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

Petition No.: **35-005-15-1-5-00284-15**
Petitioners: **Yvonne C. Hiles & Von, Inc. – Tony L. Hiles**[1]
Respondent: **Huntington County Assessor**
Parcel No.: **35-05-14-100-729.400-005**
Assessment Year: **2015**

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

Procedural History

1. Petitioners initiated a 2015 appeal with the Huntington County Property Tax Assessment Board of Appeals ("PTABOA") on August 19, 2015. On October 16, 2015, the PTABOA issued its Notification of Final Assessment Determination sustaining the assessment. Petitioners then timely filed a Form 131 petition on December 7, 2015, with the Board.

2. Petitioners elected to have the appeal heard under the Board's small claims procedures. Respondent did not elect to have the appeal removed from those procedures.

3. On November 15, 2016, the Board's administrative law judge ("ALJ"), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.

4. The following people testified under oath:[2]

   – Tony L. Hiles, Vice President of Von Incorporated,
   – Julie Newsome, Huntington County Deputy Assessor.

Facts

5. The property under appeal is a 60-foot by 145-foot vacant lot located on Lindley Street in Huntington.

[1] Notification of Final Assessment Determination – Form 115 shows the property owner as Yvonne C. Hiles & Von, Inc. The Form 131 shows Petitioner as Tony L. Hiles. *Board Ex. A.*
[2] Terri Boone, Huntington County Assessor was sworn but did not testify.

6. The PTABOA determined a total assessment of $700.

7. On the Form 131 petition, Petitioner requested a total assessment of $100.

Record

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

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioner Exhibit 2.[3]	Note stating "Kent Bowers (Real Estate Agent 21 Century) is on record from previous hearing. He said this lot as has no value",
Petitioner Exhibit 3:	Chapter 2 – pages 9, 43-47 & 49 of the Real Property Assessment Guidelines ("Guidelines"),
Petitioner Exhibit 4:	Petitioner's description of the subject property,
Petitioner Exhibit 5:	2015 property record card ("PRC"),
Petitioner Exhibit 6:	Aerial map of the subject property,
Petitioner Exhibit 6A:	Aerial map of the subject property,
Petitioner Exhibit 7:	2009 & 2010 Summary of Taxes, dated March 24, 2010,
Petitioner Exhibit 8:	2009 & 2010 Corrected Summary of Taxes, dated April 22, 2010,
Petitioner Exhibit 9:	Notice of Assessment of Land and Structures – Form 11, dated September 10, 2010,
Petitioner Exhibit 10:	2012 & 2013 Summary of Taxes, dated April 24, 2013,
Petitioner Exhibit 11:	Zoning code for the City of Huntington, Indiana,
Petitioner Exhibit 12:	PRC for comparable property #35-05-14-100-291.000-005,

Respondent Exhibit 1:	Form 131 petition with attachments,
Respondent Exhibit 2:	2015 PRC,

Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet,

   c. These Findings and Conclusions.

[3] Petitioner did not submit a Petitioner Exhibit 1 into the record. Petitioner's exhibits were also a part of the record in petition #35-005-11-3-5-82421-15.

Burden of Proof

9. 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 its 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.

10. 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).

11. 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," 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).

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

13. The assessed value remained at $700 from 2014 to 2015. Although the assessed value was appealed in 2014, it was not changed. Thus, Petitioner has the burden for 2015.

Summary of the Parties' Contentions

14. Petitioners' case:

    a. Petitioners argue that the 60-foot by 145-foot strip of land is unbuildable. The property is located in a flood zone, and it lacks a driveway, walkways, and public utilities. There is also a drainage ditch running diagonally through the middle of the property which makes the shape of the lot irregular and limits its use. Petitioners claim that the DLGF Guidelines describe these issues as being eligible

for an influence factor being applied to the land.[4] *Hiles testimony; Pet'r Ex. 3-4 & 6-6A.*

b. Petitioners testified that in a previous Board hearing, real estate agent Kent Bowers testified that the subject lot had "no value." They also claim that four realtors refused to sell the subject lot because "they wouldn't get anything out of it." *Hiles testimony; Pet'r Ex. 2.*

c. Petitioners testified that according to the City of Huntington's zoning code, the subject property is zoned AE. AE zoned properties are "areas subject to inundation by the one-percent annual chance flood event…". Petitioners contend that the zoning code regulates what can be built and how it has to be built when the property is located in a flood zone. *Hiles testimony; Pet'r Ex. 11.*

d. Petitioners presented a purportedly comparable property located on Brawley Street, roughly a block from the subject property. It is a 60-foot by 143-foot flat usable lot assessed with a 50% negative influence factor, whereas, the subject lot is unusable and in a flood zone. *Hiles testimony; Pet'r Ex. 12.*

e. Petitioners claim at their PTABOA hearing that appeals regarding several of their properties were scheduled to be heard and they were only given the opportunity to present testimony and evidence on four properties. Petitioners question how the PTABOA can make a determination on the subject lot, when they were not given the opportunity to "speak" about the property on the record. *Hiles testimony.*

15. Respondent's case:

a. Respondent contends that the subject property is a 60-foot by 145-foot lot receiving a negative 90% influence factor with an assessed value of $700. The County believes the subject property is valued fair and equitably for 2015. Respondent argues that Petitioners failed to offer any evidence to support a lower value. *Newsome testimony; Resp't Ex. 2.*

Analysis

16. Petitioners failed to make a prima facie case for reducing the 2015 assessment. The Board reached this decision for the following reasons:

a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local

[4] Petitioner testified that the subject property's assessment was originally assessed at $600 in 2010, however, on April 22, 2010, it was increased to $6400. The assessed value remained at $6400 for three years. In 2012 through 2015, the 90% negative influence factor was reinstated and the value was reduced to $700. *Hiles testimony; Pet'r Ex. 5 & 7-10.*

Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "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). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the 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 Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

c. Petitioners offered two aerial maps and a written description of the property under appeal to establish that the lot is located in a flood zone, and that it lacks a driveway, walkways, and public utilities. Petitioners also claimed that due to these factors, the property is unbuildable. While these factors are likely detrimental to the value, they do not in and of themselves establish that the assessment is in error. Petitioners also did not offer any evidence to establish that the 90% negative influence factor was insufficient, nor did they address the effects the factors discussed above have on the property's market value-in-use as of the assessment date. Without more, Petitioners' description and aerial maps are not enough to make a prima facie case for lowering the assessment.

d. Further, conclusory statements, such as Petitioners' unsupported claim that various realtors have stated that the property has "no value" cannot serve as a substitute for probative evidence. *Heart City Chrysler v. State Bd. Of Tax Comm'rs,* 714 N.E.2d 329 (Ind. Tax Ct. 1999) (citing *Whitley,* 704 N.E.2d at 1119).

e. Petitioners attempted to offer another assessment to prove the subject property was over-assessed. 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).

f. 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 County Assessor,* 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).

g. While Petitioners introduced a property record card of a supposedly superior property, they failed to offer meaningful evidence relating the property's specific features and characteristics to the subject property. In fact, Petitioners primarily argued that the purportedly comparable property is usable land, while the subject property is unusable land. Again, the type of analysis and related adjustments required for a probative comparison are lacking. Plus, it is up to Petitioners to prove the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian towers East & West,* 805 N.E.2d at 478. Thus, Petitioners' presentation of a comparable assessment lacks probative value.

h. Finally, Petitioners also contend that their hearing before the PTABOA was flawed. Petitioners testified they were not given an opportunity to present any testimony or evidence on the subject property at the PTABOA hearing, as it was consolidated with several other properties Petitioners own. Once a taxpayer properly invokes the Board's jurisdiction, however, the proceedings are *de novo.* The taxpayer is not limited to evidence offered at the PTABOA hearing. *See* Ind. Code § 6-1.1-15-4(k) (A party participating in the hearing…is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county board.) Furthermore, the Board owes the PTABOA determination no deference. Thus, even though Petitioners claim they were deprived of the opportunity to present testimony and evidence to the PTABOA, it did not hinder their ability to present their case to the Board. *Id.*

i. Consequently, Petitioners failed to make a prima facie case for reducing the 2015 assessment. 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

17. Petitioner failed to make a prima facie case for reducing the 2015 assessment and the Board finds for Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2015 assessed value should not be changed.

ISSUED: February 13, 2017

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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