

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

Petition: 45-036-14-1-4-20627-15
Petitioners: Joseph F. & Lora Lee Kroslack
Respondent: Lake County Assessor
Parcel: 45-11-24-252-001.000-036
Assessment Year: 2014

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

Procedural History

1. Petitioners appealed their 2014 assessment. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued notice of its determination on December 3, 2015.
2. Petitioners filed their Form 131 petition with the Board, electing to have their appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from the Board’s small claims procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on March 14, 2016. Neither the ALJ nor the Board inspected the property.
4. Lora Kroslack, owner, was sworn as a witness for Petitioners. Robert Metz, Lake County Hearing Officer, and Melody Kikkert, St. John Township Assessor, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant commercial parcel located at 5200 US 30 in Schererville.
6. For 2014, the PTABOA determined the land assessment is \$320,300. Petitioners claim the assessed value should be \$249,400.

Record

7. The official record contains the following:
 - a. A digital recording of the hearing,
 - b. Exhibits:

Petitioner Exhibit A:	Basis for the tax appeal,
Petitioner Exhibit B:	GIS map of 9.10 acre parcel on US 30, Schererville,
Petitioner Exhibit C:	GIS map of 15 acre parcel on US 30, Schererville,
Petitioner Exhibit D:	GIS map of the subject property,
Petitioner Exhibit E:	Tax record for 2299 US 30/Cline Avenue, Schererville (Schererville Shell),
Petitioner Exhibit F:	Tax record for 2299 US 30, Schererville (OMSHREE INC),
Petitioner Exhibit G:	Tax record for 2299 US 30 Cline, Schererville (NH Vegas LLC),
Petitioner Exhibit H:	Tax record for 551-555 US 30, Schererville (Ladd, Eric J. & Patricia J, (LLC),
Petitioner Exhibit I:	Tax record for US 30, Schererville (Lake County Trust 4971),
Petitioner Exhibit J:	Tax record for 5050 US 30, Schererville (Schererville Auto Center),
Petitioner Exhibit K:	Tax record for 5500-5512 US 30, Schererville (Lake County Trust 4868),
Petitioner Exhibit L:	Tax record for 5038 US 30, Schererville (Lakefront Storage Indiana LLC),
Respondent Exhibit 1:	E-mail from Robert Volkmann/Town of Schererville,
Respondent Exhibit 2:	Property record card (“PRC”) for subject property,
Respondent Exhibit 3:	GIS printouts of subject property,
Respondent Exhibit 4:	Sales of commercial land,
Respondent Exhibit 5:	PRCs of comparable sales,
Respondent Exhibit 6:	GIS printouts of comparable sales,
Respondent Exhibit 7:	Assessed values of land for neighboring parcels,
Respondent Exhibit 8:	Active listings of commercial land,
Respondent Exhibit 9:	GIS printouts of active listings,
Respondent Exhibit 10:	Form 115,
Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of Hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Objections

8. Mr. Metz objected to Petitioner Exhibits E, F, G, J, K, and L because the tax records were for personal property and not real estate. He objected to Petitioner Exhibit I because the property was not in the same taxing jurisdiction as the subject property.
9. Mr. Metz's objections go to the weight of the evidence rather than their admissibility. Thus, the Board overrules the objections.

Burden

10. 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.
11. 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).
12. 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).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. 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).

15. There was no change in the assessment between 2013 and 2014 and there is no evidence that the 2013 assessed value was the result of an appeal. Petitioners, therefore, have the burden of proof in this matter.

Summary of Parties' Contentions

16. Petitioners' case:
 - a. Petitioners purchased the subject property as an investment. They contend that the property taxes are now excessive and negate any sign rental income that was initially being generated. Petitioners contend that the property across the street and comparable properties along US 30 are taxed significantly lower. *Kroslack testimony; Pet'r Exs. E, F, J, K, and L.*
 - b. Petitioners contend that the subject property contains a significant portion of unbuildable land. They further contend that the town requires a 60 foot setback at the front of the property, a 30 foot setback at the rear, and 20 foot setbacks on either side. In addition, there is a .60 acre area of unusable land to the west of the property. Petitioners contend that, considering all of the setback requirements, property taxes should be reevaluated because available land on which to build is extremely limited. *Kroslack testimony; Pet'r Ex. A.*
 - c. Petitioners contend that it is difficult to find sales of vacant commercial land along US 30. Respondent has identified various commercial sales, but the sales are not comparable to the subject property. Some sales are in Griffith, Center Township, and Hobart. Petitioners contend that the property on Calumet Avenue in Dyer is distinguishable from the subject property. The property on US 41 in Schererville consists of 19 acres and the market there is significantly different. *Kroslack testimony. Resp't Ex. 4.*
17. Respondent's case:
 - a. Respondent contends that the property meets the minimum acreage requirements. He further contends that the majority of the property is usable and, although the west end of the property is very narrow, it could accommodate parking, drainage, or landscaping. *Metz testimony; Resp't Ex. 1.*
 - b. Respondent has compiled sales of similar commercial properties along US 30 and other commercial areas that are located on highly visible highways. The average sale price is \$5.79 per square foot. He contends that if that value were applied to the subject property, the result would be \$610,952. *Metz testimony; Resp't Ex. 4.*
 - c. Respondent notes that Ms. Kroslack stated that she investigated properties along US 30 and could not find any assessments as high as hers. Properties near the subject property show the assessed values of land along US 30 at an average of \$6.85 per

square foot. Applying this average to Petitioners' property would result in a value of \$721,991. In comparison, the assessed value of the subject property is \$3.04 per square foot. *Metz testimony; Resp't Ex. 7.*

- d. Respondent contends that active listings of commercial properties show the price per square foot to be even higher than corresponding sales. This is an indication of the improved market conditions along US 30. He further contends that Petitioners' tax records reflect mostly personal property and not real estate. He argues that Exhibit H, which describes real estate, shows only the assessed valuation and that the property described in Exhibit I is not in the same taxing jurisdiction as the subject. *Metz testimony; Resp't Ex. 8; Pet'r Exs. F-L.*

ANALYSIS

18. Petitioners failed to establish a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
 - 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 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. The evidence presented by Petitioners lacks probative value. Petitioners made several arguments regarding their taxes, including claims that their taxes were higher than taxes paid by owners of neighboring properties. The Board, however, lacks jurisdiction to hear general claims that a petitioner's taxes are too high or that those taxes are higher than the taxes paid by other property owners. The Board is a creation of the legislature and only has power as conferred by statute. *Whetzel V. Dept of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct.2002) (citing *Matonovich V. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093,1096 (Ind. Tax Ct. 1999)) Ind. Code §

6-1.5-4-1 gives the Board authority to consider appeals concerning assessed valuations, deductions, exemptions, and credits. The Board has no authority to address general disputes over taxes or tax rates.

- d. Petitioners' taxes are based on the assessment. The Board has authority to hear the challenge to that assessment.
- e. Petitioners presented tax records for several properties along US 30. Only two of those records are for real property, while the rest are for personal property. Petitioners failed to establish how the personal property tax records have any relevance to this case. Pursuant to Ind. 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 miles of a boundary of the taxing district. The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices. *Id.*
- f. Petitioners did not provide any information about the sizes of the properties or the proximity to the subject property. They failed to make any meaningful comparisons to the other properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long, supra*, at 470.
- g. Because Petitioners failed to present significant probative evidence regarding the value of the property, they did not to make a prima facie case that the 2014 assessment is incorrect.
- h. Where a petitioner has not supported its 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

- 19. Petitioners failed to establish a prima facie case for a reduction in the assessed value. The Board finds for the Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2014 assessed value should not be changed.

ISSUED: June 13, 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>>.