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

Petition: 57-020-16-1-4-00117-17
Petitioner: H&J Legacy Family Ltd., Partnership
Respondent: Noble County Assessor
Parcel: 57-07-32-400-002.000-020
Assessment Year: 2016

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

Procedural History

1. The Petitioner initiated its 2016 assessment appeal with the Noble County Assessor on July 5, 2016.

2. On December 19, 2016, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.

4. The Board issued a notice of hearing on June 29, 2017.

5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on August 3, 2017. He did not inspect the property.

6. Managing General Partner, Gary Uhl, appeared for the Petitioner. Deputy Assessor Deidra D. Schlotterback appeared for the Respondent. Gavin M. Fisher was a witness for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a vacant lot located in the 900 block of West North Street, also known as US 6, in Kendallville.

8. The PTABOA determined a total land assessment of $370,700.

9. The Petitioner requested a total land assessment of $150,500 on its Form 131. At the hearing, the Petitioner's representative requested a total land assessment of $212,500.

Record

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

    a) Form 131 with attachments,

    b) A digital recording of the hearing,

    c) Exhibits:

Petitioner Exhibit 1:	Letter from SES Environmental to Mr. Uhl, dated November 7, 2016,
Petitioner Exhibit 2:	Listings for six properties indicating the appraised value or sales price for each property created by Mr. Uhl dated November 13, 2016,[1]
Petitioner Exhibit 3:	Mr. Uhl's worksheet applying a "50% discount" to Mr. Kruse's value conclusion,
Petitioner Exhibit 4:	Two maps indicating the location and amount of contamination near the subject property.
Respondent Exhibit 1:	2016 subject property record card,
Respondent Exhibit 2:	Aerial photographs of the subject property,
Respondent Exhibit 3:	Appraisal of the subject property completed by John Good, MAI, with an effective date of June 9, 2009,
Respondent Exhibit 4:	Appraisal of the subject property completed by Daniel J. Kruse, Indiana Certified General Appraiser, with an effective date of July 16, 2016.

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated June 29, 2017,
Board Exhibit C:	Hearing sign-in sheet.

    d) These Findings and Conclusions.

Objections

11. The Respondent objected to all of the Petitioner's exhibits on the grounds the Petitioner failed to provide copies of the exhibits prior to the hearing after a request was made. In response, Mr. Uhl acknowledged he received the Respondent's request to provide copies of documentary evidence, but he thought the request only applied to "new evidence." Mr. Uhl went on to testify that he submitted all of aforementioned exhibits at the PTABOA hearing. The Respondent did not dispute the fact that the exhibits were submitted at the PTABOA hearing. The ALJ took the objection under advisement.

[1] According to Mr. Uhl, "appraised value" should have been stated as "assessed value" in Petitioner's exhibit 2 as he "mistermed that wrong." *Uhl testimony.*

12. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). The rules further provide that failure to comply with that requirement "*may* serve as grounds to exclude evidence or testimony that has not been timely provided." 52 IAC 3-1-5(f) (emphasis added).

13. The purpose behind the pre-hearing exchange is to allow parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at a hearing. Here, there is no dispute the Petitioner submitted the evidence in question at the PTABOA hearing. Thus, the Respondent had previously seen the evidence. Further, it should come as no surprise the Petitioner would submit the same evidence at the Board's hearing. Thus, the Respondent is in no way prejudiced by admitting the evidence. Therefore, the Respondent's objection is overruled, and all of the Petitioner's exhibits are admitted.

Contentions

14. Summary of the Petitioner's case:

    a) The property's assessment is too high. The soil and groundwater is contaminated with "petroleum fuel." Contamination levels on most of the property are "well above" the level permitted by Indiana Department of Environmental Management (IDEM) regulations. In order to achieve "unrestricted regulatory closure" for the property, contaminated soil would have to be removed and groundwater remediation would need to be conducted for at least two years. The estimated cost of clean-up ranges from $305,000 to $576,000. *Uhl argument; Pet'r Ex. 1, 4.*

    b) In an effort to prove the property is over-assessed, the Petitioner presented a list of six comparable properties. According to Mr. Uhl, these properties are similar to the subject property in terms of location, condition, and frontage. According to the analysis, Mr. Uhl examined the assessments of the six properties, and if buildings existed on the properties, deducted the value assigned to them. Mr. Uhl also analyzed sale prices for two of the properties, and came to the conclusion that the sales price per acre was "lower" than the subject property's current assessment. *Uhl testimony; Pet'r Ex. 2.*

    c) The appraisals offered by the Respondent are flawed. Both appraisals value the subject property as a "clean site," but both state the presence of contamination would lower the value conclusion. According to the Kruse appraisal, the subject property should be valued at $425,000 "as clean." If the Respondent were to add the current "50% discount for contamination and low income" to this value conclusion, the subject property would be more accurately assessed at $212,500 "basically back where it was at in 2015." *Uhl argument (referencing Resp't Ex. 1, 4); Pet'r Ex. 3.*

15. Summary of the Respondent's case:

a) The subject property is assessed correctly. In an effort to prove this, the Respondent submitted two appraisals of the property. The first appraisal, prepared by John Good, MAI, valued the property at $602,000 as of June 9, 2009. This appraisal, however, includes properties that are not subject to this appeal. The Respondent submitted this appraisal to indicate:

> [T]he owner indicates there is a good chance the subject site may be environmentally contaminated. He indicated that the cost to remediate is estimated to be between $20,000 and $100,000 based upon his experience, but has not gotten (sic) any bids. He also indicated that the site may not need to be cleaned up.

Fisher argument; Resp't Ex. 1, 3.

b) The Respondent also submitted an appraisal completed by Daniel J. Kruse, an Indiana Certified General Appraiser. He prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). Mr. Kruse estimated the property's value at $425,000 as of July 16, 2016. This value conclusion supports the current assessment and "more than accounts for" any loss in value due to contamination. *Fisher argument; Resp't Ex. 4*.

c) The Respondent acknowledges the subject property suffers from some environmental contamination. But there is no indication as to restriction of use or what "may need to transpire." Further, the Petitioner failed to offer any probative evidence correlating the contamination to a "diminution of value" nor did the Petitioner indicate an exact cost to remedy the contamination. *Fisher argument; Resp't Ex. 1, 3.*

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 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, the parties agree the assessed value of the property increased by more than 5% from 2015 to 2016. In fact, the assessment increased from $202,200 in 2015 to $370,700 in 2016. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the burden rests with the Respondent.

Analysis

20. The Respondent failed to make a prima facie case that the 2016 assessment is correct.

    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 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.

    c) In an effort to prove the property is correctly assessed, the Respondent offered a USPAP-compliant appraisal performed by Daniel J. Kruse. Mr. Kruse valued the property at $425,000 as of July 16, 2016. Generally, this would be sufficient for the Respondent to make a prima facie case. But this case presents an unusual circumstance. Specifically, Mr. Kruse stated in both the appraisal's cover letter and in the body of his appraisal that his value estimate is "based on the assumption that there is no soil contamination (and that the) presence of … potentially hazardous materials may affect the value of the property." Mr. Kruse further stated in his appraisal that he "is not qualified to detect such substances."

    d) The Respondent acknowledged that the property "suffers from some environmental contamination." Because Mr. Kruse's conclusion of value was determined under the

assumption that the property is *not* contaminated, this appraisal ultimately lacks probative value.

e) The Respondent also offered an appraisal prepared by John Good, MAI. But as the Respondent admitted, Mr. Good valued the property as of June 9, 2009, nearly seven years prior to the relevant valuation date and Mr. Good valued "properties that are not subject to this appeal." Further, Mr. Goode stated in his cover letter that he estimated a value "assuming the site is environmentally clean." As previously stated, the Respondent admitted the property is contaminated, therefore this appraisal also lacks probative value.

f) Consequently, the Respondent failed to make a prima facie case that the 2016 assessment is correct. Therefore, the Petitioner is entitled to have the assessment reduced to the 2015 level of $202,200. On its Form 131, the Petitioner requested a lower assessment of $150,500. However, at the hearing Mr. Uhl specifically testified the Petitioner was seeking a value of $212,500. Because the Board is not entirely clear which value the Petitioner is seeking, the Board will examine the Petitioner's valuation evidence purporting to establish that the assessment should be lowered to $150,500.

g) The Board finds the Petitioner's evidence insufficient to reduce the assessment below the 2015 level. First, the Petitioner presented a list of purportedly comparable properties examining both sales and assessments. By presenting sales data, the Board infers that the Petitioner intended to use the sales-comparison approach to prove the property's value. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also*, *Long,* 821 N.E.2d 466, 469.

h) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *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.*

i) While Mr. Uhl did compare the properties to some extent, he failed to make any adjustments to account for differences. His analysis only lists the price per acre of each property, and it does not indicate an estimated value for the subject property. Additionally, Mr. Uhl failed to indicate when the sales occurred. For these reasons, the Petitioner's sale-comparison analysis lacks probative value.

j) In this same exhibit, Mr. Uhl also examined the assessments of four purportedly comparable properties. When comparing assessments, a party must both prove comparability and account for any differences between the properties by using generally accepted appraisal practices. Ind. Code § 6-1.1-15-18. The Petitioner's evidence lacks any of that type of analysis. To make a case, the Petitioner was required to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs,* 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

k) Finally, the Petitioner offered a calculation in which Mr. Uhl applied the 50% negative influence factor from the subject property record card to Mr. Kruse's estimation of value. According to this calculation, the 2016 assessment should be $212,500. While the Board defers ruling on the probative weight assigned to this calculation, we will accept it as a concession on behalf of the Petitioner. Therefore, the 2016 assessment must be changed to $212,500.

Conclusion

21. The Respondent had the burden of proving the 2016 assessment is correct. She failed to make a prima facie case, thus the assessment would normally be reduced to the previous year's amount, $202,200. According to the Form 131, the Petitioner sought an even lower assessment, but failed to provide enough probative evidence to support lowering the assessment any further. However, at the hearing the Petitioner's representative conceded that the assessment should be $212,500. The Board will accept the concession and orders the 2016 assessment be changed to $212,500.

Final Determination

In accordance with these findings and conclusions, the 2016 assessment must be changed to $212,500.

ISSUED: October 27, 2017

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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 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>.