

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

Petitions: 35-005-13-1-5-00106
35-005-13-1-5-00107
Petitioner: Von Incorporated, Tony L. Hiles¹
Respondent: Huntington County Assessor
Parcels: 35-05-14-100-182.400-005 [Lot 19]
35-05-14-100-182.501-005 [Lot 20]
Assessment Year: 2013

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

Procedural History

1. The Petitioner initiated its 2013 assessment appeals for the above-captioned parcels with the Huntington County Assessor on August 16, 2013.
2. On March 13, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner relief.
3. The Petitioner filed Petitions for Review of Assessment (Form 131) with the Board on April 30, 2014. The Petitioner elected the Board's small claims procedures.
4. The Board issued notices of hearing on June 20, 2014.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on July 31, 2014. She did not inspect the properties.
6. Tony L. Hiles appeared on behalf of the Petitioner.² County Assessor Terri Boone and Deputy County Assessor Julie Newsom appeared for the Respondent. All were sworn.

Facts

7. The parcels under appeal are located at 237 Lindley Street, in Huntington. Lot 19 is a 60-foot by 145-foot lot containing a house and a utility shed. Lot 20 is a connecting 8-foot by 145-foot unimproved parcel. Unless otherwise indicated, the Board herein refers to both parcels together as "the subject property."

¹ On the Form 131 petitions to the Board, the owner of Lot 19 is listed as "Von Incorporated, Tony L. Hiles," while the owner of Lot 20 is listed as "Von Incorporated."

² Mr. Hiles signed both Form 131 petitions as Vice-President and Chief Operating Officer of Von Incorporated.

8. The PTABOA determined the following assessments:

For Lot 19:

Land: \$3,400 Improvements: \$2,500 Total: \$5,900

For Lot 20:

Land: \$500 Improvements: \$0 Total: \$500

9. On the Form 131 petitions, the Petitioner requested the following assessments:

For Lot 19:

Land: \$2,000 Improvements: \$1,200 Total: \$3,200

Lot 20:

Land: \$100 Improvements: \$0 Total: \$100

Record

10. The official record for this matter contains the following:

- a) Petitions for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibits for Lot 19

- Petitioner Exhibit 1: “Summary of assessments” spreadsheet listing different assessments from 2008-2013,
- Petitioner Exhibit 2: Description of the subject property,
- Petitioner Exhibit 3: Twenty-two interior and exterior photographs of the subject property,
- Petitioner Exhibit 4: Beacon property report for the subject property,
- Petitioner Exhibit 5: Subject property record card,
- Petitioner Exhibit 6: Two multiple listing service (MLS) reports and twenty-two property record cards with sales data listed,
- Petitioner Exhibit 7: Rebuttal evidence: 20 photographs of the Respondent’s comparable properties and a letter from Roxanne Brown to Mr. Hiles dated July 20, 2014.

Petitioner Exhibits for Lot 20

- Petitioner Exhibit 1: Two photographs of Lot 20,
- Petitioner Exhibit 2: Property record card for 408 Brawley Street with tax sale information,
- Petitioner Exhibit 3: Property record card for a property on Jackson Street.

Respondent Exhibits for Lot 19 and Lot 20

- Respondent Exhibit 1: List of witnesses and exhibits,
Respondent Exhibit 2: Notice of hearing for Lot 19,
Respondent Exhibit 3: Form 131 petition for Lot 19,
Respondent Exhibit 4: Form 115 for Lot 19,
Respondent Exhibit 5: Letter from Mr. Hiles to the Respondent requesting a review of Lot 19's assessment, dated August 10, 2013,
Respondent Exhibit 6: Notice of hearing for Lot 20,
Respondent Exhibit 7: Form 131 petition for Lot 20,
Respondent Exhibit 8: Form 115 for Lot 20,
Respondent Exhibit 9: "Approaches to value analysis,"
Respondent Exhibit 10: Description of the subject property
Respondent Exhibit 11: Aerial map from Beacon website showing both Lot 19 and Lot 20, and exterior photograph of the subject property,
Respondent Exhibit 12: Subject property record cards,
Respondent Exhibit 13: 2005 sales disclosures for the subject property,
Respondent Exhibit 14: Sales-comparison analysis spreadsheet,
Respondent Exhibit 15: Photographs, property record cards, and sales disclosures for 226 Swan Street, 814 North Broadway, 2142 Sabine Street, and 422 Condit Street,
Respondent Exhibit 16: Aerial map of the subject property in relation to comparable properties location,
Respondent Exhibit 17: Letter to Mr. Hiles from the Respondent requesting copies of evidence dated July 7, 2014.
- Board Exhibit A: Form 131 petitions with attachments,
Board Exhibit B: Hearing notices dated June 20, 2014,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. Initially, the Respondent objected to all of the Petitioner's exhibits stating the Petitioner had not provided her with copies of the exhibits when requested. Upon closer examination, the Respondent discovered that unlabeled copies of the evidence had been previously provided. The Respondent therefore withdrew her objection.
12. The Respondent also objected to the Petitioner's rebuttal evidence, Petitioner Exhibit 7. Specifically, she objected on the grounds that it is hearsay. The Petitioner argued that the letter was written and signed by Ms. Brown, and therefore it is not hearsay. The ALJ took the objection under advisement.

13. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

14. Petitioner Exhibit 7 is hearsay. Nevertheless, the exhibit is admitted, subject to the limitations in the Board’s procedural rules. The Board notes, however, that this ruling does not affect the outcome of the case.

Contentions

15. Summary of the Petitioner’s case:

For Lot 19

- a) The subject property is assessed too high. The home is unlivable and has been for years. Further, the lot itself has an extreme grade change from back to front. *Hiles argument; Pet’r Ex. 2 (Lot 19).*
- b) Lot 19 was purchased at a tax sale in 2005 for \$6,908. No improvements have been made since it was purchased. The house has a torn-out kitchen, peeling plaster, damaged chimney, rotting floors, no stairway to the basement, does not have any bathrooms, and has graffiti on the basement walls. *Hiles testimony; Pet’r Ex. 3 (Lot 19); Resp’t Ex. 13.*
- c) The Petitioner offered two MLS listings and twenty-two property record cards to compare to the subject property. With each property, Mr. Hiles noted the size of the comparable homes and the sales price. The sale prices ranged from \$959 to \$19,800. *Hiles testimony; Pet’r Ex. 6 (Lot 19).*
- d) The Respondent’s purportedly comparable sales are not comparable to the subject property. Three of the four purported comparable properties were “livable” and in much better condition than the subject property. In addition, the Petitioner presented a letter from an owner of one of the purported comparables stating that it was a “livable, move-in ready property.” The subject property is not a “livable property.” *Hiles argument; Pet’r Ex. 7 (Lot 19).*

For Lot 20

- e) The unimproved supporting parcel is also assessed too high. This lot cannot be built on, and it is not as flat as other lots. *Hiles argument; Pet'r Ex. 1 (Lot 20)*.
- f) Two similar lots sold for \$1,900 and \$718, respectively. The property that sold for \$1,900 was sold through a Commissioners' sale. *Hiles testimony; Pet'r Ex. 2, 3 (Lot 20)*.
- g) The two lots should not be combined under one assessment. *Hiles argument*.

16. Summary of the Respondent's case:

For Lot 19 and Lot 20

- a) The subject property is assessed correctly. The two lots are used as one property, thus it should be viewed and valued as one property. It is true that the home located on Lot 19 is in very poor condition and is not being utilized as a residence. *Newsome testimony; Resp't Ex. 9, 10, 11, 12*.
- b) Four comparable sales of neighborhood properties indicate that the subject property is accurately assessed. The four comparable properties are listed in poor to fair condition. The sale dates range from March 21, 2012, through November 9, 2012. The sales ranged from \$6.06 to \$10.14 per square foot. The subject property's combined assessment is \$6.00 per square foot. *Newsome testimony; Resp't Ex. 14, 15, 16*.

Burden of Proof

- 17. Generally, the taxpayer has the burden to prove an assessment is incorrect and to prove 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.
- 18. 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).
- 19. 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). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

20. Here, both parties agreed that the 2013 assessed values of the two lots together did not increase by more than 5% over the previous year’s level. Further, the Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

21. The Petitioner did not make a prima facie case for reducing the subject property’s 2013 assessment.
- a) Real property is assessed based on its market value-in-use. 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. 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 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 a 2013 assessment, the valuation date was March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Petitioner offered photographs of the subject property, mainly to support the claim that the condition of the property is so poor that it is uninhabitable. While that certainly detracts from the property’s value, the Petitioner offered nothing to quantify its actual effect, or quantify a more accurate value.
 - d) The Petitioner did attempt to offer some market-based evidence. Indeed, Mr. Hiles pointed to the sales of over twenty other properties. In doing so, Mr. Hiles essentially relies on a sales-comparison approach to establish that the assessment should be lowered. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison

approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value.”); *see also, Long*, 821 N.E.2d 466, 469.

- e) To effectively use the sales-comparison approach 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. 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. *Id.*
- f) Here, that type of analysis and the related adjustments are lacking from the Petitioner’s evidence. Mr. Hiles mainly considered only the sale prices and the size of the homes. In fact, he did not even identify the specific value indicated by the analysis. Thus, this evidence lacks probative value.
- g) Consequently, the Petitioner failed to make a prima facie case that the assessment is incorrect. Where the Petitioner has not supported his 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

22. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2013 assessment will not be changed.

ISSUED: October 28, 2014

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 of 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>>.