

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

Petitions: 35-005-12-1-5-00238
35-005-13-1-5-00098
35-005-14-1-5-00048
Petitioners: Yvonne C. Hiles & Von Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-258.700-005
Assessment Years: 2012, 2013, 2014

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 2012, 2013, and 2014 assessment appeals with the Huntington County Assessor on August 20, 2012, August 16, 2013, and August 11, 2014, respectively.
2. On April 26, 2013, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2012 assessment year denying the Petitioners any relief.
3. On March 13, 2014, the PTABOA issued its determination for the 2013 assessment year denying the Petitioners any relief.
4. On October 27, 2014, the PTABOA issued its determination for the 2014 assessment year also denying the Petitioners any relief.
5. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board, electing the Board's small claims procedures.
6. The Board issued notices of hearing on February 10, 2015.
7. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on March 25, 2015. She did not inspect the property.
8. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All were sworn.

¹ The letter initiating review at the local level indicates that Yvonne C. Hiles and Von, Inc. each have "undivided one-half interest" in the subject property.

Facts

9. The property under appeal is a single-family residence located at 392 Lindley Street in Huntington.

10. The PTABOA determined the following assessed values:

2012:	Land: \$13,700	Improvements: \$50,800	Total: \$64,500
2013:	Land: \$13,700	Improvements: \$48,500	Total: \$62,200
2014:	Land: \$13,700	Improvements: \$46,800	Total: \$60,500

11. The Petitioners requested the following assessed values on their Form 131s:

2012:	Land: \$6,000	Improvements: \$49,000	Total: \$55,000
2013:	Land: \$6,000	Improvements: \$45,200	Total: \$51,200
2014:	Land: \$6,000	Improvements: \$42,500	Total: \$48,500

Record

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

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

Petitioner Exhibit 1:	Description of the subject property,
Petitioner Exhibit 2:	Aerial flood zone map of the subject property's neighborhood,
Petitioner Exhibit 3:	Subject property record card, page 1,
Petitioner Exhibit 4:	Subject property record card, page 2,
Petitioner Exhibit 5:	Multiple Service Listing (MLS) sheet for 249 Condit Street,
Petitioner Exhibit 6:	MLS sheet for 1448 Sabine Street,
Petitioner Exhibit 7:	MLS sheet for 230 Park Boulevard, page 1,
Petitioner Exhibit 8:	MLS sheet for 230 Park Boulevard, page 2,
Petitioner Exhibit 9:	MLS sheet for 1447 Byron Street, page 1,
Petitioner Exhibit 10:	MLS sheet for 1447 Byron Street, page 2,
Petitioner Exhibit 11:	MLS sheet for 20 East Taylor Street, page 1,
Petitioner Exhibit 12:	MLS sheet for 20 East Taylor Street, page 2,
Petitioner Exhibit 13:	MLS sheet for 217 Etna Avenue, page 1,

² Mr. Hiles signed the 2012, 2013, and 2014 Form 131 petitions as the owner and Vice-President of Operations for Von Inc.

Petitioner Exhibit 14: MLS sheet for 217 Etna Avenue, page 2,
 Petitioner Exhibit 15: MLS sheet for 302 East High Street, page 1,
 Petitioner Exhibit 16: MLS sheet for 302 East High Street, page 2,
 Petitioner Exhibit 17: MLS sheet for 205 Byron Street, page 1,
 Petitioner Exhibit 18: MLS sheet for 205 Byron Street, page 2,
 Petitioner Exhibit 19: MLS sheet for 208 East High Street, page 1,
 Petitioner Exhibit 20: MLS sheet for 208 East High Street, page 2,
 Petitioner Exhibit 21: MLS sheet for 2047 Sabine Street,
 Petitioner Exhibit 22: Petitioners' box of pre-hearing evidence presented to the Respondent prior to the hearing.

Respondent Exhibits for 2012 appeal:

Respondent Exhibit 1: Notice of Hearing for 2012 appeal dated February 10, 2015,
 Respondent Exhibit 2: Form 131 petition for the 2012 appeal,
 Respondent Exhibit 3: Form 115 for the 2012 appeal,
 Respondent Exhibit 4: Letter from Petitioners to Assessor requesting a review of 2012 assessment, dated August 20, 2012,
 Respondent Exhibit 5: "Approach to Value Analysis,"
 Respondent Exhibit 6: "Description and Analysis of Subject Property," photographs of subject property, and subject property record card,
 Respondent Exhibit 7: Sales comparison grid, subject property neighborhood map, aerial map, photographs, property record cards, and sales disclosures for 2047 Sabine Street, 1030 Harris Street, and 1416 East State Street,
 Respondent Exhibit 8: Land sales comparison grid, property record cards and sales disclosures for 430 Lindley Street, 538 Lindley Street, 1219 Kocher Street, and First Street,
 Respondent Exhibit 9: Respondent's "Concluding Statement,"
 Respondent Exhibit 10: Text of Ind. Code § 6-1.1-15-17.4 and Ind. Code § 6-1.1-15-18.

Respondent Exhibits for 2013 appeal:

Respondent Exhibit 1: Notice of Hearing for 2013 appeal dated February 10, 2015,
 Respondent Exhibit 2: Form 131 petition for the 2013 appeal,
 Respondent Exhibit 3: Form 115 for the 2013 appeal,
 Respondent Exhibit 4: Letter from Petitioners to Assessor requesting a review of 2013 assessment, dated August 10, 2013,
 Respondent Exhibit 5: "Approach to Value Analysis,"
 Respondent Exhibit 6: "Description and Analysis of Subject Property," and subject property record card,

- Respondent Exhibit 7: Sales comparison grid, aerial map, photographs, property record cards, and sales disclosures for 542 Lindley Street, 503 Grayston Avenue, and 1609 East Washington Street,
Respondent Exhibit 8: Respondent’s “Concluding Statement.”

Respondent Exhibits for 2014 appeal:

- Respondent Exhibit 1: Notice of Hearing for 2014 appeal dated February 10, 2015,
Respondent Exhibit 2: Form 131 petition for the 2014 appeal,
Respondent Exhibit 3: Form 115 for the 2014 appeal,
Respondent Exhibit 4: Letter from Petitioners to Assessor requesting a review of 2014 assessment, dated August 8, 2014,
Respondent Exhibit 5: “Approach to Value Analysis,”
Respondent Exhibit 6: “Description and Analysis of Subject Property,” and subject property record card,
Respondent Exhibit 7: Sales comparison grid, aerial map, photographs, property record cards, and sales disclosures for 1045 Harris Street, 344 Swan Street, and 1503 East Market Street,
Respondent Exhibit 8: Respondent’s “Concluding Statement.”

- Board Exhibit A: Form 131 petitions with attachments,
Board Exhibit B: Hearing notices, dated February 10, 2015,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

13. The Respondent objected to all of the Petitioners’ exhibits. Ms. Newsome argued that she had requested the Petitioners’ exhibits prior to the hearing but when they were presented to her they were not properly organized or labeled. According to Ms. Newsome, the Petitioners delivered all of their unlabeled prehearing evidence to the Respondent in a single box that also included exhibits pertaining to several other hearings.³ *Pet’rs Ex. 22.*
14. Mr. Hiles claimed that he provided the Respondent with copies of the Petitioners’ pre-hearing evidence in a timely manner. Further, Mr. Hiles stated that he provided the Respondent with what she requested, “any and all evidence I planned to use at these hearings.” The ALJ took the objection under advisement.

³In the future, to avoid questions of whether prehearing evidence was properly presented to the Respondent, the Board advises the Petitioners to label and organize each prehearing exhibit packet separately in the same manner they will be presented at the Board’s hearings.

15. Under the Board’s procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits if requested. *See* 52 IAC 3-1-5(d) (“[I]f requested not later than ten (10) business days prior to hearing by any party, the parties shall provide copies of any documentary evidence...at least five (5) business days before the small claims hearing.”) Here, the Respondent requested “copies of any and all evidence” from the Petitioners in an undated letter.⁴ According to Mr. Hiles’ testimony, the pre-hearing exhibits were provided five business days in advance. While the Board has procedural rules regarding the labeling and organization of exhibits for Board hearings, those procedural rules do not address the labeling and organization of prehearing evidence.
16. Here, the Board overrules the Respondent’s objection. Mr. Hiles testified that all of the Petitioners’ exhibits were presented to the Respondent in accordance with 52 IAC 3-1-5(d). Accordingly, the Petitioners’ exhibits are admitted. The Board’s ruling on the objection, however, does not change the final determination because the Petitioners failed to make a prima facie case for reducing the assessments.
17. Mr. Hiles objected to the Respondent’s Exhibit 8 (2012), arguing that the sales took place beyond the timeframe for a March 1, 2012, assessment. In addition, the Petitioners objected that some of the sales were made to adjacent property owners. Ms. Newsome argued that she utilized the land sales because “land does not appreciate in value.” The ALJ took the objection under advisement.
18. The Petitioners’ objection goes to the weight of the exhibit rather than its admissibility. Thus, the Board overrules the Petitioners’ objection and Respondent’s Exhibit 8 (2012) is admitted.
19. Mr. Hiles also objected to Respondent’s Exhibit 7 (2014) again on the grounds that the sales were outside of the relevant timeframe. In response, Ms. Newsome admitted she should not have listed the first sale because it was a 2010 sale, but argued that the third sale occurred only 27 days past the assessment date and therefore was acceptable. The ALJ took the objection under advisement.
20. Again the Petitioners’ objection goes to the weight of the evidence rather than its admissibility. The Board overrules the Petitioners’ objection and Respondent’s Exhibit 7 (2014) is admitted.
21. Finally, after the Respondent presented her evidence and arguments for all three years under appeal, Mr. Hiles objected to the “land issue.” According to Mr. Hiles, the subject property frequently floods and is located in a flood zone. Mr. Hiles argued that this issue was never addressed by the Respondent. Further, Mr. Hiles argued that the purportedly comparable properties utilized by the Respondent are not located in a flood zone. Ms. Newsome responded by arguing the Petitioners have never provided conclusive evidence

⁴ The Respondent’s letter requesting the Petitioners’ evidence prior to the hearing is located in the binder containing the Respondent’s exhibits. It is undated and not labeled as an exhibit.

that the subject property is located in a flood zone. The ALJ took the objection under advisement.

22. The Petitioners failed to specify what, if any, exhibits they claim should be excluded from the record, or what specific remedy they seek. In any event, to the extent that the Petitioners made a proper objection, the objection goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules the Petitioners' objection.

Contentions

23. Summary of the Petitioners' case:

- a) The subject property's 2012, 2013, and 2014 assessments are too high. The house is not finished, the square footage is incorrect, and the "year built" is incorrect. In addition, the utility shed assessment is incorrect. Further, the land value is "obscene." The lot has no access from the road; the only access is through an alley. Almost half of the lot is located in a flood zone. The Petitioners do not have to carry flood insurance because they own the lot outright. However, if they decide to sell the property, the flood zone could present a problem. *Hiles argument; Pet'rs Ex. 1, 2, 3.*
- b) The Petitioners offered ten MLS reports as comparable properties:
- The first comparable property, located at 249 Condit Street, is a 1,525 square foot home that sold on June 29, 2011, for \$9,400. It is similar to the Petitioners' home, but is a "bit older." *Hiles testimony; Pet'rs Ex. 5.*
 - The second property, located at 1448 Sabine Street, sold for \$44,100, on December 15, 2011. This home has 848 square feet on the main level, and 450 square feet on the below ground level, with a 30-foot by 34-foot attached garage. *Hiles testimony; Pet'rs Ex. 6.*
 - The third property, located at 230 Park Boulevard, is a two-story 2,548 square foot home with an 18-foot by 18-foot detached garage. The home sold for \$51,000, on November 28, 2012. *Hiles testimony; Pet'rs Ex. 7, 8.*
 - The fourth property, located at 1447 Byron Street, sold for \$50,000, on February 22, 2012. This 1,584 square foot home is situated on a 66-foot by 132-foot lot. *Hiles testimony; Pet'rs Ex. 9, 10.*
 - The fifth property, located at 20 East Taylor Street, sold for \$42,000, on August 7, 2012. This home measures 2,353 square foot and has a basement. *Hiles testimony; Pet'rs Ex. 11, 12.*
 - The sixth property, a 1,966 square foot home located at 217 Etna Avenue, sold for \$45,000, on January 31, 2103. *Hiles testimony; Pet'rs Ex. 13, 14.*

- The seventh property, located at 302 East High Street, sold for \$52,500, on May 21, 2010. This home measured 1,556 square feet. *Hiles testimony; Pet'rs Ex. 15, 16.*
 - The eighth property, located at 205 Byron Street, is a 2,000 square foot home situated on an 88-foot by 88-foot lot. This home sold for \$59,100, on May 24, 2012. *Hiles testimony; Pet'rs Ex. 17, 18.*
 - The ninth property, located at 208 East High Street, is a 1,946 square foot home situated on an 32-foot by 132-foot lot. The home sold for \$59,900, on March 26, 2010. *Hiles testimony; Pet'rs Ex. 19, 20.*
 - The tenth property, located at 2047 Sabine Street, sold on March 3, 2010, for \$36,900 after a seller-paid concession of \$3,000. This home measures 1,668 square feet and situated on a 51-foot by 209-foot lot. *Hiles testimony; Pet'rs Ex. 21.*
- c) Finally, the Respondent's purportedly comparable properties are flawed. The Respondent's properties have more amenities than the subject property. Some of the sales were outside the appropriate time frame and no adjustment was made to account for this. Further, some of the sales were purchased by adjacent property owners. The Respondent is not "comparing apples to apples." *Hiles argument (referencing Resp't Ex. 5, 6, 7, 8, 9 (2012); Resp't Ex. 7 (2013)).*

24. Summary of the Respondent's case:

For 2012

- a) The subject property's 2012, 2013, and 2014 assessments are correct. To support her opinion, she offered sales of homes, as well as land-only sales. First, for the 2012 assessment appeal, she presented three comparable sales located at 2047 Sabine Street, 1030 Harris Street, and 1416 East State Street. The sales occurred between March 8, 2010, and November 7, 2011. The sale prices ranged from \$28.91 to \$34.45 per square foot. The subject property was assessed at \$34.86 per square foot in 2012. *Newsome testimony; Resp't Ex. 5, 6, 7.*
- b) The Respondent also offered four unimproved lot sales. The sales occurred between February 18, 2014, and June 6, 2014. The average price per square foot came in at \$0.32. *Newsome testimony; Resp't Ex. 8.*
- c) As is evident from the foregoing, the subject property's March 1, 2012, assessment should remain at \$64,500. *Newsome argument; Resp't Ex. 9.*

For 2013

- d) The Respondent offered three comparable sales to prove the 2013 assessment was correct. She presented a sales grid using three comparable sales located at 542 Lindley Street, 503 Grayston Avenue, and 1609 East Washington Street. Sales disclosure forms were also provided to verify the accuracy of the sale prices. The sales occurred between September 7, 2012, and November 21, 2012. The sales prices ranged from \$22.96 to \$42.39 per square foot. The subject property's 2013 assessment is \$33.62 per square foot. Accordingly, the subject property's March 1, 2013, assessment should remain at \$62,200. *Newsome testimony; Resp't Ex. 5, 6, 7, 8.*

For 2014

- e) For the 2014 appeal, the Respondent provided three comparable sales to back up her assertion that the subject property was correctly assessed. Ms. Newsome presented a sales grid using three comparable sales located at 1046 Harris Street, 344 Swan Street, and 1503 East Market Street. She also offered sales disclosure forms to verify the accuracy of the sale prices. The sales occurred between March 8, 2010, and March 28, 2014. The sales prices per square foot ranged from \$28.97 to \$48.99. The subject property's 2014 assessment is \$32.70 per square foot. Based on these sales, the subject property's March 1, 2014, assessment should remain at \$60,500. *Newsome testimony; Resp't Ex. 5, 6, 7, 8.*

Burden of Proof

25. 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.
26. 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).
27. 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.

28. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2011 to 2012. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent. Thus, the Petitioners have the burden for the 2012 assessment year. The burden for the 2013 assessment year will depend on the Board’s findings from the prior year’s appeal. Likewise, the burden for the 2014 assessment year will depend on the Board’s findings from the immediately preceding year’s appeal.

Analysis

29. The Petitioners failed to make a prima facie case for reducing the 2012, 2013, and 2014 assessments.
- 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 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2013 assessment, the valuation date was March 1, 2013. *Id.* For a 2014 assessment, the valuation date was March 1, 2014. *Id.*
 - c) First, the Petitioners offered an aerial flood map of the subject property’s neighborhood to support their claim that the property occasionally floods. While this is likely detrimental to the subject property’s value, it does not establish that the assessments are in error. The Petitioners failed to quantify the actual effects of their claim or quantify a more accurate value. The Petitioners needed to offer probative evidence that establishes the effect this occasional flooding has on the property’s market-value-in-use as of the assessment date. Without more, the Petitioners’ aerial flood map is not enough to make a prima facie case for changing the assessment.
 - d) The Petitioners did, however, attempt to offer some market-based evidence. Specifically, for all three years under appeal, they pointed to ten sales with prices ranging from \$9,400 to \$59,900. The sales dates ranged from March 3, 2010, to

January 31, 2013. In doing so, the Petitioners essentially rely on a sales-comparison approach to establish that the assessments 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 tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *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, the type of analysis required and the related adjustments are lacking from the Petitioners’ evidence. The Petitioners failed to make adjustments to the purportedly comparable properties. Further, their analysis failed to yield an indicated value. Thus, the evidence lacks probative value.
- g) Finally, the Petitioners claim that the subject property’s assessment contains objective errors. Specifically, the Petitioners argue that the house is not finished in certain areas, and that the assessment reflects an incorrect square footage and construction date. They also claimed that the property record card lists an incorrect size for the utility shed. However, the Petitioners must do more than simply claim those values are “wrong.” They must also offer evidence of what the “correct” values 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). Here, the Petitioners failed to offer what the “correct” value should be. Thus, their claim is not enough to make a prima facie case for changing the assessment.
- h) Consequently, the Petitioners failed to make a prima facie case that the 2012, 2013, and 2014 assessments are incorrect. Where the Petitioners have not supported their 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

30. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2012, 2013, and 2014 assessments will not be changed.

ISSUED: June 23, 2015

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>>.