

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

Petition No.: 54-028-13-1-4-00084
Petitioners: Mike Bickers
Respondent: Montgomery County Assessor
Parcel No.: 54-07-20-200-010.007-028
Assessment Year: 2013

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

PROCEDURAL HISTORY

1. Mike Bickers appealed his 2013 assessment to the Montgomery County Property Tax Assessment Board of Appeals (“PTABOA”), which mailed notice of its determination on January 9, 2014.
2. Bickers then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On October 29, 2014, the Board’s administrative law judge, Dalene McMillen, held a hearing on Bickers’ petition. Neither she nor the Board inspected the property.
4. Bickers and Sherri Bentley, the Montgomery County Assessor, were sworn and testified.

FACTS

5. The property consists of a nightclub/bar on 1.94 acres located at 1080 Corey Boulevard in Crawfordsville.
6. The PTABOA determined the following assessment:

Land: \$99,400 Improvements: \$125,600 Total: \$225,000.
7. Bickers requested a total assessment of \$120,000.

RECORD

8. The official record for this matter is made up of the following:
 - a. A digital recording of the hearing,
 - b. Exhibits:
 - Petitioner Exhibit A: U.S. Department of Housing & Urban Development settlement statement, dated July 26, 2013,
 - Respondent Exhibit A: Assessor's written summary,
 - Respondent Exhibit B: Property record card for 1100 Corey Boulevard, Crawfordsville,
 - Respondent Exhibit C: Taxpayer's Notice to Initiate an Appeal for the March 1, 2013, assessment year,
 - Respondent Exhibit D: Taxpayer's Notice to Initiate an Appeal for the March 1, 2014, assessment year,
 - Respondent Exhibit E: Sales Disclosure Form for the subject property, dated July 23, 2013,
 - Respondent Exhibit F: Aerial map of the subject property,
 - Respondent Exhibit G: Property record card for the subject property,
 - Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet,
 - c. These Findings and Conclusions.

BURDEN OF PROOF

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
10. Indiana Code § 6-1.1-15-17.2, as amended, 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's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the

following date represents an increase over “the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase” I.C. § 6-1.1-15-17.2(d).¹

11. Neither of those circumstances applies here. The subject property’s assessment actually decreased between 2012 and 2013. Bickers therefore has the burden of proof.

CONTENTIONS

12. Summary of Bickers’ case:
 - a. The property was on the market for several years with an asking price of \$150,000. The seller finally threw in the towel because it was not profitable. On July 26, 2013, Bickers bought the property for the negotiated price of \$120,000. The price included the real property, equipment, fixtures, and a business license. Thus, the assessment should be no more than \$120,000 and should probably be even less. *Bickers testimony; Pet’r Ex. A.*
 - b. The property is currently rented for use as a gentlemen’s club. When he bought the property, Bickers did not realize that it was located on a dead-end street. He claims that only one or two cars pass the property in any two-or-three-hour period. The area is more conducive to a warehouse or similar use that does not require much traffic. *Bickers testimony.*
13. Summary of the Assessor’s case:
 - a. According to the Assessor, the July 26, 2013 sale in which Bickers bought the property was not an arm’s length transaction, but rather was a privately negotiated cash deal without exposure to the market. And it may have involved personal property or intangibles, despite Bickers having signed a sales disclosure form saying otherwise. The sale is therefore invalid, and it should not be used to determine the property’s value. *Bentley testimony; Resp’t Exs. C, E.*
 - b. To support the assessment, the Assessor pointed to a nearby commercial property located at 1100 Corey Boulevard. Both buildings are pole-type construction. Although the subject building is 8,400 square feet, the nearby building is only 5,000 square feet. Yet the smaller building was assessed at \$164,900, while the subject building was assessed at only \$125,600. The subject land consists of 1.94 acres assessed at \$99,400. The other property has only .93 acres and a land value of \$79,400. *Bentley testimony; Resp’t Exs, A-B, F-G.*

¹ Those provisions may not apply if there was a change in improvements, zoning, or use, or if the property was valued using the income capitalization approach in the prior appeal. I.C. § 6-1.1-15-17.2(c) and (d).

- c. Finally, although the property is on a dead-end street, it backs up to the interstate. The location therefore provides good visibility for a sign that would attract customers. *Bentley testimony; Resp't Ex. F.*

ANALYSIS

14. Bickers met his burden of proving that the assessment should be reduced. The Board reaches this conclusion for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, for the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See Id.*; *see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
 - b. In any case, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *Id.* For 2013 assessments, the valuation date was March 1, 2013. *See* I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Bickers bought the subject property together with some unidentified equipment, fixtures, and a business license, for \$120,000. A property’s sale price is often compelling evidence of its true tax value. And the sale at issue occurred less than five months after the relevant valuation date.
 - d. The Assessor challenged the sale’s validity as an indicator of the property’s value, claiming that it was not exposed to the market. She is correct that, in many cases, adequate exposure to the market is a prerequisite to viewing a sale as indicative of a property’s market value. *See* 2011 MANUAL at 5-6 (defining market value as “[t]he most probable price ... in cash, or in terms equivalent to cash ... for which specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale....”). But she offered nothing to dispute Bickers’ testimony that the property was marketed for several years with an asking price of \$150,000. Granted, Bickers’ testimony was vague—he offered no details about the

manner in which the property was marketed. The Assessor's testimony, however, was even less convincing. She failed to explain what led her to believe that the property was not exposed to the market. The Board therefore rejects the Assessor's challenge to the sale price on that ground.²

- e. Next, the Assessor pointed to the fact that the sale may have included things other than real property. Indeed, Bickers testified that it included equipment, fixtures, and a business license. If Bickers were asking for an assessment lower than the \$120,000 sale price, the lack of evidence showing how the price should be allocated between the real property and other interests included in the sale might be a problem. But as Bickers persuasively argued, the sale price sets the upper limit of the real property's value, which is still substantially less than its current assessment. That is particularly true given the lack of any evidence to show that he somehow assumed additional liabilities by purchasing the non-realty interests.
- f. The Assessor, however, also pointed to the fact that the sales disclosure form, which Bickers signed, indicates that the sale did not include personal property. It is unclear whether she was challenging Bickers' claim that the sale included non-realty interests or was instead highlighting the apparent contradiction between the disclosure form and Bickers' testimony in order to challenge his overall credibility. Neither argument convinces the Board that it should disregard the sale price.
- g. As explained above, Bickers seeks to reduce the assessment to \$120,000—not to some lesser portion of the sale price that he claims should be allocated to the real property. Thus, it does not matter whether the sale actually included non-realty interests. The apparent contradiction between Bickers' testimony and the sales disclosure form is a little more concerning. The Assessor, however, failed to explore Bickers' understanding of the sales disclosure form or the circumstances under which he signed it. Under the circumstances, the Board finds Bickers' overall testimony, including his testimony about the property having been marketed in advance of the sale, sufficiently credible.
- h. The Assessor, however, did not stop at challenging the validity of the property's sale price. She also offered information about a nearby property's assessment. As noted above, a party may offer evidence regarding the assessments of relevant, comparable properties to prove the market value-in-use for a property under appeal. *See* I.C. § 6-1.1-15-18(c)(2). To do so, however, the Assessor needed to show that the properties were comparable to each other and explain how any relevant differences affected their values. *See id.* (requiring the use of generally accepted appraisal and assessment

² The Assessor also referred to the sale being a "cash sale" and said that it did not appear to be an arm's length transaction. *Bentley testimony*. The Board is unclear as to what significance the Assessor believes should be assigned to the fact that Bickers may have paid cash. As explained above, the definition of market value presumes a sale in cash or equivalent terms. 2011 MANUAL at 5-6. Her belief that the transaction was not at arm's length appears to relate to her claim about the lack of market exposure. She did not claim that Bickers and the seller were related in any way or that they acted in anything other than their own interests.

practices to determine whether properties are comparable); *see also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected the properties' values). The Assessor did nothing to compare the two properties other than to lay out their respective sizes and to explain that both buildings were pole-type construction. That falls well short of the type of comparison contemplated by the statute and case law. Even if the Board were to give the assessment comparison some weight, it would still find the property's actual sale price more persuasive.

CONCLUSION

15. Based on its sale price, the Board finds that the subject property was worth no more than \$120,000 as of March 1, 2013. It therefore orders that the assessment be reduced to \$120,000.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property should be changed.

ISSUED: January 23, 2015

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>>.