

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

**Petition:** 91-002-12-1-4-00001  
**Petitioner:** Jerry Amick  
**Respondent:** White County Assessor  
**Parcel:** 91-64-33-000-005.700-002  
**Assessment Year:** 2012

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

**Procedural History**

1. The Petitioner initiated his assessment appeal with the White County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition on October 27, 2012.
2. The PTABOA issued a notice of its determination on May 31, 2013, affirming the assessment.
3. The Petitioner filed his form 131 petition with the Board on July 3, 2013. He elected to have this appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on September 11, 2013.
5. On October 11, 2013, Administrative Law Judge (ALJ) Ellen Yuhan held the administrative hearing. The ALJ did not inspect the subject property.
6. Scott Potts, certified representative for the White County Assessor, and Jerry Amick were sworn and testified at the hearing.

**Facts**

7. The subject property is a commercial utility storage building located at 201 S. State Road 43, Chalmers, Indiana.
8. The PTABOA determined the assessment is \$9,800 for land and \$13,600 for improvements (total \$23,400). *Board Ex. A.*

9. The Petitioner requested a value of \$7,900 for the land and \$6,500 for the improvements (total \$14,400). *Board Ex. A.*

### **Record**

10. The official record contains the following:
  - a. The Form 131 petition.
  - b. Digital recording of the hearing.
  - c. Respondent Exhibit 1 – Sales comparison approach for the subject property,  
Respondent Exhibit 2 – Property record card for the subject property.
  - d. Petitioner Exhibit 1 – Comparison of the March 1, 2012, assessment to the previous assessment,  
Petitioner Exhibit 2 – Date showing the lack of residential real estate sales in Chalmers in 2011.
  - e. Board Exhibit A – Form 131 petition  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet.
  - f. These Findings and Conclusions.

### **Burden**

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

12. The assessment increased from \$14,400 in 2011 to \$23,400 in 2012 which represents a 62.5% increase. *Respondent Ex. 2*. Indiana Code section 6-1.1-15-17.2 applies and the Respondent has the burden of prove the assessment is correct.

### **Contentions**

13. Summary of the Respondent's case:
  - a. Commercial properties do not make up a high degree of sales in this market. In fact, with the exception of Monticello, there are not enough sales in any one township to do a ratio study. Even finding sales in the correct assessment year is difficult. *Potts testimony*.
  - b. Potts found two properties that he used for his sales comparison and adjusted for differences. Comparable 1 is 108 S. State Road 43 in Chalmers. This property sold on July 16, 2010, for \$37,000. No adjustments for time of sale were made because there was no fluctuation in sales prices, either up or down, between 2009 and 2012. Comparable 1 and the subject property are both approximately .3 acres, and both properties are frame buildings used as storage. The subject property was built around 1900 whereas comparable 1 was built in 1946, however since both buildings are older their depreciation schedule is exhausted. The building on the subject property is 3,024 square feet and the building on comparable 1 is 1,304 square feet. Potts adjusted \$14,000 for size based on the cost schedules in the Indiana Assessment Manual. Comparable 1 paved area is significantly larger than the paved area at the subject property. Potts adjusted -\$2,500 for this difference using the Indiana cost schedules and determined the adjusted sale price to be \$48,500. *Potts testimony; Respondent Exhibit 1*.
  - c. Comparable 2 is 310 S. South Street in Brookston. It sold for \$62,500. Multiple adjustments were made to this price. Brookston is closer to Lafayette so there is more traffic and the commercial area is better than in Chalmers, so a -\$13,600 adjustment was made. This property is approximately half of the size of the subject property and is a pole storage building, which is cheaper to build and does not last as long. Based on these factors, a \$9300 (\$7,700 for size + \$1,600 for design) adjustment was made. Comparable 2 was built in 1979 and has not reached maximum depreciation. It has less square footage than the subject property, so a -\$6,800 adjustment was made. The building at comparable 2 is smaller, which accounts for a +\$8,500 adjustment. Finally, a -\$1,600 adjustment was made because comparable 2 has more paving. The net adjustment for the differences between the subject property and comparable 2 is -\$4,200 for a comparable sales price of \$58,300. *Respondent Exhibit 1; Potts testimony*.

- d. There is a significance difference between the Petitioner's assessed value and the sales in the market. The Respondent is not advocating that the Petitioner's assessment should be raised, but the purpose of the comparables is to illustrate that lowering the assessment is not appropriate. *Potts testimony*.
  - e. The depreciation on the property record card is overstated and causes the value of the building to be lower. The 2012 assessment is likely a little low and the 2011 may have been much too low. This may account for the disparity between this assessment and the comparable sales. *Potts testimony; Respondent Exhibit 2*.
  - f. The assessed value for 2012 increased as a result of a change in the cost schedules and depreciation schedules used for the reassessment, rather than a change in the market. Further, assessments are developed using mass appraisal and not individual property appraisals. Mr. Amick's property was not singled out over any other properties. *Potts testimony*.
14. Summary of the Petitioner's case:
- a. The case is simple. The 2012 assessment is 62.5% higher than the 2011 assessment. Both assessments are supposedly on a market value basis, but the market value could not possibly have increased by 62.5%. *Amick testimony; Petitioner Exhibit 1*.
  - b. The Petitioner did not find any sales of comparable commercial properties. And residential real estate activity was non-existent in Chalmers in 2011. No homes closed during that year. *Amick testimony; Petitioner Exhibit 2*.

### **Analysis**

15. The Respondent did not make a prima facie case that the assessed value is correct. The Board reached this decision for the following reasons:
- a. For 2012, real property is assessed based on its "true tax value," which 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); 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. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.

- b. Regardless of the type of evidence, a party must explain how its evidence relates to the required 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
- c. Potts stated that the property's assessed value is likely too low. In support of this contention, Potts presented a sales comparison analysis he prepared. Potts identified two commercial properties and adjusted those sales for differences in size, age, construction, and site size based on costs in the Indiana assessment guidelines. Potts also developed a location adjustment for the comparable property located in Brookston.
- d. On March 7, 2013, Potts was certified by the Indiana Department of Local Government Finance as a professional appraiser authorized to provide technical assistance to White County. But he did not indicate that he complied with the Uniform Standards of Professional Appraisal Practice (USPAP) in preparing the sales comparison analysis. Further, Potts failed to show how he arrived at many of the adjustments he made for the many differences between the comparable properties and the subject property. For example, Potts developed a location adjustment of -\$13,600 for the difference in location between the subject property and comparable 2. He also made adjustments of -\$6,800 based on the dates each property was built, and +\$1,600 based on the type of building on each of the properties. Potts made multiple adjustments, but failed to account for how he arrived at each adjustment. It is not clear to the Board what objective data Potts used to justify the adjustments.
- e. Finally, Potts stated that he was not advocating for a value in his analysis for the subject property. He merely claimed his evidence showed that lowering the assessment was not appropriate.
- f. The adjustments used to support the conclusion the assessment should not be lowered were a significant part of the Respondent's case. Nevertheless, Potts failed to explain to the Board how he arrived at the specific adjustment numbers. Based on Potts' failure to show how he arrived at such an integral part of the analysis, the Board does not find his evidence or testimony to be probative.

- g. In other cases where the Respondent has the burden to prove the assessment is correct and failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the preceding year. In this case, the assessment is reduced to \$14,400.

### **Conclusion**

16. The Respondent failed to offer probative evidence to support the assessment and failed to meet the burden of proof. The Board finds for the Petitioner.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value should be changed to \$14,400.

ISSUED: January 30, 2014

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Commissioner, Indiana Board of Tax Review

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#### **- 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>>.