

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

Petition No.: 76-017-07-1-5-00001
Petitioners: Patrick S. Hale & Barbara P. Knights-Hale
Respondent: Steuben County Assessor
Parcel No.: 76-11-06-140-125.000-017
Assessment Year: 2007

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

Procedural History

1. Patrick S. Hale and Barbara P. Knights-Hale filed a Form 130 petition contesting the subject property’s March 1, 2007 assessment. On January 19, 2010, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the property’s assessment, but not to the level that the Hales had requested.
2. The Hales then timely filed a Form 131 petition with the Board.¹ They elected to have their appeal heard under the Board’s small claims procedures.
3. On July 26, 2011, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) Patrick Hale
 - b) Marcia Seevers, Steuben County Assessor
Phyl Olinger

Facts

5. The subject property is an unimproved, platted 0.187-acre parcel located 2275 South Fanning Road in Angola, Indiana. Neither the Board nor the ALJ inspected the property.

¹On October 26, 2010, in an apparent attempt to correct the legal description on their original Form 131 petition, the Hales sent a letter to the Board along with an amended first page of their petition. *Hales testimony; Board Ex. A at 1-2*. The Hales’ intended correction, however, does not reference the subject parcel but instead references a different parcel for which the Hales filed a separate appeal. Regardless, the original Form 131 petition appears to contain the correct legal description for the subject property, as it matches the legal description on the property’s record card. *See Resp’t Ex. 4*.

6. The PTABOA determined the following assessment for the subject property:

Land: \$22,600	Improvements: \$0	Total: \$22,600
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7. The Hales requested an assessment of \$4,000.

Parties' Contentions

8. Summary of the Hales's evidence and arguments:

a) The subject property is assessed for more than its market value-in-use in light of a certified appraiser's valuation opinion. *Hale argument*. Thomas F. Mack, an appraiser with Good Valuation, Inc., prepared two appraisal reports estimating the subject property's market value at \$4,000 as of March 1, 2008 and March 1, 2007, respectively. *Hale testimony; Pet'rs Exs. 1, 5.*²

b) As photographs show, the subject property typically floods in the spring and fall. *Hale testimony; Pet'rs Ex. 2*. The spring flooding nearly reaches the road, and normally lasts into the summer. *Id.* Soil perk tests taken in 2004 for an adjoining lot showed that the flood-prone sites are unsuitable for construction. *Hale testimony; Pet'rs Exs. 5-6*.

c) Although the Hales bought the subject property together with an adjoining improved parcel, the subject parcel's topography, elevation and soil composition are dissimilar to the adjoining parcel. And the subject property cannot be improved without changing its elevation. Because of those dissimilarities, the two parcels should be valued separately. Out of the combined sale price, the amount of money that Mr. Hale assigned to the subject property in his mind was more in line with Mr. Mack's fair market valuation. *Hale testimony*.

9. Summary of the Assessor's evidence and arguments:

a) The Hales bought the subject property along with an adjoining parcel for \$151,900 on December 5, 2007. The adjacent parcel is assessed for \$121,200. If one subtracts that assessment from the overall sale price, the \$30,700 balance is attributable to the subject property. Thus, the sale price supports the subject property's assessment of \$22,600. *Olinger testimony; Resp't Ex. 7*.

² As originally submitted, Mr. Mack's appraisals were attached to each other. In fact, because the Hales failed to label their exhibits and failed to complete an "Identification of Exhibits" cover sheet as instructed by the Board, neither the parties nor the ALJ noticed the appraisal valuing the subject property as of March 1, 2007, until after the ALJ had said that the hearing was concluded. When the March 1, 2007 appraisal was discovered, the ALJ briefly went back on the record and entered that appraisal into evidence separately, without objection, as Petitioner's Exhibit 5.

- b) Neither of Mr. Mack’s appraisals, which are the same except for their effective dates, rebuts the subject property’s assessment. The comparable sales that Mr. Mack used are questionable for several reasons: (1) all of properties are located too far away from the subject property, (2) two of the properties sold after the assessment date under appeal, and (3) one of the properties (110B at Hamilton Lake) does not have lake access. *Id.*
- c) The Hales had soil, environmental, and sewage reports for their adjoining lot in 2004. And that lot has the same problems with flooding as the subject property. Thus, the Hales knew that the subject property floods when they bought it in 2007. *Olinger argument.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: Appraisal report by Thomas Mack of Good Valuation, estimating the subject property’s value as of March 1, 2008

Petitioners Exhibit 2: Copies of 13 photographs of the subject property

Petitioners Exhibit 3: A residential sewage disposal systems report for the subject property dated September 22, 2004

Petitioners Exhibit 4: Report from Eickholtz Soil & Environmental Consulting, dated September 16, 2004

Petitioners Exhibit 5: Appraisal report by Thomas Mack of Good Valuation estimating the subject property’s value as of March 1, 2007

Respondent Exhibit 1: Respondent Exhibit Coversheet

Respondent Exhibit 2: Summary of Respondent Testimony

Respondent Exhibit 3: Power of Attorney Certification and Power of Attorney

Respondent Exhibit 4: Property record card (“PRC”) for parcel 76-11-06-140-125.000-017 (“parcel 125”)

Respondent Exhibit 5: PRC for parcel 76-11-06-140-130.000-017 (“parcel 130”)

Respondent Exhibit 6: Form 115 determination, issued January 19, 2010

Respondent Exhibit 7: PRC for parcel 76-11-06-140-126-000.017

Respondent Exhibit 8: Beacon aerial map showing the location of the subject property and other properties owned by Mr. Hale.

Respondent Exhibit 9: Respondent Signature and Attestation Sheet

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

d) These Findings and Conclusions.

Analysis

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 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”).
13. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

The Hales’s Case

14. The Hales failed to make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *See id.*;

Kooshtard Property VI, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how his evidence relates to the appealed 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). Otherwise, the evidence lacks probative value. *See id.* For March 1, 2007 assessments, the valuation date was January 1, 2006. *See* 50 IAC 21-3-3(b) (2009) (making the valuation date January 1 of the year preceding the assessment date).
- d) Here, the Hales offered two appraisals estimating the subject property's market value at \$4,000. The appraisals appear to be identical except for their effective dates—one estimates the property's value as of March 1, 2007, and the other estimates its value as of March 1, 2008. Both those effective dates are more than a year after the January 1, 2006 valuation date that applies to the March 1, 2007 assessment under appeal. And the Hales did not explain how the appraisals related to the subject property's market value-in-use as of January 1, 2006. The appraisals therefore lack probative value.
- e) The Hales's evidence about the subject parcel's elevation and susceptibility to flooding similarly fails to make a prima facie case for changing the property's assessment. While those factors likely affect the property's value, the Hales offered no probative evidence to show the extent to which they do so.

Conclusion

- 15. The Hales failed to make a prima facie case for lowering the subject property's assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review affirms the subject property's March 1, 2007 assessment.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.