

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

Petition: 35-005-14-1-5-00052
Petitioners: Yvonne C. Hiles & Von, Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-729.400-005
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 the total assessment is \$700.
9. On their Form 131, the Petitioners requested a total assessment of \$100.

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.

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

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: Flood zone map.

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Photographs 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 the 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 objected to Respondent's Exhibit 3 on two grounds. First, Mr. Hiles argued that the sales utilized occurred outside the relevant time period for a 2014 appeal. Secondly, Mr. Hiles argued one of the properties utilized is not a valid comparable because it includes a garage, while the subject property is vacant.
12. Ms. Newsome responded that while she agrees the sales occurred outside of the relevant time period, they are close enough to conclude that "there was not a dramatic change in the market." The ALJ took the objection under advisement.
13. Mr. Hiles' objection goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules Mr. Hiles objection, and Respondent Exhibit 3 is admitted.

Contentions

14. Summary of the Petitioners' case:

- a) The property’s assessment is too high. The property is located in a flood zone, flooding “five times in the last two years.” Additionally, a drainage ditch runs diagonally through the lot. Nearly 80% of the lot lacks street access. Contrary to the Respondent’s claim, the subject property is not adjacent to the Petitioners’ home. *Hiles argument; Pet’rs Ex. 1, 2.*
 - b) The property is affected by “hundreds” of other issues, thus nothing can be done with the property. As confirmed by several realtors, the property is “basically worthless.” *Hiles argument.*
 - c) The Respondent’s comparable sales analysis is flawed. The sales utilized occurred outside the relevant time frame for a 2014 assessment appeal. Further, one of the properties utilized includes a garage, while the subject property is vacant. Additionally, none of the properties are located in a flood zone. Finally, two of the properties “appear” to have been sold to adjacent property owners. This would likely result in a higher purchase price. *Hiles argument (referencing Resp’t Ex. 3).*
15. Summary of the Respondent’s case:
- a) The property is correctly assessed. A negative 90% influence factor has been applied to account for “limited use.” *Newsome argument; Resp’t Ex. 1.*
 - b) To support her contention, the Respondent presented sales of three comparable properties. The first property, 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) The second 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

- 16. 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.
- 17. 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).

18. 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.
19. 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 in the assessment from 2013 to 2014. Thus, the Board affirms the ALJ’s preliminary determination and finds the Petitioners have the burden.

Analysis

20. 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 a written description of the property and a flood zone map with accompany testimony that the lot floods and is encumbered by a drainage ditch. Additionally, the Petitioners claim the majority of the property lacks street

access. While these factors could have a detrimental effect on the property's value, they do not establish that the assessment was made in error. The Petitioners did not offer anything to quantify their actual effect, or to quantify a more accurate value for the property. 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. Without more, the Petitioners' description and flood map are not enough to make a prima facie case for changing the assessment.

- d) Further, conclusory statements, such as the Petitioners' unsupported claim that the property is "worthless" cannot serve as a substitute for probative evidence. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax Ct. 1999) (citing *Whitley*, 704 N.E.2d at 1119).
- e) 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

21. 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>>.