

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

Petition No.: 43-023-19-1-5-01022-19
Petitioners: Philip K. & Dallas K. Smith
Respondent: Kosciusko County Assessor
Parcel No.: 43-08-21-400-114.000-023
Assessment Year: 2019

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 2019 assessment appeal with the Kosciusko County Assessor on June 13, 2019.
2. On October 22, 2019, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On July 28, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ) held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Philip K. Smith appeared *pro se* via telephone and was sworn. County Assessor Susan Engelberth and Deputy County Assessor Chris Doty appeared for the Respondent via telephone and were sworn.¹

Facts

6. The property under appeal is a vacant lot located at 20 EMS B42B Lane in Leesburg.
7. The PTABOA determined a 2019 total land assessment of \$78,200.
8. At the hearing, the Petitioners requested a total land assessment of \$70,000.

¹ PTABOA Coordinator Kim Carson was also on the call and was sworn but did not testify.

Record

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

a) A digital recording of the hearing.

b) Exhibits²:

Petitioner Exhibit 1:	Letter from Michael Kissinger to Philip & Dallas Smith dated May 18, 2016,
Petitioner Exhibit 2:	Seventeen photographs of the subject property,
Petitioner Exhibit 3:	ITC Builders and Redesign Inc., invoice dated January 11, 2016,
Petitioner Exhibit 4:	Tiny Builders & Excavating invoice dated February 6, 2016,
Petitioner Exhibit 5:	Form 131 file stamped by the Kosciusko County Assessor on November 1, 2019,
Petitioner Exhibit 6:	Page one of Taxpayer's Notice to Initiate an Appeal (Form 130) file stamped by the Kosciusko County Assessor on June 13, 2019,
Petitioner Exhibit 7:	Notice of Assessment of Land and Structures / Improvements – (Form 11) dated April 26, 2018,
Petitioner Exhibit 8:	Certificate of Survey by J.K. Walker & Associates, P.C., for the subject property.
Respondent Exhibit A:	Sales disclosure form for the subject property dated December 18, 2015,
Respondent Exhibit B:	Local Market Update for December 2017 and December 2018 by the Indiana Association of Realtors,
Respondent Exhibit C:	Letter from Michael Kissinger to Philip & Dallas Smith dated May 18, 2016,
Respondent Exhibit D:	Letter from Matthew Sandy to Kosciusko County Assessor dated January 11, 2017,
Respondent Exhibit E:	Six photographs of the subject property,
Respondent Exhibit F:	Sales disclosure form and aerial map for parcel #43-08-20-100-116.000-023 dated April 5, 2019,
Respondent Exhibit G:	Sales disclosure form and aerial map parcel #43-08-20-200-120.000-023 dated September 28, 2018,
Respondent Exhibit H:	2019 subject property record card,
Respondent Exhibit I:	Respondent's written testimony. ³

² The Board received the Petitioners' exhibits after the hearing. Because the Petitioners failed to label their exhibits, the Board labeled the exhibits 1 through 8.

³ Respondent's Exhibit I was labeled by the Board. The Respondent's Exhibit Coversheet listed Exhibits J and K, but these exhibits were not entered into the record.

- c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Objections

10. The Respondent objected to Petitioner's Exhibits 2-8 on the grounds they failed to timely provide copies prior to the hearing even though the Respondent requested them.⁴ In response, the Petitioners stated they did not have any proof of mailing indicating the evidence was provided. The ALJ took the objection under advisement.
11. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 4-8-2(b). The rules further provide that failure to comply with that requirement "may serve as grounds to exclude evidence or testimony that has not been timely provided." 52 IAC 4-8-2(c)(emphasis added).
12. The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Here, the Respondent identified a letter sent to the Petitioners on July 16, 2020, requesting their "information by the statutory time-frame." The Petitioners are unable to articulate if the evidence was mailed or if it was previously disclosed at the PTABOA hearing. Because the Petitioners failed to provide copies of these exhibits prior to the hearing, as the Respondent expressly requested, the Respondent's objection is sustained and Petitioners' Exhibits 2, 3, 4, 5, 6, 7, and 8 are excluded. The Board notes the exclusion of these exhibits does not affect the Board's final determination.

Contentions

13. Summary of the Petitioners' case:
- a) The subject property is over-assessed. In 2015, the property was purchased for \$70,000. Shortly after purchasing the property, the Taxpayers demolished the improvements at a cost of approximately \$8,000. The property suffers from flooding and has flooded "at least a month" this year and the seawall is underwater "most of the time." *Smith testimony*.
- b) Based on the issues mentioned, the 2019 assessment should be no more than the 2015 purchase price of \$70,000. *Smith testimony*.

⁴ The Respondent did not object to Petitioners' Exhibit 1, the Kissinger letter, because it is the same as Respondent's Exhibit C.

- c) The Respondent presented flawed evidence. The purportedly comparable lots are flawed because the subject property is much smaller, is located on a dirt lane, and “just all kinds of reasons.” *Smith testimony (referencing Resp’t Ex. F, G, H).*

14. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. The Petitioners purchased the property on December 18, 2015, for \$70,000. On February 5, 2016, the county conducted a field check and discovered all the improvements had been removed and the site was leveled. *Doty testimony; Resp’t Ex. A.*
- b) According to a letter from the county surveyor, the lot suffers from periodic flooding to a depth of 18 inches or greater, caused by the property’s 839.6-foot elevation. A second letter from the county area plan commission states, the site could be buildable “if it meets zoning and flood control ordinances” and residential setbacks. A visit to the property on August 15, 2019, confirmed the seawall was covered in water and lily pads, but no other flooding. The Respondent argues the lot is not unbuildable but would have some limitations if built on. *Doty testimony; Resp’t Ex. C, D, E.*
- c) To support the current assessment, the Respondent consulted the Indiana Association of Realtors’ local market updates. For 2017, the median sale price increased 7.9% and for 2018 it increased 8.1%.⁵ The Respondent applied the 7.9% increase to the \$70,000 sale price and calculated a value of \$75,500 (rounded). Next, the \$75,500 was multiplied by the 2018 increase of 8.1% for a value of \$81,600. The Respondent argues the current assessed value of \$78,200 is an accurate reflection of the property’s market value-in-use for 2019. *Doty testimony; Resp’t Ex. A, B, H, I.*
- d) The Respondent also examined two vacant lot sales located directly across Sawmill Lake from the subject property. Both comparable lots sit “low from the road down to the lake.” The first lot located at B40 Lane measures 40 feet by 213 feet. It sold on April 5, 2019, for \$58,000 or \$1,450 per front foot. The second property consists of two lots located at 84 EMS B40 Lane. The lots measure 70 feet by 188 feet. This property sold on September 28, 2018, for \$135,000 or \$1,929 per front foot. The subject property sits level with the lake and measures 60 feet by 75 feet and is currently assessed at \$1,303 per front foot. This serves as confirmation that the current assessment is not overstated. *Doty testimony; Resp’t Ex. F, G, H.*
- e) The Respondent has acknowledged that the subject property suffers from some flooding along the seawall and in response has applied a 15% negative influence factor. *Engelberth testimony; Doty testimony.*

⁵ According to the Respondent, no local market updates were available for 2016.

Burden of Proof

15. 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 creates two exceptions to that rule.
16. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
17. 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).
18. Here, the parties agree the assessed value of the property increased by more than 5% from 2018 to 2019. According to the property record card the assessment increased from \$73,700 in 2018 to \$78,200 in 2019. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the Respondent has the burden to prove the 2019 assessment is correct. To the extent the Petitioners request an assessment below the 2018 level of \$73,700; they have the burden to prove they are entitled to a lower value.

Analysis

19. The Respondent failed to make a prima facie case the 2019 assessment is correct. To the extent the Petitioners sought a value lower than the 2018 level, they failed to make a prima facie case for reducing the assessment any further.
 - 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.” 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. 2011 MANUAL

- at 2. 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 property 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 the 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
- c) Here, the burden was on the Respondent to prove the 2019 assessment is correct. The Respondent offered evidence of the Petitioners' 2015 purchase price, but because the sale was roughly four-years removed from the relevant valuation date it was necessary for the Respondent to explain how the sale was relevant. *See Long*, 821 N.E.2d at 471 (stating that any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, that required valuation date).
- d) In an effort to support the use of the purchase price, the Respondent relied on the Indiana Association of Realtors' local market 2017 and 2018 median sale price percentages of increases to time-adjust the sale to the January 1, 2019, valuation date. The Petitioners did not offer any argument that using a local market multiplier was an incorrect method for adjusting the purchase price. Nevertheless, the Respondent did not establish the analysis conforms to generally accepted appraisal principles. For this reason, the Respondent's evidence here lacks probative value.
- e) Next, the Respondent presented sale prices for two vacant lake lots located in the same area. In particular, the Respondent prepared what amounts to a price per front foot analysis. The Board infers the Respondent was attempting to employ a sales comparison approach. A sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 3. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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. Instead, the proponent must identify 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.
- f) While the Respondent pointed to two vacant lake lots in close proximity to the subject property, she failed to offer sufficient evidence relating their specific features and

amenities to the subject property. More importantly, she made no attempt to adjust for any relevant differences between the subject property and the purportedly comparable properties. The Respondent's evidentiary presentation falls short of providing the level of analysis contemplated by *Long*.

- g) For these reasons, the Respondent failed to make a prima facie case that the 2019 assessment is correct. The Petitioners are therefore entitled to have the 2019 assessment reduced to its 2018 level of \$73,700. That does not end the Board's inquiry, however, because the Petitioners sought a lower value.
- h) The Petitioners argued the Respondent made an error in determining the assessed value, because the property suffers from excessive flooding. There is no dispute between the parties that the property suffers from flooding. Accordingly, the Respondent applied a 15% negative influence factor to account for the occasional flooding. The Petitioners needed to prove to the Board the property was assessed incorrectly. The Petitioners argued the seawall is underwater "most of the time" and it flooded "at least a month" this year. The County Surveyor also confirmed the property suffers from periodic flooding to a depth of 18 inches or greater. Based on the testimony provided, the Petitioners failed to prove the Respondent incorrectly assessed the property. Further, the Petitioners failed to quantify the impact the flooding has on the value of the property. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis.") Thus, the Petitioners failed to prove they were entitled to a value lower than the 2018 level.

Conclusion

- 20. The Respondent had the burden of proving the 2019 assessment is correct. The Respondent failed to make a prima facie case and the assessment must be reduced to the 2018 level of \$73,700. The Petitioners sought a lower value, but failed to make a case for any further reduction in the assessment.

Final Determination

In accordance with the above findings and conclusions, the 2019 assessment must be reduced to \$73,700.

ISSUED: October 23, 2020

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>>