

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

Petitions: 84-004-12-1-5-03865
84-004-13-1-5-05657
Petitioners: Jane and Andrew Hadley
Respondent: Vigo County Assessor
Parcel: 84-09-12-455-013.000-004
Assessment Years: 2012 and 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioners filed their appeals with the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) which issued its final determinations on June 26, 2014. Petitioners filed Form 131 petitions with the Board, electing to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
2. John J. Thompson, the Board’s Administrative Law Judge (“ALJ”), held a hearing on February 3, 2016. Neither the ALJ nor the Board inspected the property.
3. Jane Hadley, owner, was sworn as a witness for Petitioners. Michael West, Vigo County Cyclical Reassessment Supervisor, was sworn as a witness for Respondent.

Facts

4. The subject property is a vacant lot located at 3948 Iron Wood Lane in Terre Haute.
5. The PTABOA determined the following values:

Year	Land	Improvements	Total
2012	\$60,200	\$0	\$60,200
2013	\$59,300	\$0	\$59,300

6. On their Form 131 petitions, Petitioners requested a total assessment of \$33,500 for each year at issue.

Record

7. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	Analysis of Idle Creek lot sales,
Respondent Exhibit 1:	Copy of cards from Plat Mapping showing creation of lot,
Respondent Exhibit 2:	2012 property record card (“PRC”) and GIS map,
Respondent Exhibit 3:	50 IAC 2.4-1-1,
Respondent Exhibit 4:	Excerpt from INDIANA REAL PROPERTY ASSESSMENT GUIDELINES (“Guidelines”),
Respondent Exhibit 5:	Residential Neighborhood Valuation Form,
Respondent Exhibit 6:	2012 Land Order for Neighborhood #102522,
Respondent Exhibit 7:	Definitions for Residential Land Classifications,
Respondent Exhibit 8:	Copies of letters from area planning showing availability of water and sewer,
Respondent Exhibit 9:	2012 Trending/Ratio Study approval from the Department of Local Government Finance (“DLGF”),
Respondent Exhibit 10:	2012 trending worksheets for Honey Creek Township,
Respondent Exhibit 11:	2012 PRC showing specific math to achieve 2012 Assessment,
Board Exhibit A:	Form 131 petitions with attachments,
Board Exhibit B:	Notices of Hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

8. 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 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.

9. 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).

10. 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).
11. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
12. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence that suffices to prove the property’s correct assessment, it reverts to the previous year’s value. Ind. Code § 6-1.1-15-17.2(b).
13. The parties agree that the assessed value of the land increased from \$36,800 to \$60,200 between 2011 and 2012. Because that increase is greater than 5%, Respondent has the burden for 2012. The burden for 2013 depends on the resolution of the 2012 appeal and will be addressed in turn.

Summary of Parties’ Contentions

14. Respondent’s case:
 - a. Respondent contends that the subject property is a vacant, residentially-platted homesite lot that was assessed for \$60,200 in 2012. He claims that the property was assessed pursuant to the Guidelines. *Resp’t Exs. 2-4; West testimony.*
 - b. Respondent offered a 2012 land order spreadsheet which purports to show 2012 sales in the neighborhood. Except for two vacant lots, the sales included on the spreadsheet are properties with improvements. For the properties with improvements, the value of the land was abstracted from the total and other factors were applied. Respondent contends that the resulting median base rate is \$146,450 per acre. That base rate was then used to calculate the assessed value for the subject property. *Resp’t Exs. 6 and 11; West testimony.*

- c. Respondent offered a list of different residential land types that his office purportedly used in its analysis. They included developer's discount, residential excess acreage, homesite under-improved, homesite improved, and agricultural. *Resp't Ex. 7; West testimony.*
 - d. Respondent offered a letter from Indiana-American Water Company, Inc. and a letter from the City of Terre Haute, that purportedly indicate both city water and city sewer utilities are available in the subject neighborhood. *Resp't Ex. 7; West testimony.*
 - e. Respondent offered a letter from the DLGF indicating the acceptance of the Vigo County 2012 ratio study. He further offered a workbook that purportedly shows how the ratio study was developed. *Resp't Exs. 9 and 10; West testimony.*
 - f. Respondent finally offered the 2012 PRC showing the math-based formula indicating how he arrived at the assessed value. He contends that because the county used the Guidelines as mandated by the state to develop the assessed value, the assessment is correct and no further action should be taken. *Resp't Ex. 11; West testimony.*
15. Petitioners' case:
- a. Ms. Hadley is a certified public accountant who works with the developer of the subject neighborhood. More specifically, she claims she has worked with him on sales of vacant lots in that neighborhood. *Hadley testimony.*
 - b. Petitioners presented sales data for vacant lots in the neighborhood from 2010 through 2014. Based on those sales, she claims the average sale price for a vacant lot is \$41,181. *Hadley testimony; Pet'r Ex. 1.*
 - c. Ms. Hadley is critical of Respondent's method of abstracting land values from the total assessed values of properties with improvements. She contends that using those values does not result in a realistic comparison to vacant lots similar to the subject property. *Hadley testimony.*
 - d. Petitioners claim that the assessed values are excessive. As a result, they requested a value of \$33,500 for each year at issue. *Hadley testimony; Board Ex. 1.*

Analysis

16. Respondent did not make a prima facie case that the assessments are correct. Petitioner did not make a prima facie case that the assessments should be lower than the 2011 value.
- a. 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.
- b. 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 a 2012 assessment was March 1, 2012, and the valuation date for a 2013 assessment was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Respondent largely relied on the fact that he followed the Guidelines and other assessment regulations. Such evidence has little or no probative weight. As the tax court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *Eckerling*, 841 N.E.2d at 674 (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).
- d. Respondent also cited the DLGF's approval of the Vigo County 2012 ratio study. While the DLGF approved the study, Respondent failed to offer any authority for using a ratio study to prove an individual property's market value-in-use. In fact, the IAAO's Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . .

However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES, Version 17.03, Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

- e. Respondent did offer limited market-based evidence. Specifically, as part of the land order spreadsheet, Respondent offered a list of sales that occurred in the same neighborhood as the subject property. According to Respondent, those sales were used in calculating the subject property's base rate. The Board infers that Respondent is attempting to prove the property's value by using the sales-comparison approach.

- f. In order to use a sales comparison approach as evidence in an assessment appeal, however, the party must first show that the properties being examined are comparable to each other. Conclusory statements that a property is “similar” or “comparable” to another property are not probative evidence. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market value-in-use. *Id*
- g. Here, Respondent did little to compare the properties. Also, despite the fact that the abstracted land values of the properties ranged from \$18,200 to \$127,800, Respondent failed to offer any market-based adjustments for differences between the properties. Accordingly, Respondent’s sales analysis has little probative value.
- h. Consequently, Respondent failed to make a prima facie case that the 2012 assessment is correct. The 2012 assessment must be returned to its prior year’s assessment of \$36,800.
- i. Petitioners, however, requested a value of \$33,500, which is lower than the 2011 assessment. The Board now turns to Petitioners’ evidence.
- j. In an attempt to prove a lower value, Petitioners offered sales data for vacant parcels in the neighborhood. They arrived at an average sale price of \$41,181.33. However, Petitioner also failed to offer sufficient evidence that the properties presented are comparable to each other and failed to provide any analysis as to how relevant differences affect their values. *Id*. Thus, Petitioners failed to provide sufficient probative evidence to reduce the 2012 assessment below its 2011 value.
- k. Because Respondent failed to offer enough probative evidence to show market value-in-use, he failed to make a prima facie case that the 2012 assessment is correct. Therefore, Petitioners are entitled to have that assessment returned to its 2011 level of \$36,800. Petitioners sought an assessment lower than the 2011 value, however, they failed to provide sufficient probative evidence to support lowering it any further. Thus, the 2012 assessment must be reduced to the 2011 value of \$36,800.
- l. Accordingly, the burden of proof remains with Respondent for 2013. For 2013, Respondent offered the same argument and evidence. For the same reasons as discussed above, Respondent failed to present enough probative evidence to make a prima facie case that the 2013 assessment was correct. Therefore, Petitioners are entitled to have that assessment returned to its 2012 level of \$36,800. Petitioners sought an assessment lower than the 2012 value, however, they also offered the same argument and evidence and, for the same reasons as discussed above, failed to provide sufficient probative evidence to support lowering it any further. Thus, the 2013 assessment must be reduced to the 2012 value of \$36,800.

Conclusion

- 17. Respondent had the burden of proving the 2012 assessment was correct, but failed. Petitioners asked for an assessed value lower than that of 2011, but also failed. Thus, the 2012 assessment must be reduced to the 2011 amount. Because Respondent failed to meet his burden for 2012, he also had the burden for 2013, but again failed. Petitioners asked for an assessed value lower than that of 2012, but they too again failed. Thus, the 2013 assessment must be reduced to the 2012 amount.

Final Determination

In accordance with these findings and conclusions, the 2012 and 2013 assessments must be reduced to \$36,800.

ISSUED: July 5, 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>>.