

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

**Petition:** 53-008-02-1-4-00428B  
**Petitioner:** JWR Properties  
**Respondent:** Perry Township Assessor (Monroe County)  
**Parcel:** 014-24390-00  
**Assessment Year:** 2002

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 9, 2003.
2. The PTABOA mailed notice of the decision to the Petitioner on December 5, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on January 5, 2004. Petitioner elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated July 10, 2006.
5. The Board held an administrative hearing on September 13, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Marilyn Meighen appeared as counsel for the Respondent. Persons present and sworn as witnesses at the hearing:
  - Milo Smith, Tax Representative,
  - Judy Sharp, Monroe County Assessor.
  - Ken Surface, Nexus Group.

**Facts**

7. The subject property is a light manufacturing facility located at 5233 S. State Road 37, Bloomington, Indiana. The property has three buildings on 1.79 acres.
8. The ALJ did not conduct an on-site inspection of the property.

9. The PTABOA determined the assessed value of the subject property is \$53,700 for the land and \$668,200 for the improvements, for a total assessed value of \$721,900.
10. The Petitioner requested an assessment of \$53,700 for the land and \$641,100 for the improvements, for a total assessed value of \$694,800.

### **Issue**

11. Summary of Petitioner's contentions in support of error in the assessment:
  - a. The subject improvement should be priced using the General Commercial Kit (GCK) pricing schedule. *Smith testimony*. The Form 11 – Notice of Assessment of Land and Improvements issued on April 26, 2003, and the property record card (PRC) printed on April 9, 2003, show that the manufacturing portion of the improvement was valued from the GCK pricing schedule for the 2002 assessment. *Smith testimony; Petitioner Exhibits 1, 2*.
  - b. The PTABOA issued its final determination denying the appeal. According to that determination, the property was assessed correctly. Nevertheless, the PTABOA changed the assessed value for the improvements by changing the pricing schedule used to value the manufacturing portion of the improvement from GCK to General Commercial Industrial (GCI). *Smith testimony; Petitioner Exhibits 4, 5*. Because the Form 115 indicated that the petition was denied, the value should have remained unchanged. *Smith testimony*.
12. Summary of Respondent's contentions in support of the assessment:
  - a. According to IC § 6-1.1-15-2.1, assessed values may increase, decrease or remain the same when someone files a petition for PTABOA review. *Meighen argument*. Statutes authorize the PTABOA to make any changes in assessments that it deems necessary. *Id*.
  - b. One can interpret the Form 115 to mean that the PTABOA made a ruling on the Petitioner's issues and then corrected the assessment. *Meighen argument*. The Petitioner had full opportunity to contest the schedule selection, but failed to do so. *Id*.

### **Record**

13. The official record for this matter contains the following:
  - a. The Petition,
  - b. The recording of the hearing labeled BTR # 6160,

c. Exhibits:

Petitioner Exhibit 1 - Form 11 dated April 26, 2003,  
Petitioner Exhibit 2 - PRC printed April 9, 2003,  
Petitioner Exhibit 3 - Form 130 filed on June 9, 2003,  
Petitioner Exhibit 4 - Form 115 dated December 5, 2003,  
Petitioner Exhibit 5 - PRC printed October 10, 2003,

Respondent submitted no exhibits,

Board Exhibit A - Form 131,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C - Notice of Appearance for Marilyn Meighen,  
Board Exhibit D - Notice of appearance,  
Board Exhibit E - Hearing Sign In Sheet,

d. These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:

- a. 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 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).
- b. 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 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”).

15. The Petitioner failed to make a prima facie case for the following reasons:

- a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while

- presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.
- b. The general instructions printed on the Petitioner's Form 130 expressly cautions that "[a]s a result of filing this petition, the assessment may increase, may decrease, or may remain the same." *Petitioner Exhibit 3*. Although the Respondent incorrectly argued that Ind. Code § 6-1.1-15-2.1 provides the authority for this statement, it is true that when a petition for review is filed, the assessed value may increase, decrease or remain the same. Tax representatives are specifically required to warn taxpayers of that possibility. 50 IAC 15-5-5; 52 IAC 1-2-2(b). Mr. Smith certified that he did so.
  - c. Section V of the PTABOA's notice states, "Petition denied. Property assessed correctly according to I.C. 6-1.1-4." *Petitioner Exhibit 4*. In isolation, this statement is arguably ambiguous. Nevertheless, the meaning is clear within the context of the entire notice of which it is a part. Section III specifies that as a result of the PTABOA hearing, the assessed value of the property is \$53,700 for land and \$668,200 for improvements. The notice is sufficiently clear to indicate that the claims the Petitioner made on its Form 130 were denied *and* that the PTABOA determined the correct assessment for the improvements should be \$668,200.
  - d. The Petitioner's procedural argument that the PTABOA cannot change the assessment or that the improvements must remain at \$641,900 is incorrect. Furthermore, the current Board hearing provides the Petitioner with the opportunity to dispute the PTABOA's determination and makes any ambiguity in the language of the PTABOA determination a moot point.
  - e. Having made that determination, the Board now turns to the Petitioner's main contention that the PTABOA erroneously changed its assessment because the assessment as shown on the original notice (Petitioner Exhibit 1) and an earlier PRC (Petitioner Exhibit 2) is prima facie evidence that its improvements should be assessed under the GCK schedule.
  - f. The choice between the GCK schedule and the GCI schedule, however, concerns only the methodology by which this assessment was determined. The goal under Indiana's assessment scheme is to ascertain the property's market value-in-use. Merely challenging an assessment on the theory that the regulations were misapplied does not show that an assessment is not a reasonable measure of true tax value. A taxpayer must present evidence indicating the property's actual market value-in-use.
  - g. To challenge the PTABOA's determination of \$668,200 successfully, the Petitioner should have presented evidence to prove that this figure does not accurately reflect the property's market value-in-use. To the extent that a township assessor's original

assessment is presumed to be an accurate measure of market value-in-use, the PTABOA's assessment "trumps" the township assessor and is afforded the same presumption. See Ind. Code § 6-1.1-13 (outlining the PTABOA's authority to alter assessments within its jurisdiction). See also *Lentz v. Trustees of Indiana Univ.*, 221 N.E.2d 883, 884 (Ind. 1966) (suggesting that within the administrative realm of assessing Indiana property, there is a hierarchy of assessment officials); *King Indus. Corp. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 338, 341 (Ind. Tax Ct. 1998) (explaining that the goal of the entire assessing process is to arrive at correct assessments).

- h. The Petitioner failed to present probative evidence that the assessment is not a reasonable measure of market value-in-use. That failure is fatal.

[T]o the extent that an assessor may err in applying the regulations correctly, this will not necessarily invalidate the assessment so long as the assessment accurately reflects the property's market value-in-use. See IND. ADMIN CODE tit. 50, r. 2.3-1-1(d) (2002 Supp.). Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.

*Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

16. Where the Petitioner has not supported the 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**

17. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.