

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

Petition: 45-023-13-1-4-20033-15
Petitioner: 3H Holding LLC
Respondent: Lake County Assessor
Parcel: 45-03-07-301-007.000-023
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. 3H Holding LLC (“Petitioner”) initiated its assessment appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its notice of final determination on February 11, 2015.
2. Petitioner filed its appeal with the Board on March 5, 2015, electing to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held a hearing on January 11, 2016. Neither the ALJ nor the Board inspected the property.
4. Dr. Vijay Patel, member and Secretary of 3H Holding LLC, represented Petitioner. Robert Metz, Lake County Hearing Officer, represented Respondent. Both were sworn and testified.

Facts

5. The subject property is a medical building located at 2143 Calumet Avenue in Hammond.

The total assessed value for 2012 was \$550,000. The total assessed value for 2013 was \$545,700. Petitioner requested a total assessed value for 2013 of \$400,000.

Record

6. The official record contains the following:
 - a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A:	Closing statement for a comparable property
Petitioner Exhibit B:	Listing agreement for 2230 Indianapolis Boulevard
Petitioner Exhibit C:	Settlement agreement for the subject property
Respondent Exhibit A:	Form 113 for the subject property as of March 1, 2010
Board Exhibit A:	Form 131 petition with attachments
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

Burden

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the 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.
8. 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).
9. 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 Ind. Code § 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).
10. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

11. Because the assessed value decreased from 2012 to 2013, Petitioner had the burden of proving the 2013 assessment was incorrect.

Summary of Parties' Contentions

12. Petitioner's case:
 - a. Petitioner purchased the subject property on December 6, 2013 for \$461,111 at a sheriff's sale. That amount included taxes in escrow of \$61,111 that the seller refunded. *Patel testimony; Pet'r Ex. C.*
 - b. Petitioner contends the assessed value is excessive based on the purchase price and in comparison to two purportedly comparable properties. *Patel testimony; Pet'r Exs. A, B, and C.*
 - c. The first purportedly comparable property is a vacant lot located at 2248-60 New York Avenue in Hammond. Petitioner contends this property is in a superior location to the subject property. He presented a closing statement showing the property sold for \$100,000 in January of 2013. *Patel testimony; Pet'r Ex. A.*
 - d. The second purportedly comparable property is located at 2230 Indianapolis Boulevard in Hammond. Petitioner contends this property is larger than the subject property and also in a superior location. He presented a listing agreement dated December 9, 2012, showing a price of \$475,000. Petitioner contends that no one has made an offer to purchase the property. *Patel testimony; Pet'r Ex. B.*
 - e. Petitioner also contends that the current owner of the subject property is selling it for \$275,000. That sale has not been finalized and he was unable to provide a closing statement. *Patel testimony.*
13. Respondent's case:
 - a. Petitioner made no reference to any similarities or differences between the subject property and the purportedly comparable land sale. He claims the property is in a superior location but did not submit any supporting traffic data. *Metz testimony.*
 - b. The listing agreement for the purportedly similar medical building contains no data that can be analyzed. Petitioner claims the property consists of 11,000 square feet. However, the condition of the property is unknown as are the terms of the contract. *Metz testimony.*
 - c. In 2013, the value was reduced from \$550,000 to \$545,700. It is unclear what sort of depreciation might have occurred that would cause Petitioner to request a value of \$400,000. *Metz testimony; Resp't Ex. A.*

ANALYSIS

14. Real property is assessed based on its "true tax value," which means "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); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
15. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject 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 Twp. Assessor*, 821 N.E.2d 466 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
16. Dr. Patel presented information about two purportedly comparable properties. He contends the first is a vacant lot that is larger than the subject property and is situated in a superior location. He presented a closing statement showing the lot sold for \$100,000 in 2013.
17. Dr. Patel testified that the second property is a similar medical building, but it is larger than the subject property and is in a superior location. He presented a listing agreement dated December 9, 2012 showing a price of \$475,000.
18. In presenting this information, Petitioner is attempting to use a comparison approach to establish market value-in-use. In order to effectively do so, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" do not constitute probative evidence. *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.*
19. With regard to the sale of the vacant lot, Petitioner presented no evidence to show that it was comparable to the subject property. With regard to the listing of the purportedly comparable medical building, Petitioner similarly failed to provide sufficient evidence

such as age, condition, or traffic data. Because Petitioner's analysis falls short of that contemplated by *Long*, it is not probative in showing that the assessment is incorrect.

20. Petitioner also presented a settlement agreement that obligated him to purchase the subject property at the December 6, 2013 sheriff's sale. The purchase price was \$400,000 for the property and \$61,111 for outstanding tax liabilities. The seller would reimburse Petitioner for the tax amount.
21. The terms of the settlement agreement indicate that Indiana Investors LLC ("Indiana Investors") held a loan secured by the subject property and foreclosed on the property. Under the agreement, Dr. Patel was to take all actions to place a bid on the property and Indiana Investors would not bid its judgment. If Dr. Patel was successful in his bid, Indiana Investors would reimburse the tax amount and release Dr. Patel from all claims relating to the lawsuit.
22. The 2011 Real Property Assessment Manual defines market value as:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and the seller each acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress.

MANUAL at 5-6.

23. The settlement agreement does not represent an arm's-length transaction. The property was not exposed in a competitive market. Also, the sale price is not simply a payment for real estate. It also includes a release of liability among other items. Furthermore, there is nothing to indicate how the parties determined the value of the property. Therefore, the sale of the property is not probative evidence of its market value-in-use as of the assessment date.
24. Petitioner failed to make a prima facie case that the assessment was incorrect for 2013. 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. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

Petitioner failed to establish a prima facie case. In accordance with these above findings and conclusions, the Board finds for the Respondent and the 2013 assessment will not be changed.

ISSUED: April 12, 2016

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>.