

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

Petitions: 35-005-12-1-5-00241
35-005-13-1-5-00103
Petitioners: Yvonne C. Hiles & Von Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-177.600-005
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. On March 13, 2014, the PTABOA issued its determination for the 2013 assessment year denying the Petitioners relief.
3. The Petitioners timely filed Petitions for Review of Assessment (Form 131) with the Board. For both years, they elected the Board's small claims procedures.
4. The Board issued notices of hearing on June 20, 2014.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on July 31, 2014. She did not inspect the property.
6. Tony L. Hiles appeared on behalf of the Petitioners.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All were sworn.

Facts

7. The subject property is an unimproved lot located on Lindley Street, in Huntington.

¹ The Form 131 petition for 2013 indicates that Yvonne C. Hiles and Von Inc. each have undivided one-half interest in the subject property.

² Mr. Hiles signed the 2012 Form 131 petition as the owner and Vice-President of Operations for Von Inc. For 2013, Mr. Hiles signed the Form 131 petition as the Vice-President and Chief Operating Officer of Von Inc.

8. The PTABOA determined an assessed value of \$3,400 for each year.
9. On the Form 131 petitions, the Petitioners requested a total assessment of \$1,200 for each year.

Record

10. The official record for this matter is made up of the following:

- a) Petitions for Review of Assessment with attachments,
- b) A digital recording of the hearing,
- c) Exhibits for the 2012 appeal:

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|------------------------|---|
| Petitioner Exhibit 1: | “Summary of assessments” spreadsheet listing different assessments from 2008 - 2013, |
| Petitioner Exhibit 2: | Description of the subject property, |
| Petitioner Exhibit 3: | Photographs of the subject property, |
| Petitioner Exhibit 4: | Photographs of the subject property, |
| Petitioner Exhibit 5: | Photographs of the subject property, |
| Petitioner Exhibit 6: | Subject property record card, |
| Petitioner Exhibit 7: | Multiple Listing Service (MLS) listing for vacant lot on William Street, |
| Petitioner Exhibit 8: | MLS listing for vacant lot located on Clark Street, |
| Petitioner Exhibit 9: | MLS listing for vacant lot located on Clark Street, |
| Petitioner Exhibit 10: | Thirty-four property record cards for properties throughout Huntington. ³ |
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| Respondent Exhibit 1: | Respondent’s hearing notice and list of witnesses and exhibits, |
| Respondent Exhibit 2: | Form 131 petition, |
| Respondent Exhibit 3: | Form 115 petition, subject property record card, and photograph of the subject property, |
| Respondent Exhibit 4: | “Assessment Summary” prepared by the Respondent including a discussion of market value and three approaches to value, |
| Respondent Exhibit 5: | Comparable sales analysis spreadsheet with plat map, four property record cards, and sales disclosures, |
| Respondent Exhibit 6: | Second comparable assessment analysis spreadsheet with plat map and four property record cards, |
| Respondent Exhibit 7: | Closing arguments. |
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| Board Exhibit A: | Form 131 petition with attachments, |

³ Petitioner’s exhibit list indicates Petitioner Exhibit 10 consists of 44 property record cards; however Mr. Hiles removed 10 property record cards prior to the hearing.

Board Exhibit B: Hearing notice dated June 20, 2014,
Board Exhibit C: Hearing sign-in sheet.

Exhibits for the 2013 appeal:

Petitioner Exhibit 1: “Summary of assessments” spreadsheet listing different assessments from 2008 - 2013,
Petitioner Exhibit 2: Description of the subject property,
Petitioner Exhibit 3: Photographs of the subject property,
Petitioner Exhibit 4: Subject property record card,
Petitioner Exhibit 5: MLS listing for vacant lot located on Frederick Street,
Petitioner Exhibit 6: MLS listing for vacant lot located on Frederick Street,
Petitioner Exhibit 7: MLS listing for vacant lot located on Frederick Street,
Petitioner Exhibit 8: Twenty-four property record cards for properties throughout Huntington,⁴
Petitioner Reb. Ex. 1: Information regarding the property at 160 Circle Drive.

Respondent Exhibit 1: Respondent’s list of witnesses and exhibits,
Respondent Exhibit 2: Notice of hearing,
Respondent Exhibit 3: Form 131 petition,
Respondent Exhibit 4: Form 115 petition, subject property record card, and aerial photograph,
Respondent Exhibit 5: “Assessment summary” prepared by the Respondent including a discussion of market value and three approaches to value,
Respondent Exhibit 6: Comparable sales analysis spreadsheet with plat map and five property record cards, sales disclosures for vacant lots on First Street, East Market Street, Circle Drive, South Briant Street, and Lindley Street,
Respondent Exhibit 7: Second comparable assessment analysis spreadsheet with plat map and four property record cards,
Respondent Exhibit 8: Closing arguments.

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Hearing notice dated June 20, 2014,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners’ case:

⁴ Petitioners’ exhibit list originally indicates that Petitioner Exhibit 8 consists of 31 property record cards; however Mr. Hiles removed seven property record cards prior to the hearing.

- a) The subject property is assessed too high. The lot is located on the corner of Superior and Lindley Street. However, no front access exists to the property from Lindley Street; access is only available from Superior Street. *Hiles argument.*
- b) A creek runs across the front of the subject property, making it impossible to build anything on the lot. To develop the property, sewer lines would have to be run underneath the creek. *Hiles testimony.*
- c) Flooding occurs several times throughout the year. The lot consists of fill material, and is “swampy” even when not flooded. *Hiles testimony; Pet’r Ex. 3, 4, 5(2012); Pet’r Ex. 3(2013)*
- d) According to MLS reports, three lots on Frederick Street sold for \$3,000, \$4,500, and \$4,900, respectively. *Hiles testimony; Pet’r Ex. 7, 8, 9 (2012); Pet’r Ex. 5 (2013).*
- e) Generally, vacant residential lots in Huntington County receive negative 50% influence factors. *Hiles testimony; Pet’r Ex. 10 (2012); Pet’r Ex. 8 (2013).*
- f) The Respondent’s purportedly comparable sales are not comparable to the subject property. In all of the sales presented, the lots were purchased by adjacent property owners. The purpose was to support their existing properties. In any event, the sales of properties located on South Briant Street and Lindley Street occurred in 2014, and should not be considered. *Hiles argument (referencing Resp. Ex. 6 (2013)).*
- g) Finally, the Petitioners argue the sale of 160 Circle Drive should not be considered because the property went through “a process” prior to being sold. *Hiles argument; Pet’r Reb. Ex. 1.*

12. Summary of the Respondent’s case:

- a) The subject property is assessed fairly and accurately. In support of this, the Respondent performed an analysis which considered all three approaches to value, cost, sales-comparison, and income approach. Accordingly, the sales-comparison approach provided the best indicator of value. The Respondent utilized both the “Guidelines” and the Uniform Standards of Professional Appraisal Practice (USPAP) to analyze the comparable sales. *Newsome argument; Resp’t Ex. 4 (2012); Resp’t Ex. 5 (2013).*
- b) The Respondent performed an analysis for each year. According to the Respondent’s “Assessment summary” she utilized sales that occurred from June 9, 2010, through May 5, 2011, to support the 2012 assessment. Further, she utilized sales that occurred from March 1, 2011, through February 28, 2013, to support the 2013 assessment. The subject property is assessed at \$0.39 per square foot. In both analyses, the comparable properties sold for more than that. Overall, the sales ranged from \$0.54 to \$1.88 per square foot. *Newsome testimony; Resp’t Ex. 4, 5, 7 (2012); Resp’t Ex. 5, 6, 7, 8 (2013).*

- c) Additionally, vacant lot sales on Briant Street and Lindley Street in 2014 further indicate that the subject property is correctly assessed. *Newsome; Resp't Ex. 6 (2013)*.
- d) Finally, in an effort to further support both years' assessments, the Respondent offered an assessment-comparison analysis. The Respondent considered four comparable properties. These four properties are all assessed at \$0.40 to \$0.41 per square foot. This is slightly higher than the subject property. All four of the properties received a negative 50% influence factor, due to lack of utility. *Newsome testimony; Resp't Ex. 6 (2012); Resp't Ex. 7 (2013)*.

Burden of Proof

- 13. Generally, the taxpayer has the burden to prove an assessment is incorrect and to prove 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.
- 14. First, Ind. Code section 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).
- 15. 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.
- 16. Here, both parties agreed that the 2012 and 2013 assessed values did not increase by more than 5% over the previous years' levels. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent for either year.

Analysis

17. The Petitioners did not 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) Here, the Petitioners offered photographs of the subject property, mainly to support their claims that the property floods and cannot be built on. While these factors could certainly detract from the property's value, the Petitioners failed to offer anything to quantify the actual effect of their claims or quantify a more accurate value.
 - d) The Petitioners did attempt to offer some market-based evidence. Specifically, they pointed to the sales of three lots on Frederick Street. 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.
 - e) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *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.*

- f) Here, the type of analysis required and the related adjustments are lacking from the Petitioners' evidence. In fact, the Petitioners did not even identify the specific value indicated by the analysis. Thus, this evidence lacks probative value.
- g) Finally, the Petitioners offered a comparison to several 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 comparable 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).
- h) However, the determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. 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.
- i) 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

18. 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: October 28, 2014

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>>.