

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

Petition: 41-026-09-1-4-01382
Petitioner: Greenwood West Partners
Respondent: Johnson County Assessor
Parcel: 41-02-30-014-998.000-026
Assessment Year: 2009

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 initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated June 7, 2010.
2. The PTABOA issued notice of its decision on April 29, 2011.
3. The Petitioner appealed to the Board by filing Form 131 on June 9, 2011. The Petitioner elected to have this appeal heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 7, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on April 26, 2012. He did not inspect the property.
6. Milo Smith, certified tax representative, appeared on behalf of the Petitioner. Michael Watkins, county appraiser, represented the Johnson County Assessor. Both were sworn as witnesses.

Facts

7. The property is a convenience store, service station, and car wash located at 840 North US 31 in Greenwood.
8. The PTABOA determined the assessed value for 2009 is \$585,900 for land and \$296,200 for improvements (total \$882,100).
9. The Petitioner claimed the total should be \$455,400 for 2009.
10. The Petitioner initially appealed the 2008 and 2009 assessments. On April 21, 2012, the parties stipulated that the 2008 assessment should be \$455,400. *Pet'r Ex. 2.*

Record

11. The official record contains the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Witness and exhibit list, one page statement of position, and property record card,
Petitioner Exhibit 2 – Stipulation agreement for the 2008 assessment,
Respondent Exhibits – None,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

12. Summary of the Petitioner's case:
 - a. The 2009 assessment (\$882,100) increased by 6.9% over the original assessment for 2008 (\$824,800). The Respondent has the burden of proof for this appeal. *Smith testimony; Pet'r Ex. 1.*
 - b. The 2008 assessment for the property was corrected by a stipulation agreement to \$455,400. Omitting caption and signature lines, the entire "Stipulation Agreement" states, "Greenwood West Partners, Petitioner, agrees to withdraw petition 41-026-08-1-4-01312, which is currently scheduled to be heard before the Indiana Board of Tax Review on 26 April 2012 in exchange for the adjustment of the assessed value of parcel 41-02-30-014-998.000-026 to be [﻿\$]455,400 for 2008 payable 2009. Mark Alexander, Johnson County Assessor and PTABOA Secretary, agrees to the same." Nothing in the record demonstrates why the assessment should almost double from 2008 to 2009. No annual adjustments were made in the neighborhood for 2009. Therefore, the stipulated value of \$455,400 should be carried forward to 2009. *Smith testimony; Pet'r Ex. 2.*
13. Summary of the Respondent's case:
 - a. The Respondent determined the 2008 assessment for the property was \$824,800 and agrees it bears the burden of proof. *Watkins testimony.*
 - b. Each year of assessment stands alone. The 2008 agreement is not relevant to the 2009 assessment. *Watkins testimony.*

- c. The Respondent is willing to reduce the 2009 assessed value to the original 2008 assessed value, which was \$824,800. *Watkins testimony*.

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving the 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). But the General Assembly enacted Ind. Code § 6-1.1-15-17.2, which shifts the burden to the assessor in cases where the assessment under appeal increased by more than 5%:

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.

15. In this case nobody disputed the fact that from 2008 to 2009 the assessed value increase is more than 5% and according to Ind. Code § 6-1.1-15-17.2 the Respondent had the burden of proof.
16. The Respondent, however, did not even attempt to prove the existing 2009 assessment is correct. The Respondent conceded that the current assessed value for 2009 must be changed.
17. Significantly, the statute is silent about what happens when an assessor has the burden and fails to prove the assessment is correct. In similar cases, the Board returned the disputed assessment to the value determined by the county assessor for the immediately preceding assessment date. *See Kaehr v. Steuben Co. Assessor*, pet. no. 76-011-07-1-5-00235 (Ind. Bd. Tax Rev. March 13, 2012); *Stout v. Orange Co. Assessor*, pet. no. 59-007-09-1-5-00001 (Ind. Bd. Tax Rev. Nov. 7, 2011).
18. The Respondent offered to reduce the 2009 assessment to the figure he originally had determined for the 2008 assessment, which was \$824,800. But according to the Petitioner their agreement to change the 2008 assessment to \$455,400 establishes that same value for 2009, even though nothing in the terms of the agreement itself supports using the agreed value for a subsequent assessment year. In addition to silence in the statute and the settlement agreement, there are other reasons the Board will not use the 2008 settlement number for the revised 2009 assessment.

19. In Indiana each year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001); *Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). This principle is consistent with the fact that under Indiana's current assessment system the valuation date for each assessment year is different.
20. Judicial policy strongly favors settlement agreements. They allow courts to operate more efficiently and allow parties to fashion the outcome of their disputes through mutual agreement. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). The strong policy justification for denying settlements precedential effect in a property tax case is that allowing parties to use the settlement would have a chilling effect on the incentive of the parties to resolve cases. *Id.* at 1228.
21. Coupled with Ind. Code § 6-1.1-15-17.2, this case presents an unusual scenario. Nevertheless, general principles about the limitations of settlements still are persuasive. There are many reasons for parties to make such agreements. We will not speculate what those reasons might have been and we will not apply the settlement to other matters. This agreement is merely a settlement whereby the 2008 appeal was withdrawn in exchanged for a specified adjustment. It does not dictate what the 2009 will be.

Final Determination

In accordance with the above findings and conclusions the assessment will be reduced to \$824,800.

ISSUED: July 25, 2012

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>