

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

Petition: 07-005-02-1-4-00018
Petitioner: DQ Brazier of Nashville
Respondent: Brown County Assessor
Parcel: 001093193200200
Assessment Year: 2002

The Indiana Board of Tax Review (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 Brown County Property Tax Assessment Board of Appeals (PTABOA) by written notice dated May 23, 2005.
2. The PTABOA mailed notice of its decision on August 29, 2005.
3. The Petitioner appealed to the Board by filing a Form 131 on September 22, 2005, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 9, 2010.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on June 9, 2010. She did not inspect the property.
6. The following persons were present and sworn as witnesses:
For the Petitioner – Milo Smith,
For the Respondent – Ken Surface,
Linda Bauer.

Facts

7. The subject property was a restaurant located in Nashville.
8. The PTABOA determined the assessed value is \$583,850 (\$522,700 for land and \$61,150 for improvements).
9. On its Form 131, the Petitioner claimed the assessment should be \$71,650 (\$10,500 for land and \$61,150 for improvements). At the hearing, however, the Petitioner requested an assessed value of \$191,850 (\$130,700 for land and \$61,150 for improvements).

Contentions

10. Summary of the Petitioner's case:

- a. According to Ind. Code § 6-1.1-4-13.6(a), [t]he township assessor shall determine the values of all classes of commercial, industrial, and residential land ... in the township using guidelines determined by the department of local government finance.” *Pet’r Ex. 2.*
- b. Those DLGF guidelines state that “[e]ach township assessor shall determine the value of all classes of residential land, commercial land, industrial land, and agricultural homesite within his or her jurisdiction. The established value of this land represents the January 1, 1999 market value in use of improved land.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 7 (incorporated by reference at 50 IAC 2.3-1-2); *Pet’r Ex. 1.*
- c. According to Ind. Code § 6-1.1-4-13.6(c), “[t]ownship assessors shall use the values determined under this section.” *Pet’r Ex. 2.*
- d. The Commercial and Industrial Neighborhood Valuation Form for neighborhood 0140500 specifically states it is for property “south of Highway 46 within City Limits” and it states the base rate for primary land is \$5 per square foot. The PRC shows that the subject property is in neighborhood 7014010, but that is wrong. The correct neighborhood number should be 0140500 because the subject property is located within the city limits and south of Highway 46. *Smith testimony; Pet’r Ex. 3, 3m, 4.*
- e. The land value for the subject property is calculated incorrectly at \$20 per square foot because it is based on the wrong neighborhood. When identified with the correct neighborhood number, the land value would be \$5 per square foot. The resulting land value would be \$130,700 (26,136 square feet x \$5). The total true tax value of the subject property should be \$191,850 (\$130,700 for land plus \$61,150 for improvements). *Smith testimony; Pet’r Ex. 4.*
- f. Such a land valuation would be consistent with the Salt Creek Inn, Inc. and the Miller & Herr Investments, LLC properties that also are located south of Highway 46 because those land values are based on \$5 per square foot. *Smith testimony; Pet’r Ex. 3, 5, 6.*

11. Summary of the Respondent's case:

- a. Language in the comment section of the Neighborhood Valuation Form cannot contain every parcel located within a designated neighborhood. The subject property never was assigned to neighborhood 0140500. It was correctly assigned to neighborhood 7014010, which has a land base rate of \$20 per square foot. *Surface testimony; Resp’t Ex. 1.*

- b. Exhibit 11 is a map showing the proximity of some other commercial properties that are in the same neighborhood as the subject property. Exhibits 4, 6, 7, 8 and 9 are the Property Record Cards for five such properties in neighborhood 7014010. For 2002 those five also had land values determined from a \$20 per square foot base rate, as did the subject property. *Surface testimony.*
- c. The Stanley property sold in 2000 for \$455,000. It was a sale used to establish land rates for the area. *Surface testimony; Resp't Ex. 4, 5.*
- d. The KLS property sold for \$275,000 in 2000. It was a sale used to establish land rates for area. *Surface testimony; Resp't Ex. 6.*
- e. The 27 Jefferson Street property sold for \$257,500 in 1999. It also helped to establish the \$20 base rate for this neighborhood. *Surface testimony; Resp't Ex. 7.*
- f. The Watson property sold in April 1999 for \$640,000. It also helped to establish the \$20 base rate for this neighborhood. *Surface testimony; Resp't Ex. 8.*
- g. The Taco Bell property is located approximately 500 yards north of the property. In 2002 its assessed value was \$177,700 based on the same \$20 land base rate for the neighborhood. In 2007 the former Taco Bell property was offered for sale at \$600,000. *Surface testimony; Resp't Ex. 10.*
- h. The subject property sold for \$525,000 in 2004. At that same time an adjoining property sold for \$350,000. Both of those transactions were essentially a purchase of vacant land because the improvements were removed shortly after the purchases to prepare for the construction of a new building. Even though the sale of the subject property was not within the time that is correctly related to a 2002 assessment, the selling price validates the disputed assessment. *Surface testimony; Resp't Ex. 2, 3.*
- i. Regardless of the neighborhood to which it was assigned, the assessment on the subject property accurately reflects what it is worth. *Surface testimony.*
- j. The Petitioner has not provided any evidence of the property's "bottom line" value. *Surface testimony.*

Record

- 12. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,

- c. Hearing Sign-In Sheet,
- d. Digital recording of the hearing,
- e. Petitioner Exhibit 1 – 2002 Real Property Assessment Guidelines—Version A, chapter 2, page 7,
 Petitioner Exhibit 2 – Ind. Code § 6-1.1-4-13.6,
 Petitioner Exhibit 3 – Commercial and Industrial Neighborhood Valuation Form for Neighborhood 0140500,
 Petitioner Exhibit 3m – Google aerial image indicating the subject property location with a red circle,
 Petitioner Exhibit 4 – Subject property record card (PRC) with added notes indicating the Petitioner’s requested assessment,
 Petitioner Exhibit 5 – PRC for the Salt Creek Inn property,
 Petitioner Exhibit 6 – PRC for Miller-Herr Investments property,
 Respondent Exhibit 1 – Subject PRC,
 Respondent Exhibit 2 – Sales disclosure form (SDF) for sale of the subject property on October 14, 2004,
 Respondent Exhibit 3 – SDF for sale of adjoining property on October 14, 2004,
 Respondent Exhibit 4 – PRC for the Stanley property,
 Respondent Exhibit 5 – SDF for the Stanley property, September 15, 2000,
 Respondent Exhibit 6 – PRC for the KLS property,
 Respondent Exhibit 7 – PRC for the 27 Jefferson Street property,
 Respondent Exhibit 8 – PRC for the Watson property,
 Respondent Exhibit 9 – PRC for the Taco Bell property,
 Respondent Exhibit 10 – MLS listing for the Taco Bell property,
 Respondent Exhibit 11 – Map indicating the location of the subject property and the others for which Respondent introduced a PRC,
- f. These Findings and Conclusions.

Analysis

- 13. 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).
- 14. The parties must walk the Board through every element of their analysis, explaining how each piece of evidence is relevant to their claim. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
- 15. The Petitioner did not provide sufficient evidence to make a prima facie case for any assessment change. This conclusion was arrived at because:

- a. Indiana assesses real property based on its “true tax value”, which is “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally uses three methods to determine value: the cost approach, the sales comparison approach, and the income approach. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2).
- b. A property’s market value-in-use as determined using those guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal practices. MANUAL at 5.
- c. But rather than presenting that type of actual market value-in-use evidence, the Petitioner (via Mr. Smith) focused entirely on a very narrow dispute about what the correct neighborhood number and land base rate should be. Although there was almost no cogent argument to support their view, apparently they believe that Ind. Code § 6-1.1-4-13.6 requires assessed land values to be determined only on the basis of the Guidelines provided by the Department of Local Government Finance. Even assuming, arguendo, that one could make a case based on proper application of the methodology in the Guidelines, here the Petitioner failed to do so because the evidence is not sufficient to conclude that the correct neighborhood number should be 0140500. And even if that were the correct neighborhood number and \$5 per square foot were the correct base rate, those changes do not necessarily prove that the assessed land value must be \$191,850.
- d. Defining neighborhoods and establishing base rates for the land in each neighborhood are key concepts to the valuation process that is specified by the Department of Local Government Finance. GUIDELINES, ch. 2 at 8-19; Ind. Code § 6-1.1-4-13.6. Many things can define a “neighborhood” and establish its boundaries.¹ Assessors have a great deal of flexibility in analyzing those factors when they draw the lines for a neighborhood. But in making those determinations the boundary for a neighborhood must be clearly delineated on easily read maps.

¹ An assessor must “define neighborhoods according to: (1) common development characteristics; (2) the average age of the majority of improvements; (3) the size of lots or tracts; (4) subdivision plats and zoning maps; (5) school and other taxing district boundaries; (6) distinctive geographic boundaries; (7) any manmade improvements that significantly disrupt the cohesion of adjacent properties; (8) sales statistics; and (9) other characteristics deemed appropriate to assure equitable determinations.” GUIDELINES, ch. 2 at 8.

GUIDELINES, ch. 2 at 9, 11-12. If the maps that delineate the boundaries for neighborhoods 0140500 and 7014010 were in evidence, it probably would be clear that the subject property is located within one or the other. Unfortunately, the parties did not provide those maps. Furthermore, the evidence they did provide about the exact boundaries of the neighborhoods is ambiguous.

- e. The Petitioner attempted to prove the subject property actually is located in neighborhood 0140500 by showing the Neighborhood Valuation Form included a comment that this particular neighborhood is “south of Highway 46 within city limits.” There was testimony that the subject property is south of Highway 46, but Petitioner Exhibit 3m and Respondent Exhibit 11 indicate otherwise. They show that the subject property is located where Highway 46 and State Road 135 intersect, but apparently the testimony refers to where 46 would be if it continued on straight through the intersection, which it does not. Consequently, Highway 46 does not actually run north of the subject property. Therefore, it is not clear that the reference to south of Highway 46 means the subject property is within this neighborhood. The Petitioner also relied on the neighborhood designation and \$5 base rate of two other properties located south of Highway 46 to support its claim; however, it failed to establish the exact location of those properties or provide any way to validly compare those locations with the location of the subject property. Therefore, the land valuations shown on Petitioner Exhibits 5 and 6 are not probative evidence for this case. The Neighborhood Valuation Form for 7014010 is not in evidence. The Respondent provided a map that shows where the subject property is located in relation to the business district of Nashville and five other commercial properties that also were assessed as being in neighborhood 7014010. Mr. Surface provided conclusory testimony that that number is correct, but such statements do not constitute probative evidence. Ultimately, neither party presented probative evidence regarding which neighborhood number is really correct. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119, (Ind. Tax Ct. 1998) (explaining that unsupported conclusory statements are not probative evidence). Therefore, no change to the assigned neighborhood number will be ordered.
- f. Even if the neighborhood number and land base rate were changed to conform to the Petitioner’s claim, doing so would not necessarily lead to the requested valuation. According to the Guidelines, the choices for a market value-in-use on this property are not limited to a valuation based on either \$20 per square foot or \$5 per square foot. The Guidelines would allow an influence factor to accurately reflect market value-in-use if the base rate were only \$5 per square foot. GUIDELINES, ch. 2 at 11. Because Mr. Smith’s analysis and requested valuation completely ignored this point, there is no validity to his conclusion that the Guidelines would require changing the land assessment to \$130,700.
- g. A proper analysis of this case must recognize that the goal of our assessment system is to ascertain an accurate, actual market value-in-use. Even if an assessment did not fully comply with the Guidelines, a petitioner must show that

the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *Westfield Golf Practice Ctr. v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2005); *O'Donnell v. Dept't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006).

- h. The most fundamental problem with the Petitioner's case is the total failure to present objectively verifiable evidence demonstrating what the subject property's market value-in-use actually is. That failure precludes any change to the existing assessment.
16. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See 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 Petitioner failed to prove that the current assessment is incorrect or what a more accurate valuation might be.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, 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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>