

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

Petitions: 15-002-14-1-1-00083
15-002-14-1-5-00084
Petitioner: Patrick C. Kern¹
Respondent: Dearborn County Assessor
Parcels: 15-07-32-300-108.000-002
15-07-32-300-049.000-002
Assessment Year: 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 Petitioner initiated his 2014 assessment appeals with the Dearborn County Assessor on October 2, 2014.
2. On December 5, 2014, the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner any relief.
3. The Petitioner filed Petitions for Review of Assessment (Form 131s) with the Board on December 19, 2014.²
4. The Board issued a notice of hearing on October 2, 2015.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on November 10, 2015. She did not inspect the properties.
6. Patrick C. Kern appeared *pro se* and was sworn as a witness. Attorney Andrew D. Baudendistel appeared for the Respondent. County Assessor Gary R. Hensley was sworn as a witness for the Respondent.

¹ Patrick C. Kern is the sole petitioner listed on both Form 131s. However, the subject property record cards list the following owners: Patrick C. Kern, Herb J. Mueller, and Michael L. Schultz. *Pet'r Ex. 1, 3.*

² The Petitioner elected the Board's small claims procedures on petition number 15-002-14-1-1-00083. However, he failed to make an election on petition number 15-002-14-1-5-00084. Because the Board consolidated the petitions without objection, the small claims procedures will apply pursuant to 52 IAC 3-1-2(a).

Facts

7. The properties under appeal include a single-family residence located at 4770 York Street in Aurora and an adjacent vacant lot with an address of “Langley Heights.”
8. For parcel 15-07-32-300-108.000-002, the PTABOA determined the total assessment is \$76,700 (land \$27,700 and improvements \$49,000). The Petitioner requested a total assessment of \$35,000 (land \$10,000 and improvements \$25,000).
9. For parcel 15-07-32-300-049.000-002, the PTABOA determined the total assessment is \$29,400. The Petitioner requested a total assessment of \$25,000.

Record

10. The official record for this matter contains the following:
 - a) Petitions for Review of Assessment (Form 131s) with attachments
 - b) A digital recording of the hearing
 - c) Exhibits:³

Petitioner Exhibit 1: Notices of hearing, subject property record cards, and aerial photographs of both parcels,

Petitioner Exhibit 2: “Right-of-way Notification” from Dearborn County Commissioners, letter from Thomas R. Blondell, Esq., dated February 23, 2010, “Notice of Hearing on Proposed Vacation of Public Street/Right of Way of Langley Heights Subdivision,” letter from John Gay, Esq., dated October 10, 2010,

Petitioner Exhibit 3: *Patrick C. Kern & Herb J. Mueller v. Dearborn Co. Ass’r*, Ind. Bd. of Tax Rev. Pet. No. 15-002-14-1-5-00080 (March 17, 2015), compliant filed with Dearborn County Health Department, dated December 9, 2014, email from Vinnie Fazzino to Patrick Kern dated December 9, 2014, Notices of PTABOA hearings, Form 131, Form 115, and Form 130-Short, Form 134, subject property record cards, and a Notice of Assessment for the subject property,

Petitioner Exhibit 4: Emails between Patrick Kern and Guinevere Emery, emails between Patrick Kern and Mark McCormack, emails between Patrick Kern and Jeff Stratman, email from Vinnie Fazzino to Patrick Kern, and text of 329 IAC 10.

Board Exhibit A: Form 131 petitions with attachments,

³ The Respondent did not offer any exhibits.

Board Exhibit B: Hearing notices dated October 2, 2015,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. The Respondent objected to Petitioner's Exhibit 2 on the grounds that it is not relevant. Specifically, Mr. Baudendistel argued that the exhibit contains letters that are over five years old. In response, Mr. Kern argued that while the letters are old, they reference issues that are "still going on." The ALJ did not rule on the objection at the hearing.
12. The Respondent's objection goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules the Respondent's objection, and Petitioner's Exhibit 2 is admitted.
13. The Respondent objected to Petitioner's Exhibit 4 also on the grounds it is not relevant. Mr. Baudendistel argued the issues raised in this exhibit were addressed with other county offices and not within the purview of the Assessor's office. Again, Mr. Kern responded by stating the issues raised "remain unresolved." The ALJ did not rule on the objection at hearing.
14. The Respondent's objection again goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules the Respondent's objection, and Petitioner's Exhibit 4 is admitted.

Contentions

15. Summary of the Petitioner's case:
 - a) The properties are assessed too high. The roads and "right-of-ways" have been closed off to both properties. In addition, "a neighbor has been dumping garbage and other debris in an area in front of the properties." These situations have diminished the properties' value. Both properties have been listed for sale but "no one even looked at them." *Kern argument; Pet'r Ex. 2, 3, 4.*
 - b) Several city and county offices have been contacted regarding these issues. The county has filed lawsuits against the parties in question; however, nothing has been resolved. Additionally, "the police are not offering protection, the roads are not being fixed in the subdivision, the county enforcement officers are not enforcing the rules and regulations, and sewer laws have been violated." As a result, the properties have lost "at least 50% of their value." *Kern argument; Pet'r Ex. 4.*
16. Summary of the Respondent's case:

- a) The properties are assessed correctly and according to Indiana statute. The county works in connection with Tyler Technologies in assessing Dearborn County properties utilizing a cost-based system. *Baudendistel argument; Henley testimony.*
- b) In addition, the Respondent utilizes ratio studies to determine if assessments need to be adjusted each year. In the vicinity of the subject property, improvements have decreased slightly due to depreciation. Land, however, has remained static. *Hensley testimony.*

Burden of Proof

- 17. 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 as amended by P.L. 97-2014 creates two exceptions to that rule.
- 18. 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).
- 19. 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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
- 20. Here, the parties agree that the total assessed value for each parcel did not increase by more than 5% from 2013 to 2014. The assessment for parcel 15-07-32-300-108.000-002 decreased from \$83,000 in 2013 to \$76,700 in 2014. While the assessment for parcel 15-07-32-300-049.000-002 remained at \$29,400 for 2013 and 2014. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden of proof remains with the Petitioner.

Analysis

21. The Petitioner failed to make a prima facie case for reducing the 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 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Petitioner claimed his property values have been negatively affected due to a neighbor dumping garbage and debris on the premises. Further, the Petitioner argued the properties' values are also affected due to their lack of street access. While these factors could have a detrimental effect on the properties' values, they do not establish that the assessment was made in error. The Petitioner failed to offer anything to quantify their actual effect, or quantify more accurate values for the properties. The Petitioner needed to offer probative evidence that establishes the effect those factors have on the properties' market value-in-use as of the assessment date. While the Petitioner did testify he previously listed the properties for sale, he did not indicate when he listed the properties or the listing price. Without more, his description of the "garbage" in front of the properties and "right-of-way" issues are not enough to make a prima facie case for changing the assessments.
 - d) Further, conclusory statements, such as the Petitioner's unsupported claim that the properties have lost "at least 50%" of their 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 Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998)).
 - e) Consequently, the Petitioner failed to make a prima facie case that the 2014 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 2014 assessments will not be changed.

ISSUED: February 8, 2016

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>>.