

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

**Petition:** 54-030-12-1-4-00195  
**Petitioners:** Tim & Katherine Light<sup>1</sup>  
(K & T Infinite Possibilities, LLC)  
**Respondent:** Montgomery County Assessor  
**Parcel:** 54-10-06-200-005.000-030  
**Assessment Year:** 2012

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

**Procedural History**

1. The Petitioners initiated the assessment appeal with the Montgomery County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition on October 12, 2012.
2. The PTABOA issued a notice of its determination on October 4, 2013.
3. The Petitioners filed the Form 131 petition with the Board on November 14, 2013. The Petitioners elected to have this appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on January 10, 2014.
5. On February 27, 2014, the Administrative Law Judge (ALJ), Ellen Yuhan, held the administrative hearing. There was no inspection of the subject property by the ALJ or the Board in connection with this appeal.
6. Katherine Light, Timothy Light, Chief Deputy Assessor Sherri L. Bentley, and Brian Thomas were sworn and presented testimony.<sup>2</sup>

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<sup>1</sup> The Form 131 states that the property owners are Tim and Katherine Light. The Form 115 and Form 130, however, state that the property owner is K & T Infinite Possibilities LLC. Neither party addressed this conflict or ambiguity about ownership. They apparently attached no significance to it. Therefore, the Board will do the same in this determination.

<sup>2</sup> County Assessor Kelley Ewoldt was sworn, but did not testify.

## **Facts**

7. The subject property is a pre-engineered, commercial building located at 400 South Schenck Road in Crawfordsville.
8. The PTABOA determined the assessment is \$34,300 for land and \$96,700 for improvements (total \$131,000). *Board Ex. A; Petitioner Exhibit 4.*
9. At the hearing Mr. Light requested a valuation of \$100,000. On Form 131, however, the Petitioners requested an assessment of \$25,000 for the land and \$66,484 for the improvements (total \$91,484). *Board Ex. A.*

## **Record**

10. The official record contains the following:
  - a. The Form 131 petition,
  - b. Digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Burns Buildings Construction receipt,  
Petitioner Exhibit 2 – Photographs of the subject property,  
Petitioner Exhibit 3 – Clear Capital Valuation Report (only pages 1, 2, 16, and an unnumbered page with 2 photographs identified as “Comp 3”),  
Petitioner Exhibit 4 – Form 115,  
Petitioner Exhibit 5 – Property record card (subject property),  
Petitioner Exhibit 6 – Comparable property (1597 Ladoga Road/Vitagreen),  
Petitioner Exhibit 7 – Comparable property (2110 Indianapolis/Dickerson),  
Petitioner Exhibit 8 – Comparable property (2008 Indianapolis/Wilson),  
  
Respondent Exhibit 1 – Commercial Valuation Report,  
Respondent Exhibit 2 – Property record card (subject property),  
Respondent Exhibit 3 – Property record card (1597 Ladoga Road),  
Respondent Exhibit 4 – Property record card (2008 Indianapolis/Wilson),  
Respondent Exhibit 5 – Property record card (2110 Indianapolis/Dickerson)  
  
Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet,
  - d. These Findings and Conclusions.

## **Burden**

11. 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.
12. First, Ind. Code section 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).
13. Second, Ind. Code section 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).
14. This change is effective March 25, 2014, and has application to all appeals pending before the Board.
15. There is no evidence about any appeal for 2010. Furthermore, a new building was constructed on the property in 2011. Therefore, the property is not the same property as assessed the previous year. Indiana Code § 6-1.1-15-17.2 does not apply. The Petitioners have the burden of proof.

## **Contentions**

16. Summary of the Petitioners’ case:
  - a. The land value should be around \$25,000 because only one acre is usable. The rest of the land is unusable. *K. Light testimony.*
  - b. The property had a modular building when the Petitioners bought it for \$35,000. Later that modular building was sold for \$5,800. *K. Light testimony.*

- c. Burns Construction erected the current building in 2011 for \$66,484. It is a pole barn that will eventually have an office, but it is totally unfinished at this time. It is used to store equipment for the landscaping business. The building is a mirror image of the Dickerson property and is not a custom design. *K. Light testimony; Petitioner Exhibits 1, 2, 7.*
- d. The Petitioners got a construction loan and at that time the property was appraised. Mr. Light testified that he asked for a loan of \$100,000 and the property was appraised for \$120,000. *T. Light testimony; Petitioner Exhibit 3.*
- e. The shed at the back of the property is about ready to fall down, but it is assessed at \$800. *K. Light testimony; Petitioner Exhibits 2, 5.*
- f. The properties in the Clear Capital valuation report are much larger than the subject property. The most comparable property is a 7,200 square foot building that sold in March 2011 for \$124,500. It is an older building, but it has been totally updated and is completely finished. *K. Light testimony; Petitioner Exhibit 3.*
- g. Age should not be a factor. The Dickerson property, which was the model for the Petitioners' building, has had over \$100,000 in improvements. It was stripped to the studs and completely redone plus there is an addition. It is not the same property any more. It is also located on Highway 136. It is assessed for \$119,300. *K. Light and T. Light testimony; Petitioner Exhibit 7; Respondent Exhibit 5.*
- h. The Wilson property is located on a highway and has two buildings. The Petitioners used to rent the Wilson's back building, which is 40 feet by 80 feet. It has drywall, insulation, heat, water, and electricity and is valued at \$25,700. The front building is a mechanic shop and office. It has concrete paving, drywall, insulation, heat and air-conditioning, electricity and plumbing. It is a mainstream business and it is valued at \$71,500. For over 8,600 square feet on 1.65 acres of flat usable land, the Wilson's valuation is less than \$100,000. *K. Light testimony; Petitioner Exhibit 8.*

17. Summary of the Respondent's case:

- a. The original 2012 assessment was \$182,100. The Petitioners appealed to the PTABOA. The PTABOA changed a portion of the land, 1.14 acres, to unusable/undeveloped reducing the land value to \$34,300. The PTABOA also changed the percentage of completion to 80%. The final total assessed value was \$131,000. *Thomas testimony; Petitioner Exhibit 4.*
- b. The commercial valuation report estimated the value of the property at \$129,000. This document is the same report the Petitioners offered as their Exhibit 3, except that Respondent Exhibit 1 is a complete copy. The assessor relied on the expertise of the

commercial valuation report. The PTABOA did the same when making its ruling of \$131,000. The PTABOA's value is pretty close to what the commercial valuation report says. *Thomas testimony; Respondent Exhibit 1.*

### Analysis

18. The Petitioners failed to make a prima facie case that the assessed value is incorrect and needs to be changed.
  - a. For 2012 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); 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. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. Other kinds of permissible evidence 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 type of evidence, 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 2012 assessment was March 1, 2012. Ind. Code § 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. As noted above, actual construction cost evidence is one of the recognized ways to prove market value-in-use. The Petitioners offered a receipt purporting to show the cost of constructing the building, but they did not include the contract showing exactly what the building costs included or excluded. Costs include direct costs such as labor, materials, supervision, electrical and water service, other utilities, equipment rental, and installation of components. They also must include indirect costs. Indirect costs include, but are not limited to, architecture and engineering, building permits, title and legal expense, insurance, real estate taxes and other taxes during construction, construction loan fees and interest payments during construction, overhead, profit, advertising, and sales expense. *IAAO Property Assessment Valuation*, 2<sup>nd</sup> Edition, 1996, page 130. The receipt clearly shows the Petitioners are responsible for the insurance and for at least part of the site preparation. The Petitioners presented testimony that there was a construction loan, which means there would have been construction loan fees and interest payments. Ultimately, the Petitioners failed to prove that their cost evidence includes all required elements of cost as required by generally accepted appraisal principles. Therefore, that evidence does not make their case for any change to the assessed value of the subject property.

- d. The Petitioners presented the assessments of three properties in an effort to show that their building was over-assessed. Other assessments do not automatically show the market value-in-use of a property under appeal. The party relying on those assessments must show that the other properties are comparable to the property under appeal and explain how any differences affect the relative values. *See* Ind. Code § 6-1.1-15-18(c) (2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable); *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). The Petitioners did not explain how any differences between the properties affect their market values-in-use. Accordingly, this evidence does not help prove the assessment must be changed.
- e. The Petitioners presented part of a commercial valuation report.<sup>3</sup> The pages of this report that were offered by Petitioners do not show a value for the subject property. The Petitioners focused on the 3 comparable sales shown on page 2 of their exhibit and their prices based on gross building area (GBA). Those selling prices were \$16.10/GBA, \$7.95/GBA, and \$17.29/GBA. The Petitioners argue the comparable properties in the report are larger than the subject building and their locations on a highway are better. Based on this report, Mrs. Light offered conclusory testimony that at \$16 per square foot their 6,000 square foot building would not reach a value of \$130,000. (That total would be \$96,000. But does not include land value.) This sort of conclusory evidence, however, lacks probative value. Conclusory statements that are unsupported by probative evidence do not help to prove what a more accurate valuation would be. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995).
- f. The Petitioners also contend the land should only be about \$25,000. Again, the Petitioners did not present any probative evidence to support that conclusion. To successfully make a case the Petitioners needed to show the assessment does not accurately reflect the market value-in-use of the subject property. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that proper focus is not on methodology, but rather, on what the correct value actually is).

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<sup>3</sup> The Respondent offered a document that appears to be this entire report as Exhibit 1. On page 3, which the Petitioners did not include, this report estimates the market value of the subject property was \$129,900. (The difference between this report and the disputed assessment is only \$1,100.) Considering the entire document, the report is unsigned and does little to establish the credibility of the person who prepared it. The date of that value is unclear. In addition, on page 20 of this report (also not provided in the Petitioners' exhibit) there is a disclaimer, part of which states, "This document is not an appraisal as defined by USPAP (Uniform Standards of Professional Appraisal Practice). It is not to be construed as an appraisal and may not be used as such for any purpose."

- g. Similarly, merely testifying that the shed is about ready to fall down does not help to prove a more accurate market value-in-use for the subject property (even if the statement is true). *Id.*
- h. The Petitioners failed to make a prima facie case. Therefore, the Respondent's duty to support the assessment with substantial evidence was not triggered. *Lacy Diversified Indus. V. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

### **Conclusion**

19. The Petitioners failed to make a case for a lower assessment.

### **Final Determination**

The Board finds for the Respondent. The 2012 assessed value will not be changed.

ISSUED: August 1, 2014

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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 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>>.