

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

Petition Nos.: 03-016-18-1-5-00546-21
03-016-19-1-5-00547-21
03-016-20-1-5-00548-21
Petitioners: Kent & Deborah Fischvogt
Respondent: Bartholomew County Assessor
Parcel: 03-84-15-000-000.110-016
Assessment Years: 2018, 2019 & 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 Petitioners appealed the 2018, 2019 and 2020 assessments of their property located at 13100 West Sawmill in Columbus.
2. On June 1, 2021, the Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the following assessments:

2018: Land: \$334,600	Improvements: \$390,400	Total: \$725,000
2019: Land: \$334,600	Improvements: \$391,200	Total: \$725,800
2020: Land: \$334,600	Improvements: \$388,100	Total: \$722,700
3. The Petitioners timely filed appeals with the Board, electing to proceed under the small claims procedures.
4. On May 19, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Melissa Michie appeared as the Petitioners’ attorney. Bartholomew County Assessor, Virginia Whipple appeared for the Respondent and was sworn.

Record

6. The parties submitted the following exhibits:

Petitioner Exhibit 1: *Chevrolet of Columbus, Inc. v. Bartholomew County Assessor*, 2022 Ind. Tax LEXIS 14 (Ind. Tax Ct. 2022),
Petitioner Exhibit 2: Emails between Melissa Michie and Ginny Whipple, Bartholomew County Assessor,
Petitioner Exhibit 3: Document of land rates for neighborhood 3095001-016,
Petitioner Exhibit 4: Document comparing land order values,
Petitioner Exhibit 5: 2020 subject property record card,
Petitioner Exhibit 6: 2019 subject property record card,
Petitioner Exhibit 7: 2018 subject property record card.

Respondent Exhibit R-A: Virginia R. Whipple's resume,
Respondent Exhibit R-B: Virginia Whipple & Dean Layman's Statement of Professionalism,
Respondent Exhibit R-C: 2017 subject property record card,
Respondent Exhibit R-D: 2018 subject property record card,
Respondent Exhibit R-E: 2019 subject property record card,
Respondent Exhibit R-F: 2020 subject property record card,
Respondent Exhibit R-G: Aerial map of subject property.

- a) 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

7. Summary of the Petitioners' case:

- a) The Petitioners contend the Respondent incorrectly valued the subject property's land by applying an incorrect land base rate of \$300,000/acre for the homesite and \$8,075/acre for excess acreage. The Petitioners argued that the Assessor should have instead used a base rate of \$200,000/acre for the homesite and \$20,000/acre for excess acreage based on the land rates documents the Assessor provided them. In addition, the Petitioners pointed to a recent Tax Court decision in *Chevrolet of Columbus, Inc. v. Bartholomew County Assessor*, 2022 Ind. Tax LEXIS 14 (Ind. Tax Ct. 2022). *Michie argument; Pet'r Exs. 1-7.*

8. Summary of the Respondent's case:

- a) The Respondent argued the Petitioners did not meet their burden of proof because instead of providing evidence of a different market value-in-use, the Petitioners merely contested the methodology used to determine the assessment. *Whipple testimony.*

- b) Whipple also testified that Indiana Administrative Code 50-27-5-7 allows a county assessor to review land values as part of the annual adjustment process. She further stated that in 2018 during the annual adjustment process, the data indicated the land base rate of \$200,000/acre in Sawmill Lake was incorrect. It was adjusted to \$300,000/acre for 2018, 2019 and 2020. *Whipple testimony*.

Analysis

9. The Petitioners failed to make a prima facie case for reducing the assessment.
- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.¹ The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Assessor*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
- b) Real property is assessed based on its market value-in-use. 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. 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.
- c) 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 (In. Tax Ct. 2005). For the 2018 assessment, the valuation date was January 1, 2018. For the 2019 assessment, the valuation date was January 1, 2019. For the 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
- d) The Petitioners claim that the Assessor did not use the correct land base rates for the subject property in 2018, 2019 or 2020. They based this argument on the recent Indiana Tax Court decision *Chevrolet of Columbus, Inc. v. Bartholomew County Assessor*, 2022 Ind. Tax LEXIS 14 (Ind. Tax Ct. 2022) as well as the land base rate documents they provided. But they provided little explanation as to how *Chevrolet of Columbus, Inc.* applies to this case, and we do not find it controlling.
- e) Ind. Code § 6-1.1-4-13.6, mandates the Assessor “use the land values determined under this section.” I.C. § 6-1.1-4-13.6 (c). But it does not provide that true tax value

¹ The Department of Local Government Finance adopted a new assessment manual for assessments from 2021 forward. 52 IAC 2.4-1-2.


necessarily equals the values determined by using those rates. Even if the Assessor erred in applying the base rates, it has long been the case that simply attacking the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property's market value-in-use. *Id.*; see also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value is). To do so, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*

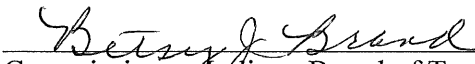
- f) Neither *Chevrolet of Columbus, Inc.*, nor the Tax Court's recent case of *Bushmann, LLC v. Bartholomew Cnty. Assessor*, Ind. Tax Lexis 13 (Ind. Tax Ct. 2022), or the Indiana Supreme Court decision in *Muir Woods Section One Assoc. Inc. v. Marion Cnty. Ass'r*, 172 N.E.3d 1205 (Ind. 2021) purport to overrule those principles. Rather the Tax Court has continued to endorse those principles, holding that a taxpayer must present "objectively verifiable, market-based evidence to show that the property's assessed value does not reflect its market value-in-use." *Piotrowski BK #5643, LLC v. Shelby Cnty. Ass'r*, 177 N.E.3d 127 (Ind. Tax Ct. 2021).
- g) In any case, the Petitioners have failed to show that the Assessor used the incorrect base rate. The Assessor's un rebutted testimony established that the original base rate of \$200,000/acre was increased to \$300,000/acre for the years at issue in accordance with Indiana Administrative Code 50-27-5-7. That regulation provides that "If the county assessor determines through review, ratio studies, or assessment appeals from previous assessment years that the land base rate units need to be modified, the county assessor shall proceed to set new land base rates." 50 IAC 27-5-7 (b). The Petitioners failed to show that this was contrary to law, nor did they offer any evidence to the contrary. For these reasons, we find the Petitioners have failed to show they are entitled to any reduction in their assessments.
- h) Where the Petitioner has not supported its 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).

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2018, 2019 and 2020 assessments.

ISSUED: 8/12/2022


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>>.