

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

Petition No.: 84-002-11-1-5-02337
Petitioner: Will B. Nelson, III
Respondent: Vigo County Assessor
Parcel No.: 84-06-15-453-026.000-002
Assessment Year: 2011

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

PROCEDURAL HISTORY

1. Will B. Nelson, III (the "Petitioner") initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the "PTABOA") by filing a Form 130 dated January 9, 2012.
2. On September 20, 2013, the PTABOA issued its Notification of Final Assessment Determination ordering no change to the 2011 assessment.
3. The Petitioner then timely filed the Form 131 petition with the Board on October 28, 2013.
4. The Petitioner elected to have the administrative hearing conducted under the Board's small claims procedures. The Respondent did not elect to have the proceeding removed from the Board's small claims procedures.
5. Jacob Robinson, the Board's appointed Administrative Law Judge (the "ALJ"), held the administrative hearing on March 25, 2015. The ALJ did not inspect the subject property.
6. The Petitioner, Will B. Nelson, III, appeared *pro se*. Harrison Township Assessor Donald E. Pruett appeared for the Respondent. Both were sworn in as witnesses and testified under oath.

FACTS

7. The subject property is a residential property located at 1354 2nd Avenue in Terre Haute.
8. The PTABOA determined the 2011 assessed value for the land is \$9,400 and the assessed value for the improvements is \$31,700, for a total assessed value of \$41,100.

RECORD

9. The official record for this matter contains the following:

a) A digital recording of the hearing.

b) Exhibits:

- Respondent Exhibit 1: Property Record Card (“PRC”) for subject property with notes documenting phone calls to Petitioner
- Respondent Exhibit 2: Form 115
- Respondent Exhibit 3: Picture of east side of subject property with five trash cans
- Respondent Exhibit 4: Picture of east side of subject property with two gas meters
- Respondent Exhibit 5: Picture of gas lines entering basement area
- Respondent Exhibit 6: Picture of rear of subject property showing electric meter base and power line to second floor
- Respondent Exhibit 7: PRC for 2011 payable 2012
- Respondent Exhibit 8: Picture of front of subject property with four mailboxes

- Board Exhibit A: Form 131 Petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Hearing Sign-In Sheet

c) These Findings and Conclusions.¹

BURDEN OF PROOF

10. 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. *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). The taxpayer must explain how each piece of evidence relates to the requested assessment. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). 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. *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also Meridian Towers*, 805 N.E.2d at 479.
11. 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. First, 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. Ind. Code § 6-1.1-15-17.2(b). This provision may not apply if there was a change in the property’s improvements, zoning or use. Ind. Code § 6-1.1-15-17.2(c). Second, the assessor has the burden where a property’s gross

¹ The Petitioner did not submit any exhibits.

assessed value was reduced in an appeal, and the assessment for the following assessment 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...” Ind. Code § 6-1.1-15-17.2(d). This provision may not apply if the assessment was determined using the income approach to value. *Id.*

12. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence that suffices to prove the property’s correct assessment, it reverts to the previous year’s value. I.C. § 6-1.1-15-17.2(b).
13. The subject property was assessed at \$22,400 for 2010 and the PTABOA determined a 2011 value of \$41,100, which was more than a 5% increase. The parties agreed on the record that the Respondent has the burden of proving that the 2011 assessment is correct.

CONTENTIONS

14. Summary of the Respondent’s case:
 - a) The Respondent’s representative, Harrison Township Assessor Donald E. Pruett, contends that the subject property is a four unit apartment complex. In support of such assertion, Mr. Pruett introduced two versions of the subject property’s PRC, and a copy of the Form 115 containing the PTABOA’s decision. He also presented various pictures of the subject property. Respondent’s Exhibit 3 shows the east side of the subject property with five different trash cans, each labeled with a different number that Mr. Pruett argues correspond to units in the apartment building. Respondent’s Exhibits 4 and 5 are pictures of the subject property’s gas meters located on the east side of the house. Mr. Pruett presented the pictures to show that the meters are hooked up and lead into the basement. Respondent’s Exhibit 6 is a picture of the rear of the subject property, which faces north, showing the breaker boxes and the power line that enters the second floor of the house. Respondent’s Exhibit 8 is a picture of the front of the house showing four different mailbox locations. Mr. Pruett contends such evidence supports the theory that the subject property is a four unit apartment complex. *Pruett testimony; Resp’t Exs. 1-8.*
15. Summary of the Petitioner’s case:
 - a) The Petitioner contends that he does not have any tenants and that the subject property consists of only one unit. While the Petitioner agrees that there were two gas meters, one of them has since been removed because it was not functional. Mr. Nelson also explained that he had extra trash cans because he was tearing off his roof and it was cheaper to use the city trash cans than a bigger dumpster. As for the extra mailboxes, Mr. Nelson contends that they had tags for the mailman, who would sort his mail for him, putting letters in one box and junk mail in another. If he had tenants in the unit, they would be entitled to a renter’s credit or deduction on their state taxes. Mr. Nelson claims that if he had failed to claim such income on his tax returns, he

would have been audited a long time ago. According to Mr. Nelson, he purchased the subject property in 2005 and has been working on making improvements himself. He installed a wood stove in 2013, he has been fixing the roof himself, tearing it off, bringing up all the materials and getting it to code. Mr. Nelson wanted to make sure he did the repairs “to code,” so when he attempts to sell the property, he will not have to “redo it.” *Nelson testimony*.

ANALYSIS

16. 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* 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. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
17. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's 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). The valuation date for a 2011 assessment was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
18. As explained above, the Respondent has the burden of proving that the 2011 assessment of \$41,100 is correct. The Respondent presented photos of the subject property and copies of the PRC. However, conspicuously absent from the Respondent's presentation was any attempt to explain how the Respondent actually valued the subject property.
19. As part of making a prima facie case, "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (*quoting Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). This requirement applies equally to an Assessor bearing the burden. Although the subject property's PRC was offered at the hearing, the Respondent's representative failed to offer any meaningful testimony explaining how the 2011 assessment was in fact calculated.
20. Further, while the Respondent's representative attempted to show that the subject property is an apartment complex, he did nothing to demonstrate how this evidence supports the 2011 assessment. If the subject property was being used as an apartment building, then the Respondent should have calculated the 2011 assessment using one of

the valuation methods for assessment of rental property.² However, the Respondent representative failed to demonstrate the market value-in-use of the subject property through any generally accepted valuation method. Thus, the Board finds that the Respondent failed to produce any probative evidence supporting the 2011 assessment of \$41,100.

21. Again, it was the Respondent's duty to demonstrate that the 2011 assessment accurately reflected the market value-in-use. Because the Respondent did not offer any probative evidence to show the market value-in-use of the subject property, the Respondent failed to make a prima facie case that the 2011 assessment was correct. Accordingly, the burden did not shift to the Petitioner, and since the Petitioner did not request a value lower than the 2010 assessment, the Board need not evaluate the Petitioner's contentions. For the foregoing reasons, the Petitioner is entitled to have the 2011 assessment reduced to its 2010 assessed value.

CONCLUSION

22. The Board concludes that the Respondent failed to make a prima facie case that the 2011 assessment was correct. The Petitioner did not seek an assessment lower than the 2010 assessment. Thus, the 2011 assessment must be reduced to the subject property's 2010 assessed value of \$22,400.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board determines that the 2011 assessment must be changed to \$22,400.

ISSUED: April 16, 2015

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

² In Indiana, the GRM method is the preferred method of valuing real property that has one (1) to four (4) rental units. Ind. Code § 6-1.1-4-39(b). For properties with more than four (4) rental units, the true tax value is typically the lowest valuation determined by applying the cost approach, the sales comparison approach, and the income capitalization approach. Ind. Code § 6-1.1-4-39(a).

- 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>>.