

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

Petition No: 35-005-15-1-5-00301-15
Petitioner: Tony L. Hiles
Respondent: Huntington County Assessor
Parcel No.: 35-05-14-100-394.500-005
Assessment Year: 2015

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 his 2015 appeal with the Huntington County Assessor on August 19, 2015.
2. On October 16, 2015, the Huntington 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, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on May 10, 2017.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on June 13, 2017. She did not inspect the property.
6. Tony Hiles appeared *pro se*. County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared the Respondent. All of them were sworn.

Facts

7. The property under appeal is a 55-foot wide by 132-foot deep lot that includes a home and storage shed, located at 319 Swan Street in Huntington.
8. The PTABOA determined the total assessment is \$15,000 (land \$3,000 and improvement \$12,000).
9. The Petitioner requested a total assessment of \$5,000 (land \$3,000 and improvements \$2,000).

Record

10. The official record for this matter contains the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1:	Aerial photograph of the subject property,
Petitioner Exhibit 2:	“Parcel Report 2006-2013,”
Petitioner Exhibit 3a, 3b:	Subject property record card,
Petitioner Exhibit 4:	Opinion of Value for the subject property prepared by Stephen Ness dated November 21, 2013,
Petitioner Exhibit 5:	Multiple Listing Service (MLS) listing for 1834 Sabine Street,
Petitioner Exhibit 6:	MLS listing for 759 East Washington Street,
Petitioner Exhibit 7:	MLS listing for 229 Garfield Street.

Respondent Exhibit 1:	Form 131,
Respondent Exhibit 2:	Subject property record card,
Respondent Exhibit 3:	Aerial photograph of the subject property.

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Hearing notice dated May 10, 2017,
Board Exhibit C:	Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:

- a) The subject property is over assessed. Mr. Hiles purchased the distressed property at a tax sale on October 28, 2010, for \$2,423.42. Granted the home was not in the best of shape, but Mr. Hiles thought “it would make a good storage building.” In 2007, the property was also sold at a tax sale for \$8,500, less taxes due of \$1,846.18. However, in 2008, “those people redeemed their money instead of taking possession.” *Hiles argument; Pet’r Ex. 1, 2.*
- b) The property record card contains several errors. Some corrections have been made, but errors still exist. First, the home is not situated on a concrete slab. While it could be referred to as a crawl space, the space is “not really big enough for a person.” In addition, the home lacks carpet, vinyl siding, electrical lines, and plumbing. The car shed is in disrepair and should be torn down. If the property were listed in its current

shape, Mr. Hiles would be unable to “get \$500 out of it.” *Hiles argument; Pet’r Ex. 3a, 3b.*

- c) In an effort to prove the property is over assessed, Mr. Hiles presented an “opinion of value” from Stephen Ness, a local realtor. Mr. Ness estimated the value at \$4,500 in a letter dated November 21, 2013. According to the letter, Mr. Ness stated the house is “in need of major repairs and improvements before it could be used as a home and that the outbuilding has no value and should be removed.” Mr. Ness based his value on four comparable sales of similar homes and adjustments to reflect the differences in the homes.¹ According to Mr. Hiles, the conclusion of value is “a little high” and “should be \$2,500 to \$3,000.” *Hiles argument; Pet’r Ex. 4.*
- d) Mr. Hiles also offered his own sales comparison analysis by examining three comparable properties. The first property, located at 1834 Sabine Street, sold on September 20, 2013, for \$6,100. This property has a 70-foot by 116-foot lot, a 1,113 square-foot home, and an outbuilding. It is “relatively close” to the subject property and it looks like a “pretty decent place.” *Hiles testimony; Pet’r Ex. 5.*
- e) The second property, located at 759 East Washington Street and “not too far” from the subject property, sold on September 2, 2013, for \$9,500. This lot measures 35-foot by 132-foot lot and includes a 1,458 square-foot home. The home is “pretty nice looking and much larger than the subject property.” *Hiles testimony; Pet’r Ex. 6.*
- f) The last property, located at 229 Garfield Street, sold on November 3, 2013, for \$8,750. This lot measures 56-foot by 137-foot lot, and features a two bedroom one bath home with a detached garage. *Hiles testimony; Pet’r Ex. 7.*

12. Summary of the Respondent’s case:

- a) The current assessment is “fair” and should not be changed. Ironically, the Petitioner has requested a total assessment of \$5,000 on his Form 131 but submitted an opinion of value indicating a value of \$4,500. Given all of this, he still states he cannot “get \$500 out of it.” *Newsome argument.*
- b) The alleged errors on the property record card have been corrected. The plumbing and heating have been removed. The property record card currently reflects the home is situated on a crawl space, has masonry construction, and the poor condition of the home is graded at “E+2.” *Newsome testimony; Resp’t Ex. 2.*

Burden of Proof

13. 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. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax*

¹ The four purportedly comparable properties utilized in the analysis were not attached to the letter. *Pet’r Ex. 4.*

Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

14. 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).
21. 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.
22. Here, the parties agree the total assessed value decreased from 2014 to 2015. The Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

23. The Petitioner failed to make a prima facie case for reducing the 2015 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 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 to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the 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); *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471-72 (Ind.

Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) The Petitioner offered evidence that he purchased the property at a tax sale on October 28, 2010, for \$2,423.42. Often, the purchase price of a property is the best evidence of the property's value. *See Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (the court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). However, the purchase must meet the conditions for a market sale. As explained in the Manual, market value is:

[T]he most probable price, as of a specified date, in cash, or terms equivalent to cash, or in other precisely revealed terms, for which the specified property right should sell *after reasonable exposure in a competitive market under all conditions requisite to a fair sale*, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress.

MANUAL at 5-6 (emphasis added).

- d) Here, there is insufficient evidence to conclude that the Petitioner's purchase price is indicative of the market value-in-use. But most importantly, the Petitioner purchased the property over four years prior to the March 1, 2015, valuation date, and he failed to relate his purchase price to the relevant valuation date. For these reasons, the purchase price lacks probative value.
- e) The Petitioner also offered a realtor's "opinion of value" letter. The realtor purports to have relied on the sales-comparison approach and utilized four purportedly comparable properties to estimate a value of \$4,500 for the property. However, for the following reasons, the opinion of value lacks probative value.
- f) First, the Board can only assume that the effective date of value is the date of the letter, November 21, 2013, because this is the only date on the letter. However, this date is more than a year removed from the relevant valuation date of March 1, 2015. Neither the realtor nor the Petitioner offered anything to relate the opinion of value to the appropriate date.
- g) Further, the realtor did not indicate his qualifications to appraise property, nor did he certify that he complied with generally accepted appraisal principles in completing his work. Moreover, he did not disclose the purportedly comparable properties he utilized, the adjustments he made, or offer any explanation for the adjustments he made. For these reasons, the realtor's opinion of value lacks probative value.
- h) The Petitioner also attempted to offer his own sales-comparison evidence. Mr. Hiles offered three purportedly comparable sales that he testified are "close" to the subject

property. To effectively use any kind of sales comparison approach to value a property, however, one must establish that the properties are truly comparable. Conclusory statements that properties are “similar” or “comparable” 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.*

- i) The Petitioner failed to offer the type of evidence contemplated by *Long*. While he offered a few details regarding each property, he fell short of proving that the properties are actually comparable. Additionally, he failed to make adjustments to account for differences between the purportedly comparable properties and the subject property. For these reasons, the Petitioner’s sales analysis lacks probative value.
- j) Finally, the Petitioner argued that, at least in the assessment years prior to 2015, there were “errors” on the subject property record card. According to undisputed testimony from the Respondent, the objective errors the Petitioner pointed to, such as foundation type, construction type, and lack of plumbing, have been corrected. Other purported errors, such as the number of rooms and whether the house is carpeted, are not objective errors that affect the computation of the assessment. Thus, the Board is not persuaded that any objective errors exist for the 2015 assessment.
- k) Consequently, the Petitioner failed to make a prima facie case that the 2015 assessment is incorrect. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessments 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

- 24. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2015 assessment will not be changed.

ISSUED: September 11, 2017

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>>.