

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

Petition No.: 35-005-14-1-5-00057
Petitioner: Von Incorporated
Respondent: Huntington County Assessor
Parcel No.: 35-05-14-100-182.501-005
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. Petitioner initiated a 2014 appeal with the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) by filing an appeal on August 11, 2014. On October 27, 2014, the PTABOA issued its Notification of Final Assessment Determination sustaining the assessment. Petitioner then timely filed a Form 131 petition on December 12, 2014, with the Board.
2. Petitioner elected to have its appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On November 15, 2016, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:¹
 - Tony L. Hiles, Vice President of Von Incorporated,
 - Julie Newsome, Huntington County Deputy Assessor.

Facts

5. The property under appeal is an 8-foot by 145-foot vacant lot located on Lindley Street in Huntington.
6. The PTABOA determined a total assessment of \$500.

¹ Terri Boone, Huntington County Assessor, was sworn but did not testify.

7. On the Form 131 petition, Petitioner requested a total assessment of \$100.

Record

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

- a. A digital recording of the hearing,
- b. Exhibits:

Petitioner Exhibit 1: 2012 property record card (“PRC”),
Petitioner Exhibit 2: Two exterior photographs of the subject property,
Petitioner Exhibit 3: Chapter 2 – page 47 of the Real Property Assessment Guidelines (“Guidelines”),
Petitioner Exhibit 4: Petitioner’s description of the subject property,
Petitioner Exhibit 5: Value opinion letter prepared by Stephen Ness of Realliving Ness Bros. Real Estate & Auction Co.,
Petitioner Exhibit 6: Value opinion email prepared by Joanie Veach,
Petitioner Exhibit 7: Aerial map for comparable property #35-05-14-100-701.800-005,
Petitioner Exhibit 8: PRC for comparable property #35-05-14-100-701.800-005,

Respondent Exhibit 1: Form 131 petition with attachments,
Respondent Exhibit 2: 2014 PRC,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his property’s assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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). A burden-shifting statute creates two exceptions to that rule.
10. 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).

11. 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,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “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).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value of \$500 went unchanged from 2013 to 2014. Consequently, Petitioner has the burden of proof for 2014.

Summary of the Parties’ Contentions

14. Petitioner’s case:
 - a. Petitioner contends that the subject property was originally assessed at \$900 in 2012. As the result of an appeal, that value was eventually reduced to \$500. Petitioner contends that the assessed value has remained at \$500 through 2014. However, Petitioner claims the 2014 assessment is still too high. *Hiles testimony; Pet’r Ex. 1.*
 - b. Petitioner argues the 8-foot strip of land is unbuildable. It lacks a driveway and public utilities, and also suffers from extreme elevation problems. He claims the DLGF Guidelines describe these issues as being eligible for an influence factor being applied to the land. *Hiles testimony; Pet’r Ex. 2-4.*
 - c. Petitioner hired both a realtor and a broker to value the subject property. First, Stephen Ness with Realliving Ness Bros. Real Estate & Auction Co., estimated the value on November 21, 2013, at \$300. Mr. Ness indicated the subject property adjoined another property owned by Petitioner and that it has “little to no value.” *Hiles testimony; Pet’r Ex. 5.*

- d. Next, Joanie Veach, a real estate broker, estimated the value of the subject property using comparable properties that sold in 2011. Ms. Veach indicated the 8-foot strip of land was purchased to prevent an “encroachment” built on an adjoining property. She concluded on November 21, 2013, that the property was worth \$200. *Hiles testimony; Pet’r Ex. 6.*
- e. Petitioner presented a comparable property to demonstrate the subject property’s assessment is too high. The comparable property is located on Swan Street, roughly a block from the subject property. It is a 10-foot by 134-foot flat usable lot assessed with a 50% negative influence factor. In 2012 this property was assessed for \$600. *Hiles testimony; Pet’r Ex. 7-8.*

15. Respondent’s case:

- a. The subject property is receiving a negative 50% influence factor to account for the lack of utilities. Respondent believes the subject property is valued fair and equitably for 2014. Respondent argues that Petitioner failed to offer any evidence to support a lower value. *Newsome testimony; Resp’t Ex. 2.*

Analysis

16. Petitioner failed to make a prima facie case for reducing the 2014 assessment. The Board reached this decision for the following reasons:

- a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance’s (“DLGF”) rules. The DLGF’s 2011 Real Property Assessment Manual defines true tax value as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property’s market value-in-use as of 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2014 assessments, the valuation date was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. Petitioner offered photographs of the property under appeal to establish that the lot has elevation problems, has no driveway, and lacks public utilities. Petitioner also claimed that, due to these factors, the property is unbuildable. But showing that a parcel may have elevation problems, no utilities, or is unbuildable, is not enough to establish that an assessment is in error. While these factors are likely detrimental to the subject property's value, they are not determinative in and of themselves.
- d. Petitioner's contention that the land value should receive an additional negative influence factor because the lot is hindered by its size is not supported by sufficient evidence. The Board notes that the lot is merely a small part of an adjoining property owned by Petitioner. While the lot may be perceived to be negatively impacted by its size, there is no evidence that is affected by additional negative influences.
- e. Petitioner did attempt to offer some sales comparison evidence. Specifically, he offered two written opinions of value from a realtor and a broker.
- f. To effectively use any kind of comparison approach to value a property, however, one must establish that the properties are truly comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470. Petitioner is "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Id.* At 471.
- g. Petitioner ultimately failed to offer the type of evidence contemplated by *Long*. No information was provided regarding purportedly comparable properties or what, if any, adjustments were made for differences between the comparable properties and the subject property.
- h. Furthermore, nothing in the record indicates that the realtor's or broker's opinions of value were prepared in accordance with Uniform Standards of Professional Appraisal Practice ("USPAP") or followed generally accepted appraisal principles. Additionally, the opinions of value were dated November 21, 2013, and neither the realtor nor broker offered an explanation to relate their opinions of value to the March 1, 2014, valuation date. *See Whitley Products, Inc.* 704 N.E.2d at 1113, 1119 (explaining that unsupported conclusory statements are not

probative evidence). Accordingly, Petitioner's exhibits do not constitute probative evidence of what the 2014 assessment should be.

- i. Petitioner also relied on another assessment to prove the subject property was over-assessed. 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).
- j. The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion County Assessor*, 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 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).
- k. While Petitioner introduced a PRC and an aerial map for a purportedly comparable property, he failed to offer meaningful testimony relating the property's specific features and characteristics to the subject property. In fact, Petitioner mainly argues that the purportedly comparable property is a 10-foot strip of usable land, while the subject property is an 8-foot strip of unusable land. Again, the type of analysis and related adjustments required for a probative comparison are lacking. Furthermore, it is up to the Petitioner to prove the current assessment is incorrect and specifically what the correct assessment should be. See *Meridian towers East & West*, 805 N.E.2d at 478. Thus, Petitioner's presentation of a comparable assessment lacks probative value.
- l. Consequently, Petitioner failed to make a prima facie case for reducing the 2014 assessment. Where a petitioner has not supported its 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

17. Petitioner failed to make a prima facie case for reducing the 2014 assessment and the Board finds for the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2014 assessed value should not be changed.

ISSUED: February 13, 2017

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 after 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>>.