

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

Petition: 18-005-11-1-5-00001
Petitioner: Barbara Green
Respondent: Delaware County Assessor
Parcel: 18-08-02-282-004.000-005
Assessment Year: 2011

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (PTABOA) by timely filing the Form 130 on December 21, 2011.
2. The PTABOA did not conduct a hearing on the petition within 180 days, as required by statute. Ind. Code § 6-1.1-15-1(k). Accordingly, the Petitioner filed directly with the Board on June 25, 2012. Ind. Code § 6-1.1-15-1(o). *Smith testimony; Hisle testimony; Board Ex. A.*
3. The Petitioner elected to have this appeal heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on February 12, 2013. He did not inspect the property.
5. Barbara Green, Rocky Smith, and Deputy Assessor Kelly Hisle were sworn as witnesses.

Facts

6. The property is a single family residence located at 317 North Plum in Albany.
7. The Respondent determined the assessment for the subject property is \$10,600 for land and \$37,600 for improvements (total \$48,200). The PTABOA held a hearing on August 9, 2012, but it was too late because the Petitioner had already filed the Form 131 with the Board. Regardless of its bad timing, the PTABOA purportedly made no change in the assessment. As previously noted, this case is not an appeal from a PTABOA determination—it is based on Ind. Code § 6-1.1-15-1(o).

Record

8. The official record for this matter contains the following:
 - a. The Form 131 Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibits – None,
Respondent Exhibit 1 – Comparables spreadsheet,
Respondent Exhibit 2 – Property record card (PRC) of subject property,
Respondent Exhibit 3 – PRC for 249 N. Plum,
Respondent Exhibit 4 – PRC for 200 N. Plum,
Respondent Exhibit 5 – PRC for 241 N. Plum,
Respondent Exhibit 6 – PRC for 252 N. Plum,
Respondent Exhibit 7 – PRC for 216 N. Plum,
Respondent Exhibit 8 – PRC for 305 N. Plum,
Respondent Exhibit 9 – PRC for 316 N. Plum,
Respondent Exhibit 10 – PRC for 357 N. Plum,
Respondent Exhibit 11 – PRC for 356 N. Plum,
Respondent Exhibit 12 – PRC for 328 N. Plum,
Respondent Exhibit 13 – PRC for 317½ N. Plum,
Respondent Exhibit 14 – PRC for 248 N. Plum,
Respondent Exhibit 15 – PRC for 333 N. Plum,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

9. Summary of the Petitioner's case:
 - a. The Respondent had the responsibility to establish a prima facie case that the 2011 assessment is correct. The Respondent did not do so. *Smith testimony.*
 - b. The Respondent compared the subject assessment to other assessments, but did not establish the other assessments reflect the market value of those properties. *Smith testimony.*
 - c. The PTABOA did not explain to the Petitioner that the 2011 assessment increase was the result of corrections to the measurements of the subject property. *Smith testimony.*

10. Summary of the Respondent's case:

- a. The subject property was visited by the assessor's data collector on April 12, 2010, and several corrections to the assessment were made as a result of that inspection. Those corrections are the sole reason for the increase in the 2011 assessment. The house previously had been assessed incorrectly as a story and a half. The value for the half story was removed and the first floor square footage increased from 832 square feet to 1,244 square feet. The measurements of the basement and crawl area also were corrected. Furthermore, the effective age was changed from 1890 to 1916. *Hisle testimony.*
- b. There were no sales of comparable properties that could be used to arrive at an assessed value. Instead, the Respondent compared the subject assessment with the assessments of seven comparable properties to determine the current assessment is accurate. All the comparables are on North Plum Street in the same neighborhood as the subject property. The 2011 assessed values of the comparables range from around \$30,000 to \$64,800. The average assessed value of the comparables per square foot is \$40. *Hisle testimony; Resp't Ex. 1.*
- c. The Petitioner's house has 1,244 square feet, was built in 1890, has an effective age of 1916, and the lot size is 66 feet by 136 feet. The parcel is assessed at \$48,200. Based on the square footage of the house, the total assessed value is \$39 per square foot. *Hisle testimony; Resp't Ex. 2.*
- d. Comparable #1, located at 249 N. Plum, has a total assessed value of \$64,800. The house was built in 1890. It has similar square footage and lot size. The assessed value is \$50 per square foot. *Hisle testimony; Resp't Ex.3.*
- e. Comparable #2, located at 200 N. Plum, is assessed at \$45,100. The house was built in 1885. It has similar square footage and a slightly smaller lot. The assessed value is \$35 per square foot. *Hisle testimony; Resp't Ex.4.*
- f. Comparable #3, located at 241 N. Plum, is assessed at \$40,300. The house was built in 1890. It has similar square footage and the same lot size as the subject property. The assessed value is \$31 per square foot. *Hisle testimony; Resp't Ex.5.*
- g. Comparable #4, located at 252 N. Plum, is assessed at \$47,100. The house was built in 1890, has similar square footage and a similar lot size. The assessed value is \$44 per square foot. *Hisle testimony; Resp't Ex.6.*
- h. Comparable #5, located at 216 N. Plum, is assessed at \$58,700. The house was built in 1890 and has an effective age figured from 1906. It has similar square footage and lot size. The assessed value is \$51 per square foot. *Hisle testimony; Resp't Ex.7.*

- i. Comparable #6, located at 305 N. Plum, is assessed at \$30,000. The house was built in 1900. It has 1,055 square feet and the lot size is similar to the subject property. The assessed value is \$28 per square foot. *Hisle testimony; Resp't Ex.8.*
- j. Comparable #7, located at 316 N. Plum, is assessed at \$53,400. The house was built in 1885. It has 1,331 square feet and a similar lot size. The assessed value is \$40 per square foot. *Hisle testimony; Resp't Ex.9.*
- k. At the local PTABOA hearing, the Petitioner identified six properties that she contended were comparable to her property. They, however, are not comparable to the subject property. *Hisle testimony.*
- l. The property located at 357 N. Plum was built in 2002. The house has 2,940 square feet. *Hisle testimony; Resp't Ex. 10.*
- m. The property located at 356 N. Plum has two buildings. *Hisle testimony; Resp't Ex. 11.*
- n. The property located at 328 N. Plum has a 1,040 square foot mobile home and a different lot size. *Hisle testimony; Resp't Ex. 12.*
- o. The property located at 317½ N. Plum has improvements of only 504 square feet and a smaller lot size (35 feet by 35 feet). *Hisle testimony; Resp't Ex. 13.*
- p. The property located at 248 N. Plum was built in 1920 and the house has 1,620 square feet. *Hisle testimony; Resp't Ex. 14.*
- q. The property located at 333 N. Plum has a 2,025 square foot mobile home built in 1995. *Hisle testimony; Resp't Ex. 15.*

Burden of Proof

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 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). 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 assessed value increased from \$40,000 in 2010 to \$48,200 in 2011, an increase of more than 5%. If the numbers were the only consideration, then Ind. Code § 6-1.1-15-17.2 would dictate that the Respondent must prove the 2011 assessed valuation is correct. But this statute also requires comparing assessments for the same property. Here the increased assessment was based on the addition of previously omitted square footage, as well as correcting the measurements of the basement and crawl area. The Petitioner did not dispute those corrections.
13. The language of the statute must be applied as it was written. “Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Bd. of Tax Comm’rs*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997). Under the plain language of Ind. Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than 5%. But with the data corrections, the 2011 assessment was not for the same property. In this case, Ind. Code § 6-1.1-15-17.2 does not require the Respondent to prove the 2011 assessed value is correct.
14. Accordingly, the Petitioner has the burden of proof in this appeal.

Analysis

15. The Petitioner did not make a prima facie case. The Board reached this decision for the following reasons:
 - a. 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). 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. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to market value-in-use as of 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. Assessor*, 821 N.E.2d 466,

471 (Ind. Tax Ct. 2005). For the March 1, 2011, assessment, the valuation date was March 1, 2011. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. The insufficient or incomplete explanation about the PTABOA's purported determination (after this appeal had already been filed with the Board) did not hinder the Petitioner's ability to present relevant evidence and argument during the Board's hearing. *See* Ind. Code § 6-1.1-15-4.
 - d. The Petitioner, however, presented no substantial evidence regarding the market value-in-use of her property.
16. The taxpayer failed to provide probative evidence supporting her position that the assessment should be changed. Consequently, the Respondent's duty to support the assessment with substantial evidence was 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 make a prima facie case.

Final Determination

18. The Board finds in favor of the Respondent. The assessment will not be changed.

ISSUED: May 2, 2013

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, 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>