

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

Petition: 15-007-11-1-5-00579
Petitioners: Tom and Laura Crone Huismann
Respondent: Dearborn County Assessor
Parcel: 15-01-24-101-008.000-007
Assessment Year: 2011

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

Procedural History

1. The Petitioners filed a Form 130 appeal for their 2011 assessment on November 14, 2011.
2. The Property Tax Assessment Board of Appeals (PTABOA) refused to consider changing the assessment because the appeal was untimely. It mailed the Notification of Final Assessment Determination (Form 115) on December 27, 2011.
3. The Petitioners filed a Form 131 Petition with the Board on January 17, 2012. They elected the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the administrative hearing on November 27, 2012. He did not inspect the property.
5. Petitioner Laura Crone Huismann appeared pro se. County Attorney Andrew D. Baudendistel represented the Respondent. County Assessor Gary R. Hensley, PTABOA President Mark J. Neff, and Ms. Huismann were sworn as witnesses.

Facts

6. The property is a single family residence located at 200 West Harrison Avenue in West Harrison.
7. The PTABOA determined the assessment is \$7,600 for land and \$68,400 for improvements (total \$76,000).
8. The Petitioners contended the assessment should be \$5,000 for land and \$48,000 for improvements (total \$53,000).

Objection

9. The Respondent objected to Petitioners' Exhibits A through E because they contain data from irrelevant dates for a 2011 assessment appeal. This point goes to the weight of the evidence more than its admissibility. Accordingly, the objection is overruled.

Contentions

10. Summary of the Petitioners' case:
 - a. The subject property is over-assessed because the values in this neighborhood have gone down. No improvements have been made to the property. *Huismann testimony*.
 - b. A property at 202 Harrison Avenue West (next door to the subject property) sold for \$28,000. *Huismann testimony; Pet'r Ex. A*.
 - c. The property at 103 Bowles Avenue (two doors away) was assessed at \$22,000. *Huismann testimony; Pet'r Ex. B*.
 - d. The property at 101 Bowles Avenue (next door to the subject property) is assessed at \$62,700. *Huismann testimony; Pet'r Ex. C*.
 - e. The property at 26359 S. State Street is assessed at \$62,700. It is three blocks from the subject property. *Huismann testimony; Pet'r Ex. D*.
 - f. The property at 208 West Broadway Avenue is larger than the Huismann house and it has a garage, a feature that the subject property does not have. That property is assessed for \$84,900. *Huismann testimony; Pet'r Ex. E*.
 - g. "I know I missed the date." Had the Petitioners been aware the PTABOA would deny the appeal based on a late filing, they would have waited and appealed tax year 2012. *Huismann testimony*.
11. Summary of the Respondent's case:
 - a. The Form 11 notices of the 2011 assessments were mailed on September 14, 2011. Indiana statutes grant taxpayers 45 days to file a Form 130 to initiate an appeal. The deadline to file an appeal was approximately October 30. The Form 11 included information on the 45-day deadline. Additionally, county officials placed a deadline notice in the local newspaper and posted notice in the courthouse. *Hensley testimony; Respondent Exhibits 2-4*.
 - b. The Petitioners' Form 130 Petition for 2011 was untimely. *Hensley testimony; Neff testimony*.

- c. The Petitioners filed Form 130 on November 14, 2011. The PTABOA refused to act on the appeal because the filing was untimely. On December 27, 2011, it issued a Form 115 Notification of Final Assessment Determination denying the appeal based on the late filing. The PTABOA advised the taxpayers to file a Form 131 appeal to the IBTR. *Neff testimony.*
- d. The Board ruled on untimely filing in *115 Land Trust et. al, vs. St. Joseph County Assessor. Baudendistel argument; Respondent Exhibit 1.*
- e. Dearborn County follows state standards and contracts with Tyler Technologies to provide studies of sales in over 200 neighborhoods. Ratio studies of valid sales from the time period 14 months prior to each March 1 assessment date are prepared. Trending of assessments is based on those studies. Based on the annual trending, the \$76,000 assessment for the subject property did not change from 2010. *Hensley testimony; Respondent Exhibit 5.*
- f. The data sheets submitted by the Petitioners seem to be based on 2012 sales and assessments. Therefore, they are inappropriate for the 2011 assessment. *Hensley testimony.*

Record

- 12. The official record contains the following:
 - a. The Petition,
 - b. The digital recording of the hearing,
 - c. Petitioner Exhibit A – Assessment, tax and sales data on 202 Harrison Ave.,
Petitioner Exhibit B – Assessment, tax and sales data on 103 Bowles Ave.,
Petitioner Exhibit C – Assessment, tax and sales data on 101 Bowles Ave.,
Petitioner Exhibit D – Assessment, tax and sales data on 26359 S. State St.,
Petitioner Exhibit E – Assessment, tax and sales data on 208 W. Broadway St.,
 - d. Respondent Exhibit 1 – IBTR case *115 Land Trust vs. St. Joseph Co. Assessor*,
Respondent Exhibit 2 – Form 11, notice of assessment for the subject property,
Respondent Exhibit 3 – Notice,
Respondent Exhibit 4 – Notice,
Respondent Exhibit 5 – Property record card for the subject property,
 - e. Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
 - f. These Findings and Conclusions.

Analysis

13. The legislature created specific appeal procedures that allow a taxpayer to challenge an assessment of his property. If a taxpayer chooses to exercise his appeal rights, those procedures must be followed. The requirements include initiating an appeal with a timely written notice. *See Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 717-718 (Ind. Tax Ct. 1995); *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 759-760 (Ind. Tax Ct. 1993).¹ Failure to initiate the appeal process within the time allowed by statute makes unavailable the relief that might otherwise have been obtained. *Id.*
14. The relevant facts concerning the initiation of the appeals process are undisputed. The Notice of Assessment of Land and Structures (Form 11) to the Petitioners is dated September 14, 2011. A taxpayer who disagrees with the assessed value on that document can begin the appeal process by filing a written notice within 45 days. Ind. Code § 6-1.1-15-1(c). These appeal instructions were included on the Form 11 and clearly provided information about the 45-day filing requirement. September 14 to October 29 would have been 45 days. The Petitioners, however, did not file any document initiating this appeal until November 14, 2011, when they filed a Form 130 Petition. This filing was approximately two weeks later than the time allowed by statute. The Petitioners acknowledged they “missed the date.”
15. The failure to file a written document initiating the appeal process within the time allowed by Ind. Code § 6-1.1-15-1(c) was a fatal mistake. It made the Ind. Code § 6-1.1-15-3 review process to the Indiana Board unavailable. *See Williams Industries*, 648 N.E.2d at 717-718; *Reams*, 620 N.E.2d 759-760. The Respondent correctly pointed out that this untimely filing precludes the relief sought by the Petitioners.
16. Even if the Board reached the merits of this appeal, the Petitioners failed to make a prima facie case for changing the assessed 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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. The value established by an assessor's cost approach is merely a starting point. A taxpayer can offer other evidence including actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

¹ At the times pertinent to *Williams Industries* and *Reams*, Ind. Code § 6-1.1-15-1 allowed 30 days for filing a Form 130. Subsequently this statute was amended to allow 45 days.

- b. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required 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 2011 assessment was March 1, 2011. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
 - c. The Petitioners' case relied heavily on the assessed value of nearby properties.
 - d. Pursuant to Indiana Code § 6-1.1-15-18(c), "To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district..." Ind. Code § 6-1.1-15-18. The "determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *Id.*
 - e. The assessed values circled on the Petitioners' exhibits are for the years 2012 and 2013. But the Petitioners offered no explanation to relate the assessed values to March 1, 2011. *Long*, 821 N.E.2d at 471.
 - f. Furthermore, in order to use this argument as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. The Petitioners were responsible for explaining the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Id.* at 471. In this appeal, the Petitioners failed to offer any meaningful comparison of the alleged comparable properties to their own. Accordingly, the other assessments do not help to prove a more accurate assessed value for the subject property. *Long*, 821 N.E.2d at 471.
 - g. A neighboring property sold for \$28,000. The sale occurred on September 18, 2012. The Petitioners failed to explain how the neighboring property is comparable to their own or relate the 2012 sale price to a value as of March 1, 2011. Therefore, this sale does not help to prove a more accurate valuation for the subject property.
17. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Petitioners case must fail because they did not file their initial petition within the 45 days allowed by Ind. Code § 6-1.1-15-1. But even if the time of filing were not a problem, the Petitioners failed to make a prima facie case for any lower assessed value. Therefore, the Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now finds the total assessed value of the property will not be changed.

ISSUED: February 13, 2013

Commissioner, Indiana Board of Tax Review

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- 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>.