

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

Petition No.: 18-004-09-1-5-00001
Petitioners: Charles W. and Linda Lou Davis
Respondent: Delaware County Assessor
Parcel No.: 18-08-28-108-009.000-004
Assessment Year: 2009

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

Procedural History

1. On June 10, 2010, Charles W. and Linda Lou Davis filed a Form 130 petition contesting the subject parcel’s March 1, 2009 assessment. On August 11, 2011, the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Davises the relief they had requested.
2. The Davises then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On December 4, 2012, the Board held a hearing through its designated administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) Charles W. Davis
 - b) Kelly Hisle, Deputy Delaware County Assessor

Facts

5. The subject parcel is an unimproved 153’ x 144’ parcel located on North Woods Street, in Muncie, Indiana.
6. Neither the Board nor the ALJ inspected the parcel.
7. For the March 1, 2009 assessment, the PTABOA determined the assessed value of the subject parcel to be \$4,500.
8. On their Form 131 petition, the Davises requested an assessed value of \$1,500.

Summary of Parties' Contentions

9. The Davises' evidence and contentions:
- a) The subject parcel's assessment is too high. The Davises bought the parcel, which consists of three unimproved adjoining lots located directly behind their home, 53 years ago to use as a play area for their children and future grandchildren. The parcel's taxes were reasonable until about five years ago, but now they are excessive. *Davis testimony.*
 - b) The subject parcel is not worth nearly \$4,500 because it cannot be built on. According to an official at the Delaware County Health Department, landowners must have at least five acres to install a septic system. Although the City of Muncie plans to install public sewage in the subject parcel's neighborhood, that will raise sewage bills more than \$88 a month and will hurt property values. Neighborhood values are declining anyway; there are at least ten empty homes due to repossessions and people moving out. The value of the Davises' home has dropped by 50%. *Davis testimony.*
 - c) The Assessor must agree that the subject parcel was over assessed because she lowered the parcel's assessment from \$4,500 to \$4,000 for 2012. The Davises would gladly sell the subject parcel for \$4,000, and it is probably worth no more than \$2,000. *Davis testimony.*
 - d) Although the Assessor pointed to comparable sales, a property's selling price is not necessarily the same as its value; if people want a property badly enough they will buy it. Indeed, the buyers from one of the Assessor's comparable sales were adjacent landowners who wanted to increase their property's size. *Davis testimony.*
10. The Assessor's evidence and contentions:
- a) The subject parcel's \$4,500 assessment is reasonable, and it is supported by sales of comparable properties from the same neighborhood. Those sales were from the timeframe prescribed by Department of Local Government Finance's guidelines for annual adjustments and ratio studies. *Hisle testimony.*
 - b) The subject parcel contains 22,032 square feet, or approximately .5 acres. Fred Scheidenberger bought the first comparable property—a platted .34-acre lot—for \$13,500. While that parcel is .16 acres smaller than the subject parcel, it sold for more than twice the subject parcel's assessment. Joshua and Melinda Coleman bought the other comparable property—a platted .18-acre lot—for \$4,500. That is the same as the subject parcel's assessment, although the Coleman's lot is less than half the subject parcel's size. *Hisle testimony; Resp't Exs. 2-6.*
 - c) The Assessor disputes Mr. Davis's claim that lots must be at least five acres to support a septic system. The Davises live in an area of small platted residential lots that all have septic systems. *Hisle testimony.*

- d) Finally, the fact that the Assessor lowered the subject parcel's 2012 assessment to \$4,000 has nothing to do with March 1, 2009 assessment that is under appeal. *Hisle argument.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:¹

Respondent Exhibit 1:	Subject property record card
Respondent Exhibit 2:	Property record card for the Scheidenberger parcel
Respondent Exhibit 3:	CAMA ² sales disclosure file for the Scheidenberger parcel
Respondent Exhibit 4:	Property record card for the Coleman parcel
Respondent Exhibit 5:	CAMA sales disclosure file for the Coleman parcel
Respondent Exhibit 6:	Map showing the location of the subject parcel and the Coleman parcel
Board Exhibit A:	Form 131 petition
Board Exhibit B:	Hearing notice
Board Exhibit C:	Hearing sign-in sheet

- d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*,

¹ The Davises did not offer any exhibits.

² "CAMA" is an acronym that stands for "Computer Assisted Mass Appraisal."

802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board...through every element of the analysis”).

14. If the taxpayer makes a prima facie case, the burden shifts to the assessor to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

15. The Davises did not make a prima facie case for reducing the subject parcel’s assessment. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 5 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party’s evidence in a tax appeal must therefore be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b) Here, the Davises offered none of the types of evidence that the Manual contemplates. Instead, Mr. Davis claimed that the subject parcel was assessed too high in light of the facts that it is too small for a septic system and therefore cannot be built upon, and that neighborhood property values were decreasing.
 - c) Regarding the first claim, Mr. Davis did not offer a copy of any ordinance or regulation restricting the installation of septic systems to parcels containing at least five acres. He instead pointed to a conversation with an unidentified employee of the Delaware County Health Department. Regardless, while such a restriction might affect the subject parcel’s value, the restriction, by itself, does little to prove a particular value or range of values. To make a prima case for reducing the subject parcel’s assessment, the Davises needed to offer probative evidence as to what a more accurate valuation would be.
 - d) The same is true for Mr. Davis’s testimony about the empty homes in the Davises’ neighborhood. While that state of affairs likely affects property values, Mr. Davis did not offer any probative evidence to quantify that effect or otherwise to show a value or range of values for the subject parcel.

- e) Because the Davises did not offer probative evidence to show the subject parcel's market value-in-use, they failed to make a prima facie case for reducing the parcel's assessment.

Conclusion

16. The Davises failed to make a prima facie case for reducing the subject parcel's assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review affirms the subject parcel's March 1, 2009 assessment.

ISSUED: March 4, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.