

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

Petition No.: 18-017-20-1-4-00542-21
Petitioner: Michael Anderson
Respondent: Delaware County Assessor
Parcel: 18-10-14-354-002.000-017
Assessment Year: 2020

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 appealed the 2020 assessment of his 12,000 s/f light utility storage building on a 100,885 s/f lot located at 7801 West Kilgore in Yorktown, Indiana.
2. On June 25, 2021, the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$151,300 for land and \$71,700 for improvements for a total of \$223,000.
3. The Petitioner timely appealed to the Board, electing to proceed under the small claims procedures. On November 23, 2021, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
4. Michael Anderson appeared *pro se*. Christopher Ward of PSC Associates LLC appeared for the Assessor. Both were sworn.

Record

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

a) Exhibits:

Petitioner Exhibit 1: 2021 property record card for 7701 West Kilgore Avenue,
Petitioner Exhibit 2: Sketch area only of property record card for 7901 West Kilgore Avenue,
Petitioner Exhibit 3: Page 1 of 2020 property record card for the subject property.

- Respondent Exhibit 1: 2019 property record card for the subject property,
- Respondent Exhibit 2: 2020 property record card for the subject property,
- Respondent Exhibit 3: Four exterior photographs of the subject property street view,
- Respondent Exhibit 4: Commercial and Industrial Neighborhood Valuation Form for neighborhood number 911005,
- Respondent Exhibit 5: Beacon aerial map of the subject property neighborhood,
- Respondent Exhibit 6: 2020 property record cards for 7701, 7901 and 8051 West Kilgore Avenue.

- b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Contentions

6. Summary of the Petitioner's case:

- a) Mr. Anderson contends that the Assessor erred in assessing the subject property. According to Mr. Anderson, he has owned the property for 28 years and the size of the lot has always been 2.3 acres. *Anderson testimony; Pet'r Ex. 3.*
- b) Mr. Anderson researched comparable land assessments near the subject property. He contends the two properties located on either side of the subject property are assessed with a primary land rate of \$1.50 per square foot and a usable undeveloped rate of \$0.60 per square foot, even though both properties are used in their entirety. Mr. Anderson argues that he only uses a third of his property, but the entire parcel is assessed at the primary land rate. *Anderson testimony; Pet'r Exs. 1 & 3.*
- c) He testified that the building has never been occupied, because the Town of Yorktown refuses to give the property an occupancy permit. The building also has a "bad" roof that needs to be replaced. Due to these factors no money has been made at the property. *Anderson testimony.*
- d) Finally, Mr. Anderson testified that over the last three years the subject property's taxes have increased from \$4,105 in 2018 payable 2019, to \$4,506 in 2019 payable 2020 and \$6,810 in 2020 payable 2021. The property has not changed but the taxes have increased over 50%. *Anderson testimony.*

7. Summary of the Respondent's case:

- a) Mr. Ward claimed the subject property's assessment is correct. According to him, the subject property's 2020 assessment increased because some of the land square footage was omitted from the assessment for several years. He testified that in 2019 the property record card showed the lot size as 49,658 square feet or 1.14 acres. For

2020, the Assessor corrected the error and changed the lot size to 100,885 square feet or 2.316 acres. *Ward testimony; Resp't Exs. 1, 2 & 5.*

- b) Mr. Ward offered the county's land order for the subject neighborhood showing that the commercial primary land base rate has a range of \$0.60 to \$10.00 per square foot. He then submitted three neighboring property record cards to show that the primary commercial land type 11 base rate was established at \$1.50 per square foot for the subject property's neighborhood. He then concluded that applying the \$1.50 per square foot rate to the Petitioner's 100,885 square foot lot yielded a total land assessed value of \$151,300. *Ward testimony; Resp't Exs 2, 4 & 6.*
- c) Next, Mr. Ward noted that the subject property has a 12,000 square foot light utility storage building that was built in 1930. It is rated at a C grade in average condition. The Assessor applied a 33% obsolescence adjustment due to lack of use. The storage building is assessed for \$69,500 or \$5.79 per square foot. The property also has fencing valued at \$2,200. The total improvement assessed value is \$71,700. Adding the improvement value to the land value yields a total assessed value of \$223,000 as of January 1, 2020. *Ward testimony; Resp't Exs. 2 & 3.*
- d) Finally, Mr. Ward testified that the two properties presented by Mr. Anderson both have assessed values higher than the subject property. He noted that when assessing a property, the Assessor is charged with determining a property's total assessed value, not just its land value. *Ward testimony; Resp't Exs. 2 & 6.*

Burden of Proof

- 8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d). But there are exceptions to that rule as well, such as where the assessment under appeal was based on substantial renovations or new improvements, zoning, or uses that were not considered in the previous year's assessment. I.C. § 6-1.1-15-17.2(c). If the assessor has the burden of proof and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither the assessor nor taxpayer meet their burden, the assessment reverts to the previous year's level. I.C. § 6-1.1-15-17.2(b)
- 9. Here, the Petitioner did not offer any argument regarding the burden of proof. The assessment increased from \$146,200 in 2019 to \$223,000 in 2020, an increase of more than 5%. The Respondent argued that due to an error in the Assessor's office, the Petitioner's lot was only assessed for 49,658 square feet in 2019, and the size was corrected in 2020 to 100,885 square feet. The Respondent contends that the burden-shifting rule should not apply because even though the assessment increased by more than 5% over the prior year, it was not the same property as it was in 2019.

10. We are sympathetic to the Respondent's argument that the subject property is not the same property as in the previous year. The 2019 assessment was based on half the acreage of the 2020 assessment. But, as Mr. Anderson points out, his property did not change between 2019 and 2020. He did not acquire any new land, nor did he add any new improvements. The legislature has made specific exceptions to the burden shifting rule for certain changes in a property. These are, as discussed above, substantial renovations or new improvements, zoning, or uses that were not considered in the previous year's assessment. Omitted acreage is not one of the listed exceptions. Thus, it appears the legislature intended assessors to bear the burden of proof when they correct such an omission. Unless and until the legislature decides otherwise, we are limited to apply the law as written. Because the subject property's assessment increased more than 5% over the previous year and no exception applies, the Respondent bears the burden of proof.

Analysis

11. The Respondent failed to make a prima facie case that the 2020 assessment is correct.
- a) Real property is assessed based on its market value-in-use. I.C. § 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 property 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 the 2020 assessment, the valuation date was January 1, 2020. *See* I.C. § 6-1.1-2-1.5.
 - c) Here, the Respondent had the burden to prove the 2020 assessment is correct. But the Respondent's witness primarily described how the subject property was assessed using the guidelines. He also described components of the building, such as age, size, condition, and obsolescence used to calculate the assessed value. A party may not make a case simply by showing how the Department of Local Government Finance's assessment guidelines were applied. To successfully make a case, parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Simply applying the mass appraisal methodology is insufficient.

- d) The Respondent did present the assessments of two neighboring properties. A party offering assessment data must use generally accepted appraisal or assessment practices to show how the purportedly comparable properties relate to the value of the subject property. *See* I.C. § 6-1.1-15-18(c); *see also Long*, 821 N.E.2d at 470-71. Conclusory statements that properties are “similar” or “comparable” do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. They must also explain how relevant differences affect values. *Id.*
- e) The Respondent did not offer the type of analysis contemplated by *Long*. While Ward identified two properties in the subject neighborhood, he offered little or no evidence on the characteristics that affect market value-in-use. And he did not even attempt to explain how any relevant differences affected the properties’ values.
- f) For these reasons, the Respondent failed to offer probative evidence to prove the 2020 assessment is correct. Therefore, the Petitioner is entitled to have his assessment returned to its 2019 value of \$146,200.¹


Final Determination

In accordance with the above findings and conclusions, the 2020 assessment must be reduced to \$146,200.

ISSUED: 2/21/2022



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

¹ It is somewhat unclear whether the Petitioner was asking for a value that differed from the reversion. In any case, we note that the Petitioner failed to provide probative, market-based evidence in support of a different value.

- 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>>.