

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

Petitions: 35-005-12-1-5-00243
35-005-13-1-5-00099
35-005-14-1-5-00049
Petitioners: Yvonne C. Hiles & Von Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-259.100-005
Assessment Years: 2012, 2013, and 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 2012, 2013, and 2014 assessment appeals with the Huntington County Assessor on August 20, 2012, August 16, 2013, and August 11, 2014, respectively.
2. On, April 26, 2013, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2012 assessment year reducing the assessment, but not to the level the Petitioners requested.
3. On, March 13, 2014, the PTABOA issued its determination for the 2013 assessment year denying the Petitioners any relief.
4. On October 27, 2014, the PTABOA issued its determination for the 2014 assessment year also denying the Petitioners any relief.
5. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board, electing the Board's small claims procedures.
6. The Board issued notices of hearing on February 10, 2015.
7. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on March 25, 2015. She did not inspect the property.

¹ The letter initiating review at the local level indicates that Yvonne C. Hiles and Von Inc., each have an "undivided one-half interest" in the subject property.

8. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All were sworn.

Facts

9. The property under appeal is an unimproved lot, legally described as Gepharts Addition Lot 34, located on Lindley Street, in Huntington.
10. The PTABOA determined a total assessment of \$3,400 for each year under appeal.
11. On their Form 131 petitions, the Petitioners requested a total assessment of \$1,000 for 2012 and 2013 and a total assessment of \$100 for 2014.

Record

12. The official record for this matter is made up of the following:
- a) Petitions for Review of Assessment (Form 131s) with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:

Petitioners' Exhibits for 2013 and 2014:³

Petitioner Exhibit 1:	Description of the subject property,
Petitioner Exhibit 2:	Aerial flood map of the subject property's neighborhood,
Petitioner Exhibit 3:	Property record card for 430 Lindley Street,
Petitioner Exhibit 4:	Page one of the April 28, 2015, "Commissioners Certificate Sale,"
Petitioner Exhibit 5:	Page two of the April 28, 2015, "Commissioners Certificate Sale,"
Petitioner Exhibit 6:	Page three of the April 28, 2015, "Commissioners Certificate Sale,"
Petitioner Exhibit 7:	Property record card for 245 Jackson Street,
Petitioner Exhibit 8:	Property record card for 1632 East Market Street,
Petitioner Exhibit 9:	Property record card for 530 Court Street,
Petitioner Exhibit 10:	Property record card for the parcel located on Washington Street,
Petitioner Exhibit 11:	Property record card for 1632 East Market Street,
Petitioner Exhibit 12:	Subject property record card.

² Mr. Hiles signed the Form 131 petitions as the owner and Vice-President of Operations for Von, Inc.

³ The Petitioners did not provide exhibits labeled specifically for 2012 but referred to their exhibit packet for 2013/2014.

Respondent Exhibits for 2012:

- Respondent Exhibit 1: Hearing notice for the 2012 appeal,
- Respondent Exhibit 2: 2012 Form 131 petition,
- Respondent Exhibit 3: 2012 Form 115,
- Respondent Exhibit 4: Petitioners' letter initiating the 2012 appeal dated August 20, 2012, and property record card for parcel number 35-05-14-100-259.000-005,
- Respondent Exhibit 5: An aerial photo of the subject property.

Respondent Exhibits for 2013:

- Respondent Exhibit 1: Hearing notice for the 2013 appeal,
- Respondent Exhibit 2: 2013 Form 131 petition,
- Respondent Exhibit 3: 2013 Form 115,
- Respondent Exhibit 4: The Petitioners' letter initiating the 2013 appeal dated August 10, 2013 and subject property record card,
- Respondent Exhibit 5: An aerial photo of the subject property.

Respondent Exhibits for 2014:

- Respondent Exhibit 1: Hearing notice for the 2014 appeal,
- Respondent Exhibit 2: 2014 Form 131 petition,
- Respondent Exhibit 3: 2014 Form 115,
- Respondent Exhibit 4: The Petitioners' letter initiating the 2014 appeal dated August 8, 2014, and subject property record card,
- Respondent Exhibit 5: An aerial photo of the subject property.

- Board Exhibit A: Form 131 petitions with attachments,
- Board Exhibit B: Hearing notices, dated February 10, 2015,
- Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

- 13. The Respondent objected to all of the Petitioners' exhibits. Ms. Newsome argued that she was not "granted a chance to review" the exhibits. Further, she argued that she did not want to "assume" that the Petitioners' purportedly comparable properties were in fact comparable without a chance to review them prior to the hearing. Mr. Hiles argued that his evidence consisted mainly of empty lots, and therefore they are comparable to the subject property. The ALJ took the objection under advisement.
- 14. Much of Ms. Newsome's argument refers to an earlier hearing involving the same parties. In this earlier hearing Ms. Newsome explained that the basis of her objection to

the admission of the Petitioners' exhibits was not that they were untimely, but rather that the exhibits were not properly organized or labeled. According to Ms. Newsome, the Petitioners delivered their unlabeled prehearing evidence to the Respondent as loose papers in a single box. This same box also contained exhibits pertaining to several other hearings scheduled for the same hearing date. Ms. Newsome argued the Respondent was not obligated to go through the Petitioners' box of prehearing exhibits because those exhibits were not properly organized.

15. Mr. Hiles claimed that he provided the Respondent with copies of the Petitioners' pre-hearing evidence in a timely manner. Given the unique circumstances and the fact that the Petitioners were scheduled for multiple hearings on the same day, the Board incorporates by reference the evidence, and Ms. Newsome's testimony regarding her objection, from the prior hearing involving the following petition numbers: 35-005-12-1-5-00238, 35-005-13-1-5-00098 and 35-005-14-1-5-00048.⁴
16. Under the Board's procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits if requested. *See* 52 IAC 3-1-5(d) ("[I]f requested not later than ten (10) business days prior to hearing by any party, the parties shall provide copies of any documentary evidence...at least five (5) business days before the small claims hearing.") Here, the Respondent requested "copies of any and all evidence" from the Petitioners in an undated and unlabeled letter incorporated by reference from the prior hearing. According to Mr. Hiles' testimony in the earlier hearing, the pre-hearing exhibits were provided five business days in advance. While the Board has procedural rules regarding the labeling and organization of exhibits for Board hearings, those procedural rules do not address the labeling and organization of prehearing evidence.
17. The Board overrules the Respondent's objection. Mr. Hiles testified that all of the Petitioners' exhibits were presented to the Respondent in accordance with 52 IAC 3-1-5(d). Accordingly, the Petitioners' exhibits are admitted. The Board's ruling on the objection, however, does not change the final determination because the Petitioners failed to make a prima facie case for reducing the assessments.⁵

Contentions

18. Summary of the Petitioners' case:
 - a) The subject property's 2012, 2013, and 2014 assessments are too high. Over half of the lot is located in a flood zone. A drainage ditch is located at the front preventing access to the street. Further, there is no street access to the rear of the property because of a concrete wall. *Hiles argument; Pet'rs Ex. 1, 2.*

⁴ The parties are advised that when there are multiple hearings scheduled for a petitioner in one day, each hearing is separate and each party to the appeal should offer a complete record for every appeal hearing without relying on the record from prior hearings.

⁵ In the future, to avoid questions of whether prehearing evidence was properly presented to the Respondent, the Board advises the Petitioners to label and organize each prehearing exhibit packet separately in the same manner they will be presented at the Board's hearings, especially when the Petitioners are scheduled for multiple hearings.

- b) The Petitioners were unable to locate any comparable sales of vacant lots, so instead they provided property record cards for properties that were to be sold at the “Commissioners Certificate Sale” on April 28, 2015. These properties are located in the subject property’s neighborhood, or in similar neighborhoods. *Hiles testimony; Pet’rs Ex. 4, 5, 6.*
- c) Specifically, 245 Jackson Street, located just two streets away from the subject property, is listed in the Commissioners Certificate Sale because “no one wants to buy it.” *Hiles testimony; Pet’rs Ex. 7.*
- d) The lot located at 1632 East Market has been part of the Commissioners Certificate Sale since 2008. Similar to the subject property, this 42-foot by 132-foot lot has a drainage ditch running through it. Further, this property previously had a home located on it, so it is a “buildable lot.” *Hiles testimony; Pet’rs Ex. 8.*
- e) Another lot, located at 530 Court Street measuring 60-feet by 120-feet, had a structure on it, but the city destroyed the structure in 2009. *Hiles testimony; Pet’rs Ex. 9.*
- f) A 42-foot by 132-foot lot located on Washington Street has been part of a tax sale since 2009. It was offered to a neighboring property owner in 2012, but the offer was refused. This lot is now a part of the 2015 Commissioners Certificate Sale. *Hiles testimony; Pet’rs Ex. 10.*
- g) A “buildable lot” located at 1632 East Market previously went to a tax sale in 2010, but then was listed as part of the Commissioners Certificate Sale in 2014. This lot was also offered to the neighboring property owner, but the offer was refused. *Hiles testimony; Pet’rs Ex. 11.*
- h) Numerous lots have been offered at the Commissioners Certificate Sale for \$50. Even at \$50 these lots lack interested purchasers. If people are unwilling to pay \$50 for a lot that does not flood and does not have a ditch running across it, they will not be willing to pay \$3,400 for the subject property. *Hiles argument; Pet’rs Ex. 4, 5, 6.*

19. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. The Petitioners have failed to provide any documentation to indicate that the assessments should be changed. *Newsome argument.*
- b) In fact, the Petitioners’ own evidence, property record cards for the five properties listed at the Commissioners Certificate Sale, supports the subject property’s assessment. According to the property records, the assessments for these five properties ranged from \$2,300 to \$3,500. The subject property is assessed at \$3,400. *Newsome argument (referencing Pet’rs Ex. 7, 8, 9, 10, 11).*

- c) The Petitioners' evidence regarding the Commissioners Certificate Sale should not be viewed as probative evidence. Properties that sell in a Commissioners Certificate Sale are not fair market sales and cannot be used to determine or refute an assessment. *Newsome argument (referencing Pet'rs Ex. 7, 8, 9, 10, 11).*
- d) The Petitioners' argument that the subject property is unbuildable because it floods is an unsupported assertion. The "AE" flood zone designation listed on the Beacon flood zone map indicates that "every 100 years it is a flood zone." *Newsome argument (referencing Pet'rs Ex. 2).*
- e) Finally, although the Petitioners argue the subject property lacks access, they own other adjacent parcels. Thus, they have access via their other properties. *Newsome argument; Resp't Ex. 5.*

Burden of Proof

- 20. 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.
- 21. 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).
- 22. 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.
- 23. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2011 to 2012. In fact, the 2011 assessment was \$6,400 and the 2012 assessment was lowered to \$3,400. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent. Thus, the Petitioners have the burden for

the 2012 assessment year. The burden for the 2013 assessment year will depend on the Board's findings from the prior year's appeal. Likewise, the burden for the 2014 assessment year will depend on the Board's findings from the immediately preceding year's appeal.

Analysis

24. The Petitioners did not make a prima facie case for reducing the 2012, 2013, and 2014 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.* For a 2014 assessment, the valuation date was March 1, 2014. *Id.*
 - c) Here, the Petitioners offered a description of the subject property along with a flood zone map to establish that the lot floods and is encumbered by a large drainage ditch. The Petitioners also claim the property lacks street access. While these factors are likely detrimental to the subject property's value, it does not establish that the assessments are in error. The Petitioners failed to quantify the actual effects of their claim or quantify a more accurate value. The Petitioners needed to offer probative evidence that establishes the effect this occasional flooding has on the property's market value-in-use as of the assessment date. Without more, the Petitioners' argument regarding the location of the drainage ditch, the property's flooding, and its lack of street access is not enough to make a prima facie case for changing the assessments.
 - d) The Petitioners did, however, attempt to offer market-based evidence. Specifically, they pointed to properties listed for auction in an upcoming Commissioners Certificate Sale. In doing so, 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 tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property 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.*
- f) Here, the type of analysis required and the related adjustments are lacking from the Petitioners' evidence. First, the Commissioners Certificate Sale was not scheduled until late April 2015, well after the requisite valuation dates for these appeals. Second, the Petitioners have not shown that properties listed for sale at a Commissioners Certificate Sale are market-value sales.⁶ Third, the Petitioners failed to make adjustments to the purportedly comparable properties. Finally, their analysis failed to yield an indicated value for the subject property. Thus, their evidence lacks probative value.
- g) Consequently, the Petitioners failed to make a prima facie case that the 2012, 2013, and 2014 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

25. The Board finds for the Respondent.

⁶ Market value is defined in part as the most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeable, and assuming the price is not affected by undue stimulus. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 10.

Final Determination

In accordance with these findings and conclusions, the 2012, 2013, and 2014 assessments will not be changed.

ISSUED: June 23, 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>>.