

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

Petition #: 03-003-03-1-3-00007
Petitioner: Earl R. and Susan M. Sellars
Respondent: Pipe Creek Township Assessor (Madison County)
Parcel #: 19951112100
Assessment Year: 2003

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 30, 2004.
2. The Petitioner received notice of the decision of the PTABOA on January 12, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on March 2, 2005. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 6, 2005.
5. The Board held an administrative hearing on November 29, 2005, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Petitioner representative
 - b) For Respondent: Barbara Hackman, Columbus Township Assessor's office
Cathi Gould, Tyler-CLT

Facts

7. The property is classified as commercial light warehouse, as is shown on the property record card for parcel #19951112100.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Bartholomew County PTABOA: Land \$63,600, Improvements \$390,900.
10. Assessed Value requested by Petitioner: Land \$55,000, Improvements \$270,000.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The assessment of the subject property does not provide for a uniform and equal rate of property assessment and taxation that secures a just valuation of taxation, pursuant to Article X, Section 1 of the Indiana Constitution. Therefore, this assessment is unconstitutional. *Smith testimony, Pet. Ex. 1.*
 - b) The Petitioner's representative argued that the "uniform and equal" clause, along with rules laid out in 50 I.A.C. 2.3-1-1, does not allow a county to assess a property using a method other than the one initially chosen by the county, in this case the 2002 REAL PROPERTY ASSESSMENT GUIDELINES—VERSION A. *Smith Testimony; Pet. Ex. 1.*
 - c) The current assessment errs in its determination of True Tax Value by being based on sales data rather than the 2002 REAL PROPERTY ASSESSMENT GUIDELINES—VERSION A. According to 50 I.A.C. 2.3-1-1(d), the purpose of the assessment is to determine True Tax Value as defined in the 2002 REAL PROPERTY ASSESSMENT MANUAL, which is not necessarily the same as market value. *Smith testimony; Pet. Ex. 1; Resp. Ex. 6 & 7.*
 - d) The subject property sold on November 24, 2000, for \$458,665. *Respondent Ex. 1.* As a result of the PTABOA decision, the assessment was changed to reflect this value. The land base rate was increased to \$40,000 per acre and the pricing schedule used to value the structure was changed from GCK to GCI. *Smith testimony; Pet. Ex. 3*
 - e) The subject property is located in Flatrock industrial park. All the buildings in the park were built by the same developer and are pre-engineered steel or wood post structures. None of the other buildings in the park are assessed based on sales prices. *Smith testimony; Pet. Ex. 5.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) At the PTABOA hearing, the Petitioner's claim of incorrect True Tax Value was denied. At that time, the PTABOA reviewed the assessment, changing the pricing schedule of the structure and the land base rate. These changes resulted in a total assessed value of \$454,500, which was in line with a time adjusted sale price of \$451,785, based on a November 2000 sale of \$458,665. *Hackman testimony, Resp. Ex. 2, 5 & 10.*
 - b) The definition of True Tax Value is market value in use, as stated in the 2002 REAL PROPERTY ASSESSMENT MANUAL. Furthermore, 50 I.A.C. 2.3-1-1(d) states that "failure to comply with the REAL PROPERTY ASSESSMENT GUIDELINES—

VERSION A ...does not in itself show that the assessment is not a reasonable measure of True Tax Value”. *Hackman testimony; Resp. Ex. 7.*

- c) The Respondent submitted the Neighborhood Valuation Form from the land order that applies to the subject property, which shows a land base rate of \$40,000 per acre. *Resp. Ex. 8.*
- d) The Respondent also submitted a sales ratio study for industrial properties in the subject neighborhood based on sales from January 1, 1998 to November 8, 2005. The results of the study were within the guidelines for that type of property. *Hackman testimony; Gould testimony; Resp. Ex. 9.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The recording of the hearing.
- c) Exhibits:
 - Petitioner Exhibit 1: Summary of Petitioner’s arguments
 - Petitioner Exhibit 2: Form 115
 - Petitioner Exhibit 3: Property record cards (PRCs) showing the assessment before and after the PTABOA decision
 - Petitioner Exhibit 4: Plat map of subject property and surrounding area
 - Petitioner Exhibit 5: Comparison packet of properties in Flatrock industrial park
 - Petitioner Exhibit 6: PRC for subject showing requested value

 - Respondent Exhibit 1: Photographs of subject property
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Form 130 Petition
 - Respondent Exhibit 4: Form 115
 - Respondent Exhibit 5: Sales disclosure form for subject property
 - Respondent Exhibit 6: Background Tool Kit, page 4, Indiana Property Tax Equalization Study Appendix B
 - Respondent Exhibit 7: 50 I.A.C. 2.3
 - Respondent Exhibit 8: Bartholomew County Land Order Neighborhood Valuation form
 - Respondent Exhibit 9: Sales Ratio study
 - Respondent Exhibit 10: Trended sale of subject property
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) Property tax representatives may not be certified to practice before the board for claims that assessments or taxes are “illegal as a matter of law”, claims regarding the

- constitutionality of an assessment, or any other representation that involves the practice of law. 52 I.A.C. 1-2-1(b). A constitutional challenge to an assessment clearly involves questions of law. *State Ex Rel. Indiana State Bar Ass'n v. Miller*, 770 N. E. 2d 328, 330 (Ind. 2002).
- b) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - c) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).
 - d) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Constitutionality

- 15. The Petitioner’s Representative challenges the current assessment as unconstitutional under the “uniform and equal” language of Article X, Section 1 of the Indiana Constitution. *Smith Testimony, Pet. Ex. 1*.
- 16. Tax representatives practicing before the Board are not certified to practice for matters claiming an assessment is illegal as a matter of law, nor for any claim of unconstitutionality. 52 I.A.C. 1-2-1(b). Previously, the Indiana Supreme Court stated that a constitutional challenge to an assessment before the Board “clearly involved questions of law”, and as such, “amount[s] to the practice of law”. *Miller*, 770 N. E. 2d at 330.
- 17. By raising such a challenge, the Petitioner’s Representative is in violation of the rules of practice laid out in 52 I.A.C. 1-2-1(b). Therefore, the Board will disregard all testimony and evidence regarding the claim and considers all arguments made under the constitutionality claim waived.¹

Land base rate

- 18. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
 - a) The Petitioner presented property record cards (PRCs) for six other neighboring properties in Flatrock industrial park. These six properties all show a base rate for

¹ The Board also cautions the Petitioner’s Representative that any violation of the rules of practice may lead to revocation of certification by the Department of Local Government Finance. 50 I.A.C. 15-5-8.

land of \$30,000 per acre being applied, whereas the subject is valued with a base rate of \$40,000 per acre. *Smith testimony; Pet. Ex. 3 & 5.* The record cards clearly state that all the properties are located in the Flatrock industrial park, and that they are all designated for industrial use, as is the subject. As such, the Petitioner has made a prima facie case showing an error in the assessment, and what the correct assessment should be.

- b) The burden now fell to the Respondent to rebut the Petitioner's evidence. The Respondent relied on market value evidence, chiefly a time-adjusted sale price from a sale of the subject property from November 2000. The PTABOA based the changes to the assessment on the adjusted sale. *Hackman testimony; Resp. Ex. 5 & 10.*
- c) However, this does not address the disparity in the land base rates. Each of the neighboring properties submitted by the Petitioner shows a base rate of \$30,000 per acre. Furthermore, the sales data is not specific in breaking down the value between land and improvements, and as a result, there is no clear evidence indicating the need for a higher base for the subject property.
- d) The Respondent also presented a sales ratio study and supporting documentation that showed that the November 2000 sale was in line with other sales of industrial properties within the subject neighborhood. *Resp. Ex. 6, 7, & 9.* However, it fails to address the Petitioner's showing of error in any meaningful form. No explanation was provided as to how the information presented in the study specifically related to the land base in question. As such the Respondent has failed to rebut the Petitioner's evidence.

Pricing schedule

19. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
 - a) The Petitioner's claim that the subject structure should be assessed using the GCK pricing schedule is based on two facts: first, that the building was previously assessed as GCK, and second, that the buildings in the industrial park are either wood joist or pre-engineered steel buildings and all save the subject property are assessed as GCK structures. *Smith testimony; Pet. Ex.5.*
 - b) However, the determination of whether to apply the GCK pricing schedule depends upon specific information about the property in question – data that the Petitioner has failed to provide. The GCK pricing schedule includes but is not limited to specific pricing for features such as exterior sheathing, insulation, steel girts and purlins, siding type, and framing variations. 2002 REAL PROPERTY ASSESSMENT GUIDELINES—VERSION A, Appendix G, Schedule A.4; see generally, *Waterfurnace Int'l Inc. v. Dep't of Local Government Finance*, 806 N.E. 2d 891 (Ind. Tax Ct. 2004). The Petitioner provided no testimony or evidence about any of the features listed above.
 - c) Furthermore, the Petitioner failed to demonstrate that the other properties in the industrial were truly comparable to the subject. The Petitioner provided no detailed information regarding the properties. The explanation as to how the properties were similar was minimal at best. With the exception of the framing

and the Petitioner Representative's statements that all the properties were pre-engineered steel structures, no discussion of the features of the subject and the purportedly comparable buildings was provided. *Smith testimony; Pet. Ex.5.* As such, the Petitioner has failed to show an error in the assessment.

Conclusions

Constitutionality

20. The Petitioner is in violation of 52 I.A.C. 1-2-1(b), and as a result has waived all arguments under this issue.

Land base rate

21. The Petitioner made a prima facie case. The Respondent did not rebut Petitioner's evidence. The Board finds in favor of Petitioner. The land base rate of the property should be changed to \$30,000 per acre.

Pricing schedule

22. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.