from Mrs. Hatke—Lake Level Report, Lake Level Details, Background Information (To ALJ and Marilyn Meighen)
 - Petitioner’s Ex. 1: Property Record Cards-Subject (2017-2019)
 - Petitioner’s Ex. 2: Form 115s
 - Petitioner’s Ex. 3: Letter from Marilyn Rode to Mrs. Hatke, Zillow Printouts, Form 115s, and Property Record Cards
 - Respondent’s Ex. A: Property Record Card—Subject (2019)
 - Respondent’s Ex. B: Property Record Card—Subject (2018)
 - Respondent’s Ex. C: Warranty Deed-Subject
 - Respondent’s Ex. D: Integra Appraisal
 - Respondent’s Ex. E: GIS Map of Racoon Lake
 - Respondent’s Ex. F: GIS of Racoon Lake (elevation)

¹ The Assessor asked the Board to take notice that many of the Hatke’s exhibits contained handwritten notes not present on the original documents. It is so noted.

- Respondent's Ex. G: GIS map of Racoon Lake (with markers)
- Respondent's Ex. H: Shoreline Management Plan (excerpts)
- Respondent's Ex. I: Letter-US Army Corps of Engineers to Mrs. Hatke
- Respondent's Ex. J: Photo of Subject Property-Street View
- Respondent's Ex. K: Building Permit-Subject
- Respondent's Ex. L: Land Survey-Subject
- Respondent's Ex. M: Documents related to Assessor's Request to Inspect

OBJECTIONS

6. The Hatkes objected to Respondent's Ex. F, a GIS map of water elevation, on the grounds that the map did not adequately reflect the water line. This appears to be an objection to the exhibit's relevance. The threshold for relevance is very low, and we find the exhibit has some relevance despite the allegation regarding the accuracy of the water line. We find the objection goes more to the weight of the evidence rather than its admissibility and overrule it.
7. The Assessor objected to Mrs. Hatke's testimony that she had heard that all properties at Geist Reservoir in Hamilton County have water access all year round on the grounds of hearsay. We agree and sustain the objection. We note that this decision does not affect our determination.
8. The Assessor also made a hearsay objection to a statement by Mrs. Hatke that an Indiana Department of Local Government Finance ("DLGF") employee previously told her that a property could have two influence factors. We find this statement was hearsay and sustain the objection. We note that this decision does not affect our determination.

BURDEN OF PROOF

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code § 6-1.1-15-17.2(b) and (d).

10. The assessed value for 2019 was \$87,700 for land and \$148,500 for improvements with a total of \$236,200. The assessed value for 2018 was \$87,800 for land and \$142,700 for improvements with a total of \$230,500. The parties agreed that the Hatkes had the burden of proof.² We agree and find the burden rests with the Hatkes.

FINDINGS OF FACT

A. Subject Property

11. The subject property consists of a two-story house with approximately .66 acres of land located on Raccoon Lake. *Hatke testimony; Lady testimony; Pet'r. Exs. D, G, 1-A, 1-B, 1-C, 1-D, 3-G, 3-H ; Resp't. Exs. A,B,C,D.*
12. The Army Corps of Engineers ("the Corps") created Raccoon Lake and holds a flowage easement for .38 acres on the lakefront portion of the subject property. In conjunction with the Indiana Department of Natural Resources, the Corps raises and lowers the water levels of the lake to control the lake's shorelines. The flowage easement gives the Corps the right to flood that portion of the property each year in order to manage flooding and lake levels. Other properties on the lake have similar easements. The Hatkes must obtain written approval from the Corps to build any structure on the easement. *Resp't. Ex. H; Hatke, Potter & Lady testimony.*
13. The Hatkes enjoy water views in the summer. In the winter, the lake levels are lowered leaving the subject property on a dry cove. Other properties on the lake experience similar changes in water levels. *Hatke testimony; Potter testimony.*

B. Hatke's Evidence

14. In support of their claim for a lower assessment, the Hatkes offered three listings of other nearby properties from Zillow. These properties were listed at \$98,000, \$98,000 and \$130,000 and ranged from 1.04 to 3 acres. *Hatke testimony; Pet'r Ex. 3.*

² Later in the hearing, Mrs. Hatke stated that the assessment increased over 30%. Then she referred to increases of over 40%. We presume she may have been referring to earlier tax years not at issue in this appeal. The Assessor stated in the hearing that she also was not certain to what Mrs. Hatke was referring and observed correctly that the value had decreased from the prior tax year of 2018.

C. Lady Appraisal

- 15. The Assessor engaged Geoffrey Lady, a licensed residential appraiser, to appraise the fee simple interest of the market value-in-use of the subject property’s land as of January 1, 2019. Lady made an extraordinary assumption that the land was vacant. He developed only the sales-comparison approach and certified that his appraisal complied with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Lady testimony; Resp’t Ex. D.*

- 16. In developing his sales-comparison approach, Lady looked for sales of properties located on Raccoon Lake. He ultimately selected three properties for comparison. These were:

Comparable #	Sale Price	Sale Date	Site Size
Comparable 1	\$115,000	April 2018	32,670 sq. ft.
Comparable 2	\$100,000	October 2017	26,136 sq. ft.
Comparable 3	\$75,000	June 2017	63,162 sq. ft.

Lady determined no adjustments were necessary for site size, site view, site improvements, zoning, or utilities because he found the comparison properties to be sufficiently similar to the subject. He did make one adjustment for physical characteristics to Comparable 3. He adjusted this comparable upward by \$15,000 because this property was narrower than the subject and had a pond that significantly limited development. Lady did not make any adjustments for time/market conditions but offered no explanation as to why these adjustments were unnecessary. Based on the adjusted sale prices, he concluded to a value of \$100,000 for the subject property’s land as of January 1, 2019. *Lady testimony; Resp’t Ex. D.*

ANALYSIS

- 17. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the DLGF. Ind. Code § 6-1.1- 31-5(a); Ind. Code § 6-1.1-31-6(f).

18. The DLGF defines “true tax value” as “market value-in-use,” which it in turn is defined as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
19. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; see also *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct.) Regardless of the method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is January 1, 2019. Ind. Code § 6-1.1-2-1.5(a). Simply attacking the methodology used to calculate an assessment or strictly applying the assessment guidelines normally does not meet a taxpayer’s burden of proof. See *Eckerling*, 841 N.E.2d at 678.
20. As discussed above, the burden of proof was on the Hatkes to prove that the 2019 assessment of their land was incorrect. In support of their claim for a lower assessment, they primarily relied on three purportedly comparable listings. As discussed above, to establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. In addition, the party must explain how any differences between the properties affect their relative market values-in-use and relate the comparables to the relevant valuation date. *Id.*
21. The Hatkes did not successfully demonstrate these points. They failed to explain how the comparables differed from the subject, nor did they provide reliable adjustments to account for any differences. Finally, they failed to relate the listings to the relevant

valuation date of January 1, 2019. Thus, we are unable to rely on this evidence to establish a value.

22. The Hatkes also claimed that approximately 1/3 of the land on their parcel should be assessed at a discounted rate with a negative influence factor. The choice to apply an influence factor is part of the methodology used by the Assessor to develop an assessment. As discussed above, simply attacking the methodology is insufficient. Instead, the Hatkes needed to provide their own reliable market-based evidence, which they failed to do.
23. In addition, the Hatkes claimed that their assessment increased without justification. As discussed above, it appears they were referring to an increase in a prior year. Each tax year stands alone, and for the 2019 assessment year the Hatkes had the burden of proof. Moreover, such an increase is part of the methodology the Assessor used to develop the assessment. Absent the burden-shifting provisions being triggered, the Assessor is not required to provide a justification for an increase over a prior year's assessment.
24. When a taxpayer fails to support their claim with probative evidence, the Assessor'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). But the Assessor has requested an increase in the assessment, thus we will examine her evidence. In support of this claim, the Assessor provided an appraisal report, along with the testimony of a licensed residential appraiser, Geoffrey Lady. He valued the subject land at \$100,000.
25. As discussed above, Lady's appraisal utilized the sales-comparison approach to compare three vacant lots in the lake community on the water. He made only one adjustment to one of the comparables, claiming the comparison properties were largely similar to the subject property. It is concerning that Lady did not make any adjustment for market conditions, given that two of his three comparables sold over a year before the valuation date. It is possible that Lady determined the market conditions were sufficiently stable such that no adjustment was required. But if that were the case, we would generally have

expected testimony or evidence to that effect. As discussed above, all evidence must be related to the appropriate valuation date. *See Long* at 471. Lady's failure to explain how market conditions affected his comparables somewhat undercuts our confidence in his appraisal.

CONCLUSION

26. The Hatkes failed to present any reliable evidence that supported a lower value. The Assessor requested an increase in the assessment and provided a USPAP-compliant appraisal and testimony from a licensed appraiser in support of this request. But we have some concerns with Lady's appraisal, particularly his lack of explanation regarding the market conditions. Under these circumstances, we find Lady's appraisal better supports the current assessment than the Assessor's requested increase. Thus, we order no change to the subject property's 2019 assessment.

ISSUED: October 27, 2020

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>>.