

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

Petition: 35-005-14-1-5-00053
Petitioners: Yvonne C. Hiles & Von, Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-177.600-005
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 Petitioners initiated their 2014 assessment appeal with the Huntington County Assessor on August 11, 2014.
2. On October 27, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued the notice of hearing on July 7, 2015.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 13, 2015. She did not inspect the property.
6. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a vacant lot located on Lindley Street in Huntington.
8. The PTABOA determined a total assessment of \$3,400.
9. On their Form 131 petition, the Petitioners requested a total assessment of \$1,000.

¹ The Petitioners' Form 131 indicates that Yvonne C. Hiles and Von, Inc., each have an "undivided one-half interest" in the subject property.

² Mr. Hiles signed the Form 131 as the Vice-President of Chief Operating Officer.

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:
 - Petitioners Exhibit 1: “Description of the subject property,”
 - Petitioners Exhibit 2: Subject property record card,
 - Petitioners Exhibit 3: Flood zone map,
 - Petitioners Exhibit 4: Property record card for a lot located on Brawley Street,
 - Petitioners Exhibit 5: Aerial photograph of Brawley Street lot.

 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Aerial photograph of the subject property,
 - Respondent Exhibit 3: Property record cards and sales disclosures for the properties located at 538 Lindley Street, 1219 Kocher Street, and First Street, along with a spreadsheet listing the sales data for these properties,
 - Respondent Exhibit 4: Aerial map indicating the location of subject property in relation to the Respondent’s three comparable properties.

 - Board Exhibit A: Form 131 petition with attachments,
 - Board Exhibit B: Notice of Hearing dated July 7, 2015,
 - Board Exhibit C: Hearing sign-in sheet.
 - d) These Findings and Conclusions.

Objections

11. Mr. Hiles made several objections all related to Respondent’s Exhibit 3. Specifically, he objected on the grounds that the sales occurred outside the relevant time period for a 2014 appeal. Further, he objected to the use of the properties located at 538 Lindley Street and 1219 Kocher Street because both lots include a garage, thus they are not comparable to the subject property. He objected to the use of the First Street property because that property was sold as an “adjacent property.” Additionally, he objected to all of the Respondent’s purportedly comparable properties because none of them are located in a flood zone. The ALJ took the objections under advisement.
12. Ms. Newsome provided various responses to Mr. Hiles’ objections. Ultimately, all of the objections go to the weight of the evidence and rather than its admissibility. Mr. Hiles failed to offer any legal grounds to exclude Respondent Exhibit 3 from the record. Mr. Hiles’ objections are overruled. Accordingly, Respondent Exhibit 3 is admitted.

Contentions

13. Summary of the Petitioners' case:
- a) The property's assessment is too high. The property currently has a 50% negative influence factor. A drainage ditch runs through the lot. There is no public access to the property. Fill dirt and concrete are the only additions to the lot; it is an "unusable property." *Hiles argument; Pet'rs Ex. 1, 2.*
 - b) Approximately 90% of the property is in a flood zone. Flooding occurs several times a year and the lot has been "completely under water a minimum of three times." *Hiles testimony; Pet'rs Ex. 3.*
 - c) In an effort to prove their property is over assessed, the Petitioners presented a vacant lot located on Brawley Street. This lot is currently assessed at \$3,400. This lot also receives a negative 50% influence factor. However, unlike the subject property, this lot is "usable." *Hiles argument; Pet'rs Ex. 4, 5.*
14. Summary of the Respondent's case:
- a) The property is correctly assessed. A negative 50% influence factor was applied because it is "under-improved." *Newsome argument; Resp't Ex. 1, 2.*
 - b) To support the current assessment, the Respondent presented sales of three comparable properties. The first, a 60 foot by 145 foot lot located at 538 Lindley Street, sold for \$5,000, or \$0.57 per square foot, on March 11, 2014. *Newsome testimony; Resp't Ex. 3, 4.*
 - c) Another property, located at 1219 Kocher Street, sold for \$1,000, or \$0.26 per square foot, on April 2, 2014. This lot features two sections, a 45 foot by 64 foot section, and a 15 foot by 64 foot section, totaling 3,840 square feet. This lot does include a garage. *Newsome testimony; Resp't Ex. 3, 4.*
 - d) Finally, a lot measuring 60 feet by 117 feet located on First Street, sold for \$3,000, or \$0.53 per square foot, on June 6, 2014. The average sale price for the three lots equates to \$0.46 per square foot. *Newsome testimony; Resp't Ex. 3, 4.*

Burden of Proof

15. 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.

16. 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).
17. 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.
18. Here, neither party offered any argument regarding who has the burden. Thus, the ALJ made a preliminary determination that the burden should remain with the Petitioners. The record indicates that there was no change to the assessment from 2013 to 2014. Thus, the Board affirms the ALJ’s preliminary determination and finds the Petitioners have the burden.

Analysis

19. The Petitioners failed to make a prima facie case for reducing the 2014 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 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 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) Here, the Petitioners offered an aerial photograph and testimony that the lot floods and is encumbered by a large drainage ditch. The Petitioners also claimed the property lacks access street access and is “unusable.” While these factors are likely detrimental to the property’s value, they do not establish that the assessment was made in error. The Petitioners needed to offer probative evidence that establishes the effect those factors have on the property’s market value-in-use as of the assessment date.
- d) The Petitioners also offered a property record card for a property located on Brawley Street. However, it is not entirely clear what the Petitioners intended to prove with that document. While the property record card lists a 2014 transfer of ownership, no sale amount is indicated. Thus, the Board assumes that the Petitioners intended to compare 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).
- e) The determination of whether the property is comparable using the “assessment comparison” approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass’r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. *Id.*; see also *Long*, 821 N.E.2d at 471 (finding that sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value.)
- f) First, the Petitioners failed to prove that the Brawley Street property is actually comparable to the subject property. Second, they failed to offer any authority suggesting that utilizing only one purportedly comparable property suffices to establish a subject property’s value. Even if they had, they failed to make any adjustments or any other type of analysis to establish a value. Thus, the Petitioners’ evidence and accompanying testimony is not enough to make a prima facie case for changing the assessment.
- g) Consequently, the Petitioners failed to make a prima facie case that the 2014 assessment is 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

20. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2014 assessment will not be changed.

ISSUED: November 12, 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>>.