

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

Petitions: 35-005-12-1-5-00237
35-005-13-1-5-00097
Petitioners: Yvonne C. Hiles & Von Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-226.700-005
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.
3. On March 13, 2014, the PTABOA issued its determination for the 2013 assessment year denying the Petitioners any relief.
4. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board. For both years, they elected the Board's small claims procedures.
5. The Board issued notices of hearing on December 5, 2014.
6. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on January 13, 2015. She did not inspect the property.
7. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. Kent Bowers was a witness for the Petitioners. All of them were sworn.

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

² Mr. Hiles signed the 2012 and 2013 Form 131 petitions as the owner and Vice-President of Operations for Von, Inc.

Facts

8. The property under appeal is a 60 foot by 132 foot lot with a garage situated on it, located at 303 Swan Street in Huntington.
9. For 2012, the PTABOA determined a total assessed value of \$5,300 (\$3,300 for land and \$2,000 for improvements). For 2013, the PTABOA determined a total assessment of \$5,600 (\$3,300 for land and \$2,300 for improvements).
10. The Form 131 petitions claimed a total assessment of \$2,000 (\$1,500 for land and \$500 for improvements) for both years under appeal.

Record

11. 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:

Petitioner Exhibit 1:	Description of the subject property,
Petitioner Exhibit 2:	First page of the subject property record card,
Petitioner Exhibit 3:	Second page of the subject property record card,
Petitioner Exhibit 4:	Aerial photograph of the subject property,
Petitioner Exhibit 5:	Multiple Listing Service (MLS) sales report for 837 Tracy Street,
Petitioner Exhibit 6:	MLS sales report for 751 East Tipton Street,
Petitioner Exhibit 7:	MLS sales report for 864 Wilkerson Street,
Petitioner Exhibit 8:	MLS sales report for 320 Circle Drive,
Petitioner Exhibit 9:	MLS sales report for 366 Frederick Street,
Petitioner Exhibit 10:	MLS sales report for 417 East Franklin Street,
Petitioner Exhibit 11:	MLS sales reports for 1416 East State Street, 720 East Washington Street, and 1659 East State Street,
Petitioner Exhibit 12:	MLS sales reports for 740 East Market Street, 249 Condit Street, and 519 Webster Street,
Petitioner Exhibit 13:	MLS sales reports for 1437 Superior Street, 312 Brawley Street, and 366 Swan Street,
Petitioner Exhibit 14:	MLS sales reports for 515 Court Street, 628 Whitelock Street, and 634 Second Street.

The Respondent did not submit any exhibits.

Board Exhibit A: Form 131 petitions with attachments,
Board Exhibit B: Notices of Hearing dated December 5, 2014,

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Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

12. Summary of the Petitioners' case:

- a) The subject property is assessed too high. The only thing remaining on the lot is an older detached garage. There are no utilities, no sidewalks, and the garage is in poor condition. Even though the garage is likely 15 or 16 feet wide, rather than 10 feet wide as the property record card indicates, it is still not worth as much as it is currently assessed. *Hiles argument; Pet'rs Ex. 2, 3, 4.*
- b) According to Kent Bowers, a real estate broker with over 25 years of experience, the subject property is worth no more than "between \$1,000 and \$2,000." The lot is located in an undesirable neighborhood and is too small to build a conventional home. While someone could buy the lot to place a mobile home on, it would depend on approval by the city's planning commission. Nevertheless, the Petitioners would have a difficult time trying to market the subject property due to its size and location. *Bowers testimony.*
- c) It is not unusual to find lots for sale for under \$2,000 in Huntington. There are hundreds of vacant lots available for purchase at a tax sale or commissioner's sale. However, no one is interested in purchasing them because they are located in undesirable neighborhoods. *Hiles testimony; Bowers testimony.*
- d) The Petitioners offered six MLS reports that Mr. Bowers provided to them. Mr. Bowers explained that there were no sales of vacant lots or vacant lots improved with garages in the marketplace, especially in a declining neighborhood. The only sales he could find were lots improved with older homes. Mr. Bowers did, however, find a number of similarly located homes that sold on the open market for prices ranging from \$3,000 to \$10,000, and narrowed his selection down to six sales:
 - The first comparable, located at 837 Tracy Street, is a recent sale and it indicates that land values have not gone up. This property sold for \$18,500 on November 10, 2014. Included in the sale were nine lots, a mobile home and a 38 foot by 40 foot pole barn. The sale price for this lot was \$2,055.55.
 - The second comparable, located at 751 East Tipton Street, sold for \$5,000 on June 2, 2011. Included in the sale was a home and a 10 foot 15 foot detached garage.
 - The third comparable, located at 864 Wilkerson Street, sold for \$3,650 on October 20, 2010. Included in this sale was a home and an 11 foot by 22 foot detached garage.

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- The fourth comparable, located at 320 Circle Drive, sold for \$4,125 on May 25, 2010. This sale included a home and a 24 foot by 28 foot detached garage.
- The fifth comparable, located at 366 Frederick Street, sold for \$4,900 on March 5, 2010. It included a home and a 20 foot by 22 foot detached garage.
- The sixth comparable, located at 417 East Franklin Street, sold for \$3,450 on August 20, 2010. This sale included a home and a detached 13 foot by 20 foot garage.

Hiles testimony; Bowers testimony; Pet'rs Ex. 5, 6, 7, 8, 9, 10.

e) The Petitioners also relied on twelve additional MLS sales reports provided by Shirley Powell of Coldwell Banker Roth Wehrly Graber:

- The properties at 1416 East State Street and 720 East Washington Street each sold for \$10,000.
- The property at 1659 East State Street sold for \$11,500.
- The property at 740 East Market Street sold for \$9,000.
- The property at 249 Condit Street sold for \$9,400.
- The property at 519 Webster Street was listed at \$19,800 but it sold for \$9,500.
- The properties at 1437 Superior Street and 312 Brawley Street sold for \$13,500.
- The property at 366 Swan Street was “completely redone” and sold for \$20,000.
- The property at 515 Court Street sold for \$6,006.
- The properties at 628 Whitelock Street and 634 Second Street each sold for \$7,000.

Hiles testimony; Pet'rs Ex. 11, 12, 13, 14.

f) None of the sales offered by the Petitioners were “stressed sales.” Even though the comparable MLS sales were improved with homes situated on them, the sale prices averaged between \$8,000 and \$9,000. Thus, the subject property, with only a garage, “is not worth \$5,600 or \$5,300.” *Hiles argument.*

13. Summary of the Respondent’s case:

- a) The subject property is assessed fairly and accurately. A 50% negative influence factor was applied to account for the fact that the property does not have any utilities. *Newsome argument.*
- b) The Petitioners have not offered any probative evidence to justify a change in the assessment. *Newsome argument.*

Burden of Proof

- 14. 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.
- 15. 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).
- 16. 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.
- 17. Here, Mr. Hiles, a *pro se* taxpayer, failed to offer any argument that the burden should shift to the Respondent for either year under appeal. Thus, the ALJ made a preliminary determination that the burden should remain with the Petitioners for both years. However, after a thorough examination of the record, the Board affirms the ALJ’s decision in part. For 2012, the ALJ correctly determined the burden should remain on the Petitioners because the subject property’s 2011 assessment was \$8,300 while the 2012 assessment was reduced to \$5,300. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners for the 2012 assessment year.
- 18. However, for the 2013 assessment year, the assessment did increase from the previous year’s level of \$5,300 to \$5,600. That increase is slightly more than 5%. Thus,

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regardless of whether the Petitioners make a prima facie case for a reduction in the 2012 assessment, the Respondent has the burden of proving the subject property's value for the 2013 assessment year.

Analysis

19. The Board now makes the following determinations regarding the evidence in the 2012 and 2013 appeals.
- 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.*

The 2012 Appeal

20. As stated above, the burden was on the Petitioners to make a prima facie case for reducing the 2012 assessment. The Petitioners failed to do so.
- a) The Petitioners relied on the testimony of local real estate broker Kent Bowers, along with MLS sales reports from Mr. Bowers and another realtor. For his part, Mr. Bowers testified that the subject property is worth no more than "between \$1,000 and \$2,000." While Mr. Bowers appears to have extensive experience in the real estate field, the Board is reluctant to give much weight to his valuation opinion. Even if Mr. Bowers had settled on a specific value, he failed to give any indication as to how he arrived at it or whether he used generally accepted appraisal principles.
 - b) In offering the MLS reports, the Petitioners did attempt to offer market-based evidence. In doing so, the Petitioners essentially relied 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.

- c) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish that 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.*
- d) Here, the type of analysis required and the related adjustments are lacking from the Petitioners' evidence. The Petitioners failed to make adjustments to the purportedly comparable properties. Further, their analysis failed to yield an indicated value. Thus, the evidence lacks probative value.
- e) Consequently, the Petitioners failed to make a prima facie case that the 2012 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).

The 2013 appeal

- 21. As stated above, the burden was on the Respondent to make a prima facie case proving the 2013 assessment is correct. The Respondent failed to do so. Further, to the extent that the Petitioners sought a value lower than the 2012 level, they failed to present a prima facie case for lowering the assessment lower than the 2012 level.
 - a) The Respondent only offered a conclusory statement that the subject property's assessment is correct. Further, the Respondent pointed to a negative 50% influence factor applied to the land assessment to account for lack of utilities.
 - b) The Respondent failed to offer any market-based evidence to prove that the 2013 assessment is correct. Therefore, she failed to make a prima facie case. Accordingly, the assessment must be reduced to the 2012 level of \$5,300. Ind. Code § 6-1.1-15-17.2(b).
 - c) The Petitioners, however, requested the assessment be lowered to \$2,000. Thus, they had the burden of proving that they were entitled to an additional reduction. With that in mind the Board turns to the Petitioners' evidence with regard to the 2013 assessment year.

- d) The Petitioners offered the exact same evidence for their 2013 appeal as they did for their 2012 appeal. Thus, for the same reasons discussed above, they failed to make a prima facie case for any further reduction in the 2013 assessment. The property's 2013 assessment shall be set at the previous year's level of \$5,300. Ind. Code § 6-1.1-15-17.2(b).

Conclusion

22. For the 2012 assessment year, the Board finds for the Respondent.
23. For the 2013 assessment year, the Board orders that the assessment be reduced to the 2012 level of \$5,300. The Respondent had the burden of proving that the assessment was correct, and failed to make a prima facie case. The Petitioners failed to make a case for any further reduction.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will not be changed and the 2013 assessment be lowered to \$5,300.

ISSUED: April 13, 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>>.