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

Petition: **60-022-13-1-5-00001**
Petitioners: **Louis and Barbara Drozda**
Respondent: **Owen County Assessor**
Parcel: **60-11-16-100-020.370-022**
Assessment Year: **2013**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. On August 12, 2013, Louis and Barbara Drozda ("Petitioners") appealed their 2013 assessment. Alleging that the Owen County Property Tax Assessment Board of Appeals ("PTABOA") failed to hold a hearing within 180 days, as required by Ind. Code § 6-1.1-15-1(k), the Petitioners filed a Form 131 petition directly with the Board on March 24, 2014. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed).[1] They elected to have their appeal heard under our small claims procedures.

2. On June 9, 2015, our designated administrative law judge, Andrew Howell, held a hearing. Neither he nor the Board inspected the property.

3. Louis Drozda, Suzanne Simmerman, and Cindy Lawn were sworn as witnesses. Ms. Simmerman and Ms. Lawn are deputy assessors.

Facts

4. The property under appeal consists of a single-family home and outbuilding on 7.561 acres located at 744 Chapman Road in Spencer.

[1] On January 29, 2014, the Assessor sent Mr. Drozda a letter notifying him that the PTABOA had scheduled a hearing on the Petitioners' appeal for March 5, 2014. Mr. Drozda responded with a letter informing the Assessor that the maximum time to hold a hearing would elapse on February 9, 2014, and that he intended to appeal to the Board. The PTABOA held the hearing, and the Petitioners did not appear. They filed their Form 131 petition with the Board less than three weeks later. On May 2, 2014, the PTABOA issued its Form 115 determination upholding the assessment. *Resp't Exs. 8-10*. There was no change in the assessment by the PTABOA and the board reviews the appeal de novo accordingly, it makes no practical difference whether the Petitioners are appealing from the Assessor's original assessment or the PTABOA's determination. We therefore do not address whether the Petitioners' appeal to us was premature, or conversely, whether the PTABOA lost jurisdiction to issue a determination.

5. The Assessor made the following assessment:

Land: $30,000 Improvements: $249,700 Total: $279,700.

6. The Petitioners requested the following assessment:

Land: $30,000 Improvements: $190,000 Total: $220,000.

Record

7. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits: [2]

Petitioners' Exhibit 1:	Appeal Statement and History Summary[3]
Petitioners' Exhibit 2:	2013 appraisal prepared by Teresa Terrell
Petitioners' Exhibit 3:	2013 property record card ("PRC"), Form 11 notice of assessment, and tax bill for the subject property
Petitioners' Exhibit 4:	*McCartin v. Clark County Ass'r,* pet. no.10-010-08-1-5-00005 (IBTR)
Petitioners' Exhibit 5:	Documents relating to classified forest program
Petitioners' Exhibit 6:	Restrictions, Reservations, and Protective Covenants and map
Petitioners' Exhibit 7:	Table of vacant land sales
Petitioners' Exhibit 9:	April 22, 2011 appraisal prepared by Charles Mowery
Petitioners' Exhibit 10:	December 12, 2011 appraisal prepared by Russell J. Stanger
Petitioners' Exhibit 11:	March 1, 2012 appraisal prepared by Richard Figg
Petitioners' Exhibit 12:	March 1, 2014 appraisal prepared by Teresa Terrell
Petitioners' Exhibit 13:	Form 130, Form 115, Notice of PTABOA hearing, letter from Mr. Drozda to the Assessor
Petitioners' Exhibit 14:	Form 131 petition
Petitioners' Exhibit 15:	Tax bills for 2010 through 2014
Petitioners' Exhibit 16:	PRCs for the subject property 2009-2014
Respondent's Exhibit 1:	Form 11 for 2013

[2] The Petitioners did not submit an Exhibit 8. The Assessor did not submit an Exhibit 6.

[3] Following the hearing, Mr. Drozda left the ALJ a voicemail message saying he wanted to correct an error in one of his exhibits. The ALJ sent a letter to both parties indicating we would accept the corrected version if the Assessor consented and the corrected exhibit was filed by June 26, 2015. On June 26, 2015, the Assessor sent an e-mail to the ALJ attaching a letter in which he consented to the corrected exhibit together with the corrected exhibit. The ALJ responded by e-mail copied to both parties acknowledging receipt. We have marked that document as Petitioners' Corrected Exhibit 1.

Respondent's Exhibit 2: 2013 PRC for the subject property
Respondent's Exhibit 3: 2012 PRC for the subject property
Respondent's Exhibit 4: Letter requesting preliminary conference
Respondent's Exhibit 5: Form 130 with attachments
Respondent's Exhibit 7: Form 134
Respondent's Exhibit 8: Notice of PTABOA hearing
Respondent's Exhibit 9: Letter from Mr. Drozda to the Assessor
Respondent's Exhibit 10: Form 115
Respondent's Exhibit 11: Photographs of the subject property
Respondent's Exhibit 12: Sales disclosure form for three parcels, including the subject property
Respondent's Exhibit 13: Bloomington Multiple Listing Service (MLS) information for the subject property
Respondent's Exhibit 14: MIBOR MLS information for the subject property
Respondent's Exhibit 15: Settlement Statement for the subject property

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: June 16, 2015 letter from ALJ
Board Exhibit E: June 26, 2015 letter from Assessor

c. These Findings and Conclusions.

Objections

8. The Assessor objected to Petitioners' Exhibits 1 and 7 because they failed to exchange those documents prior to the hearing. The Assessor's representative admitted she did not request them.

9. We overrule the objection. Our pre-hearing exchange rule for small claims requires parties to provide copies of their documentary evidence in advance of a hearing only if requested by another party no later than 10 business days before the hearing. 52 IAC 3-1-5(d). Because the Assessor did not request the exhibits, he cannot complain about the Petitioners' failure to provide them.

Burden of Proof

10. Generally, a taxpayer challenging an assessment must prove that the assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. First, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. I.C. § 6-1.1-15-17.2 (a) and (b). Second, the assessor also has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following year represents an increase

over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase…" I.C. § 6-1.1-15-17.2 (d).

11. The assessment actually decreased between 2012 and 2013, falling from $290,800 to $279,700. Thus, neither circumstance outlined in Ind. Code § 6-1.1-15-17.2 applies, and the Petitioners have the burden of proof.

Contentions

12. Summary of the Petitioners' case:

    a. On May 10, 2010, the Petitioners bought 17.24 acres with a home and outbuilding, which Mr. Drozda referred to as a "shop," for $310,000 less an $8,000 first-time homebuyer credit. The property is mature timberland, 16.24 acres of which are in the classified forest program. The subject property, which is part of the larger tract from that sale, consists of the following: 7.5561 acres, 6.5561 acres of which are assessed as classified forest; the home; and the outbuilding. The classified forest is assessed using a negative 100% influence factor. *Drozda testimony; Pet'rs Exs. 1.*

    b. The Assessor revised the assessment based on the property's sale price. But he made two mistakes in doing so. First, he failed to subtract the market value of the portion classified as forest, which led him to attribute too much of the sale price to the improvements. *Drozda testimony; Pet'rs Exs.1, 7.*

    c. Second, he erroneously classified the outbuilding as a residence. Both the subdivision's restrictions against a second residence and the building's actual use belie that classification. Contrary to the Assessor's claims, Mr. Drozda would never have said someone was living in the building, because he had no information on that. The previous owners originally intended to live in the building while they built their house, but Mr. Drozda believes they never actually did so. The Assessor even changed the building's classification for 2014 and adjusted its assessment accordingly. *Drozda testimony*; *Pet'rs Exs. 1, 6.*

    d. The Petitioners also disagree with the Assessor's characterization of the outbuilding as having a basement. It is more like a cellar because it cannot be accessed from inside the building. The Assessor used cost as the basis for assessing the building, but that is only significant for new properties. Where market data is available, cost is irrelevant. The Petitioners offered five appraisals (covering different dates), all of which value the building substantially below its assessment. *Drozda testimony; Pet'rs Exs. 1-2, 9-12.*

    e. Teresa Terrell prepared one of those appraisals. She certified that she complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and she estimated the property's market value at $220,000 as of March 1, 2013. Because the land beyond the one-acre homesite was taxed at a different rate, she valued only the homesite and improvements. *Pet'rs Ex. 2.*

f. Ms. Terrell developed both the cost and sales-comparison approaches but gave the most weight to her conclusions under the sales-comparison approach. In that analysis, she used sales of four comparable properties from rural residential areas in Spencer, and she adjusted each sale price for various ways in which the sold property differed from the subject property. She based her adjustments on paired sales and market demand. *Pet'rs Ex. 2*.

g. One of her adjustments was for the outbuilding, which she described as a 60' x 25' attached garage that included a 20' x 25' finished office space with a bathroom, two bedrooms, and a kitchenette. She explained that it would have been illegal to use the office space for living quarters. In any case, the Petitioners used the space for storage. She estimated the building's contributory value at $12/sq. ft., or $18,000, which she based on competing sales of properties with a similar amenity, such as a pole barn. She viewed typical pole barns as contributing $10/sq. ft. to the property's overall value but adjusted that price upward to account for the outbuilding's better interior finish. *Pet'rs Ex. 2*.

13. Summary of the Assessor's case:

a. Based on information from the property's listings and statements from Mr. Drozda, the Assessor originally classified the outbuilding as a residence. For 2013, he re-classified it as a detached garage with a basement. The level below the building has an outside entrance and concrete floor, so it is properly viewed as a basement assessment purposes. The change reduced the overall assessment from $290,800 to $279,800. *Simmerman testimony*; *Resp't Exs. 2-3, 13-14.*

b. Cost tables are used to assess properties, but they are adjusted to get to market value for each year. The Assessor's records show an adjustment factor for each year in which sales warranted one. *Simmerman testimony*.

c. Although his witnesses did not discuss them, the Assessor offered a sales disclosure form and settlement statement from the Petitioners' purchase of the larger 17.24-acre property in May 2010. *Resp't Exs 12, 15*.

Analysis

14. The Petitioners proved that the assessment should be reduced. We reach this conclusion for the following reasons:

a. Real property in Indiana 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." I.C. § 6-1.1-31-6(c): 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in an assessment appeal must 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 Twp. Ass'r*, 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 accepted appraisal principles. *See Kooshtard Property IV*, 836 N.E.2d at 506; *see also* I.C. § 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 a party offers, it must explain how that 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). Otherwise, the evidence lacks probative value. *See id*. The valuation date for the assessment at issue in this appeal was March 1, 2013. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

c. We begin by observing that the parties do not dispute the assessment for the portion of the property identified as classified forest. According to the 2011 Real Property Assessment Guidelines, that land is entitled to a 100% negative influence factor, and by statute, it must be assessed for general taxation purposes at $1/acre. *See* 2011 GUIDELINES, ch. 2 at 86, 98, 100; I.C. §§ 6-1.1-6-1 and -14. Thus, the classified forest does not affect the overall assessment. The dispute is over the values for the homesite and buildings.

d. To support their requested assessment, the Petitioners offered a USPAP-compliant appraisal prepared by Teresa Terrell, an Indiana certified appraiser. She developed two generally accepted valuation approaches—the sales-comparison and cost approaches—to estimate a value of at $220,000 as of March 1, 2013. Her appraisal makes a prima facie case both for reducing the overall assessment to $220,000 and for assigning $18,000 of that total value to the outbuilding.

d. The Assessor did not attempt to impeach Ms. Terrell's appraisal. He did point to the May 2010 sale where the Petitioners bought the larger 17.24-acre property for $310,000. But he did not explain how the sale price related to the March 1, 2013 valuation date. Nor did he attempt to allocate the portion of the total sale price attributable to the one-acre homesite and improvements. For those reasons, the sale price lacks probative value.

Conclusion

15. Based on Ms. Terrell's appraisal, the Petitioners made a prima facie case for reducing the overall assessment to $220,000, with $18,000 allocated to the outbuilding. The Assessor failed to rebut or impeach the appraisal and the assessment must be changed accordingly.

Final Determination

The 2013 assessment must be changed to $220,000, with $18,000 allocated to the outbuilding.

ISSUED: October 28, 2015

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.