

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

Petition: 61-015-20-1-5-00299-21
Petitioner: Thelma Hatke
Respondent: Parke County Assessor
Parcel: 61-12-21-301-008.000-015
Assessment Year: 2020

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. Thelma Hatke appealed her property’s 2020 assessment on grounds that the Parke County Assessor improperly removed an influence factor, which increased the land component of her assessment. Because she did not offer any market-based evidence to show the property’s market value-in-use, she failed to make a prima facie case for lowering her assessment. But we grant the Assessor’s request to raise the assessment based on an appraisal from Wayne Johnson that reliably estimates the real property’s overall market value-in-use at \$239,000.

PROCEDURAL HISTORY

2. Thelma Hatke appealed the 2020 assessment of her lake property located at 8017 East Oak Drive in Rockville. The Parke County Property Tax Assessment Board of Appeals (“PTABOA”) determined an assessment of \$124,800 for land and \$110,300 for improvements for a total of \$235,100.
3. Hatke timely filed a Form 131 petition with the Board. On September 15, 2022, our administrative law judge, Erik Jones (“ALJ”), held a telephonic hearing on Hatke’s petition. Hatke appeared *pro se*. Marilyn Meighen appeared as counsel for the Assessor. Hatke and Johnson were sworn as witnesses and testified.
4. The Assessor submitted the following exhibits:¹

Respondent’s Exhibit A	2020 property record card for the subject property,
Respondent’s Exhibit B	Appraisal report from Wayne Johnson, II

¹ Hatke did not offer any exhibits.

5. The record also includes the following: (1) all petitions and other documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

OBJECTION

6. As part of her testimony, Hatke referred to an alleged correspondence between her and Barry Wood, an employee of the Department of Local Government Finance (“DLGF”). According to Hatke, Wood explained that “dry cove” qualifies for an influence factor according to “page 62 land assessments.” The Assessor objected to this testimony as hearsay because no DLGF employee was called as a witness. The ALJ took the objection under advisement.
7. We overrule the objection. We agree that the statement was hearsay: it was made by a declarant, Wood, who did not testify at the hearing, and it was offered to prove the truth of the matter asserted, namely that “dry cove” qualifies for an influence factor. *See* “Ind. R. Evid. 801(c) (defining hearsay). Nonetheless, our procedural rules allow us to admit hearsay, with the caveat that we cannot base our final determination solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). We admit Hatke’s hearsay testimony, but we do not base any part of our determination on that testimony.²

FINDINGS OF FACT

A. The Subject Property

8. The subject property consists of a two-story house on approximately 0.66 acres of land located on a lake that the parties alternately referred to as “Harden Lake” and “Racoon Lake.” The Army Corps of Engineers holds a flowage easement covering 0.38 acres on the lakefront portion of the property. This easement allows the Corps to manage flooding and control the lake’s shorelines by raising or lowering its water levels. Hatke cannot build or maintain any structure for human habitation on the land burdened by the easement, and she must seek written approval to place any other structure on it. Other properties along the lake have similar easements. *Hatke testimony; Resp’t Ex. B at 25.*
9. Because of this easement and the Corps’ flooding schedules, the subject property has a lake view in the summer. In the winter, the water levels are lowered, and the property is left on a dry cove. From 2017 to 2019, the Assessor applied a negative influence factor for non-residential land to the property. But she removed that influence factor in 2020.

² Hatke appears to have testified that Wood’s correspondence was referring to chapter 2, page 62 of the 2011 Real Property Assessment Guidelines. While Wood’s assertions about what the provisions on that page say or mean are hearsay, the Guidelines themselves are an administrative rule and do not need to be introduced as evidence. *See* 50 IAC 2.4-1-2 (2010) (incorporating the Guidelines by reference). As explained below, however, Hatke’s Guidelines-based arguments simply attack the Assessor’s methodology in determining the assessment and do not suffice to make a prima facie case for changing the assessment.

As a result, Hatke's land assessment increased from \$87,700 in 2019 to \$124,800 in 2020. But the assessment for improvements dropped from \$148,500 in 2019 to \$110,300 in 2020. Hatke's total assessment decreased by \$1,100. *Hatke testimony; Resp't Ex. A.*

B. Johnson Appraisal³

10. The Assessor hired Wayne Johnson, an MAI and certified general appraiser, to appraise the market value-in-use of the fee simple interest in the subject property as of January 1, 2020. He certified that his appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Johnson testimony; Resp't Ex. B at 7-14, 65.*
11. Johnson first estimated the value of the land using the sales-comparison approach. He looked for sales of vacant land on Racoon Lake, ultimately settling on five sales and one listing. Those parcels sold in 2020 and 2021 for unit prices ranging from \$63,492/acre to \$170,965/acre and for overall prices ranging from \$97,000 to \$194,900. *Johnson testimony; Resp't Ex. B at 36-45.*
12. Johnson then adjusted the sale prices to account for transactional differences between those sales and the contemplated sale of the subject property, such as differences between market conditions on the sale dates and on the January 1, 2020 valuation that applied to the challenged assessment. He applied adjustments based on 3% annual appreciation. *Johnson testimony; Resp't Ex. B at 36-45.*
13. He also adjusted the sale prices to account for several physical differences between the subject property and his comparable properties, including differences in winter water levels, amounts of lake frontage, and number of lots. As to the last characteristic, Johnson found that sales involving multiple lots reflected a substantial per-lot discount. Although he considered various other relevant characteristics, he found that the comparable properties were sufficiently like the subject property and did not require adjustment to their sale prices on those grounds. *Johnson testimony; Resp't Ex. B at 36-45.*
14. The adjusted sale prices ranged from \$74,829/lot to \$102,882/lot, with an average of \$90,041 and a median of \$91,459. He settled on a "correlated" value of \$92,000 for the subject land, which translated to \$139,394/acre. *Johnson testimony; Resp't Ex. B at 36-45, 51.*
15. Johnson then turned his attention to allocating the land's overall value between its two uses: the portion encumbered by the flowage easement and the remainder of the property, which he described as a primary residential lot. He considered two methods for analyzing the contributory value of the approximately .38 acres of encumbered land. The

³ Before beginning her case-in-chief, the Assessor's counsel moved for judgment on the evidence. The ALJ took the motion under advisement. We deny the motion. The Assessor presented evidence, and we decide the case based on the record as a whole.

first was based on valuation matrices from articles published in *Right of Way Magazine*, which estimated discounts of between 75% and 100% for flowage and other easements with a severe impact on surface use. The other method was an analysis comparing sales of land with conservation easements to sales of similar nearby land without a similar encumbrance. Those sales indicated discounts of 62% to 74%. Because flowage easements are more restrictive than conservation easements, Johnson settled on a discount of 95%, meaning that the .38 acres encumbered by the flowage easement contributed \$2,650 to the subject land's overall value of \$92,000. *Johnson testimony; Resp't Ex. B at 45-51.*

16. Johnson next analyzed the property's overall value, including land and improvements. He considered all three generally accepted valuation approaches: the cost, income, and sales-comparison approaches. He did not develop the cost approach, however, explaining that the age of the subject improvements made estimates of cost new and depreciation unreliable. He similarly decided against developing the income approach because the property was owner-occupied rather than income-producing. *Johnson testimony; Resp't Ex. B at 52-62.*
17. For his analysis under the sales-comparison approach, Johnson used sales of six comparable improved lakefront properties. Those properties sold between November 2016 and September 2019 for unit prices ranging from \$171.84/sq. ft. and \$301.54/sq. ft. and for overall prices ranging from \$169,000 to \$337,500. *Johnson testimony; Resp't Ex. B at 52-62.*
18. As with his analysis of vacant land, Johnson then considered adjusting the sale prices of his comparable properties. He again used appreciation of 3% per year to adjust for differences in market conditions. He also considered a host of potential differences in physical attributes, including some of the same attributes he considered in his land analysis, such as winter water level and lake frontage. He also considered various attributes of the homes, such as effective age, above- and below-grade living area, and number of bathrooms, as well as other amenities, like garages or carports and fireplaces. *Resp't Ex. B at 52-62.*
19. Johnson's adjusted sale prices ranged from \$182,515 to \$296,592, with an average of \$239,664 and a median of \$237,854. He settled on a value of \$240,000 for the subject property. Johnson also indicated in his report that "[i]t was estimated that there was personal property valued at \$1,000 for appliances included in the overall value." He did not further elaborate on that statement. *Johnson testimony; Resp't Ex. B at 1, 62.*

C. Other Appraisal

20. An appraisal prepared in connection with Hatke's appeal of her 2019 assessment estimated a value of \$100,000 for the subject land. Hatke, however, did not offer the appraisal report as evidence, and there is nothing in the record to show how the appraiser arrived at that value. *Hatke testimony.*

ANALYSIS

21. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is correct and what the correct assessment should be. *Piotrowski v. Shelby Cty. Assessor*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
22. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a 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." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the DLGF's rules. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines 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." 2011 MANUAL at 2.⁴
23. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." 2011 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). Simply attacking the methodology used to calculate an assessment or strictly applying the assessment guidelines does not normally meet a taxpayer's burden of proof. *See Eckerling*, 841 N.E.2d at 678.
24. As discussed above, Hatke had the burden of proof. She offered no market-based evidence to address the property's overall market value-in-use. Indeed, she focused her case solely on the land's contributory value. Even then, she offered no probative market-based evidence of her own to support her claim. She largely attacked the Assessor's methodology in removing a negative influence factor that previously had been applied to the land. As explained above, however, such methodological attacks do not normally suffice to make a case for changing an assessment. She also made various unsupported allegations about an inspection of her property that she believed was improper and statements from people in the Assessor's office about taxing rich people on the lake. Even if we were to credit Hatke's testimony on those points, it would do nothing to show her property's market value-in-use.
25. Hatke did point to two appraisals: a previous appraisal of the subject land that she did not offer into evidence and about which she provided no information concerning the

⁴ We cite to the version of the Real Property Assessment Manual that was in effect when the property was assessed. The cited provisions do not differ substantively from the current version of the Manual. *See* 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

appraiser's methodology or analysis, and Johnson's appraisal in which he estimated the land's contribution to the property's overall value. We give her conclusory testimony about the first appraisal no weight. Johnson's estimate of the land's contributory value similarly does not entitle Hatke to a reduction in the property's overall assessment. But it does tend to show how the property's overall assessment should be allocated between land and improvements.


26. Our analysis does not end there, however. Based on Johnson's appraisal, the Assessor asks us to raise the property's overall assessment to \$240,000.
27. Johnson complied with USPAP in appraising the subject property. He considered developing all three generally recognized appraisal approaches and persuasively explained why he chose not to develop the cost and income approaches. He identified comparable lakefront properties and adjusted their sale prices to account for relevant ways in which they differed from the subject property. And Hatke did little to impeach Johnson's appraisal. We therefore find that appraisal probative of the subject property's market value-in-use. But we do not agree that the assessment should be raised to \$240,000. Johnson's appraisal report indicates that his valuation includes an estimated \$1,000 attributable to personal property. We therefore find that the subject property's overall assessment should be raised to \$239,000.

CONCLUSION

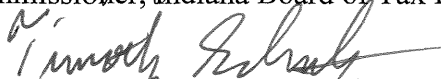
28. Hatke failed to make a prima facie case for lowering her assessment. Instead, the only probative evidence of the property's value was Johnson's USPAP-compliant appraisal in which he estimated the real property's market value-in-use at \$239,000, with a contributory land value of \$92,000. We therefore order the assessment to be change to the following amounts:

Land	Improvements	Total
\$92,000	\$147,000	\$239,000

Date: 12/14/2022


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>>.