

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

Petition: 35-005-14-1-5-00047
Petitioners: Yvonne C. Hiles & Von, Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-226.700-005
Assessment Year: 2014

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

Procedural History

1. The Petitioners initiated their 2014 assessment appeal with the Huntington County Assessor on August 11, 2014.
2. On October 27, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued the notice of hearing on July 7, 2015.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 13, 2015. She did not inspect the property.
6. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a 60 foot by 132 foot lot, legally described as Gephart's Addition Lot 19, located on 303 Swan Street in Huntington.
8. The PTABOA determined a total assessment of \$5,600 (land \$3,300 and improvements \$2,300).

¹ The letter initiating review at the local level indicates that Yvonne C. Hiles and Von, Inc., each have an "undivided one-half interest" in the subject property.

² Mr. Hiles signed the Form 131 as the Vice-President and Chief Operating Officer of Von, Inc.

9. On their Form 131, the Petitioners requested a total assessment of \$2,000 (land \$1,500 and improvements \$500).

Record

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: First page of the subject property record card,
Petitioners Exhibit 2: Second page of the subject property record card,
Petitioners Exhibit 3: Multiple Listing Service (MLS) “Full Detail Report” for 1834 Sabine Street,
Petitioners Exhibit 4: First page of the sales disclosure for 1834 Sabine Street,
Petitioners Exhibit 5: Third page of the sales disclosure for 1834 Sabine Street,
Petitioners Exhibit 6: First page of the property record card for 561 Buchanan Street,
Petitioners Exhibit 7: Second page of the property record card for 561 Buchanan Street,
Petitioners Exhibit 8: First page of the sales disclosure for 561 Buchanan Street,
Petitioners Exhibit 9: Third page of the sales disclosure for 561 Buchanan Street.

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Photographs of the subject property,
Respondent Exhibit 3: Description, property record card, sales disclosure and aerial photograph for 538 Lindley Street,
Respondent Exhibit 4: “Assessment comparison” and property record cards for Condit Street, 427 Center Street, and Brawley Street,
Respondent Exhibit 5: *Yvonne C. Hiles & Von Inc v. Huntington Co. Ass’r, Ind. Bd. of Tax Rev. Pet. Nos. 35-005-12-1-5-00237 and 35-005-13-1-5-00097* (April 13, 2015).

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Notice of Hearing, dated July 7, 2015,
Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners’ case:

- a) The property's assessment is too high. The only improvement located on the property is an "old garage built in 1900." *Hiles argument; Pet'rs Ex. 1, 2.*
- b) The Petitioners presented two sales to support their contention. The first sale was for a property located at 1834 Sabine Street. This property sold for \$6,100 on September 20, 2013, and it "looks like a legitimate sale." The lot size for this property is comparable measuring 70 feet by 116 feet. A two-story home and small shed are located on this property. Accordingly, because this property includes a home "it would be worth more than one that only contains a garage." *Hiles argument; Pet'rs Ex. 3, 4, 5.*
- c) The second property, located at 561 Buchanan Street sold on November 18, 2013, for \$7,500. Subsequent to this sale, it sold again for \$12,900. The lot size is "somewhat comparable" to the subject property, but it does include a home. This property was assessed for \$46,700 in 2013. *Hiles argument; Pet'rs Ex. 6, 7, 8, 9.*
- d) Unfortunately because of the lack of comparable properties, it was necessary to utilize properties "including homes that are far superior in value." *Hiles argument.*

12. Summary of the Respondent's case:

- a) This property was the subject of a prior appeal before the Board. According to the Board's final determination for the 2013 assessment year, the Respondent was instructed to lower the 2013 assessment to \$5,300. In the process of lowering the 2013 assessment, the Respondent "proactively" lowered the 2014 assessment from \$5,600 to \$5,300. *Newsome testimony; Resp't Ex. 5.*

Burden of Proof

- 13. 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 recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 14. 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).
- 15. 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.

16. Here, neither the Petitioners nor the Respondent offered any argument regarding the burden of proof. Thus, the ALJ made a preliminary determination that the burden should remain with the Petitioners. However, after an examination of the record, the Board finds that the assessment of record increased from \$5,300 to \$5,600.³ That is increase of more than 5%. Thus, the Board overrules the ALJ’s preliminary determination and finds that according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the burden is with the Respondent to prove the subject property is assessed correctly.

Analysis

17. The Respondent did not make a prima facie case that the 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 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Respondent made no attempt to argue that the *current* assessment of \$5,600 is correct. Instead, she admittedly attempted to lower the property’s

³ As explained above, Ms. Newsome testified that the Respondent “proactively” lowered the property’s assessment to \$5,300 based on a prior Board determination. The Board’s 2013 determination is dated April 13, 2015. However, the Petitioners filed their 2014 appeal with the Board on December 12, 2014. Accordingly, the Board’s 2013 determination was issued after the Petitioners filed their 2014 appeal. *Bd. Ex. A*. Although parties can agree to settle an appeal while it is pending before the Board, an assessor loses jurisdiction to unilaterally change an assessment once a Form 131 has been filed with the Board. Thus, the assessment of record is the PTABOA’s October 27, 2014, determination of \$5,600.

assessment to the 2013 value of \$5,300. Because the Respondent failed to make any argument that the property is accurately assessed, she failed to make a prima facie case. Thus, the Board finds that the assessment must revert back to the prior year's assessed value of \$5,300, the same amount the Respondent allegedly lowered the assessment to. Ind. Code § 6-1.1-15-17.2(b).

- d) The Petitioners, however, requested a total value of \$2,000, which is lower than the total 2013 assessment. The Board now turns to the Petitioners' evidence.
- e) To support their contention, they provided two MLS reports for properties located in Huntington. The Petitioners were essentially relying on a sales-comparison approach to establish that the assessment should be lowered. 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.
- f) To effectively use the sales-comparison 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 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.*
- g) Here, the type of analysis required and the related adjustments are lacking from the Petitioners' evidence. The Petitioners failed to make adjustments to the purportedly comparable properties. Further, they failed to yield an indicated value. Thus, their evidence lacks probative value.
- h) The Petitioners' also testified as to the assessed value of one of their purportedly comparable properties. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).
- i) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. *Id.*; *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their

property or how relevant differences affected value). Again, the Petitioners failed to provide any of the required analysis, thus their evidence lacks probative value.

- j) Because the Respondent failed to offer enough probative evidence to show the market value-in-use, she failed to make a prima facie case that the 2014 assessment is correct. Therefore, the Petitioners are entitled to have that assessment returned to its 2013 level of \$5,300. The Petitioner sought an assessment lower than the previous year's assessment, however they failed to provide sufficient probative evidence to support lowering the assessment any further. Thus, the 2014 assessment must be reduced to \$5,300.

Conclusion

- 18. The Respondent had the burden of proving the 2014 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioners sought an assessment lower than the 2013 value, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2014 assessment be reduced to the 2013 amount of \$5,300.

Final Determination

In accordance with these findings and conclusions, the 2014 assessment shall be reduced to \$5,300.

ISSUED: November 12, 2015

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 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>>.