

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

Petitions: 71-007-12-1-4-00003
71-007-13-1-4-00003
Petitioner: Anant J. Patel
Respondent: St. Joseph County
Parcel: 71-03-25-152-008.000-007
Assessment Years: 2012 and 2013

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 his 2012 and 2013 assessment appeals with the St. Joseph County Assessor on November 30, 2012, and December 3, 2013, respectively.
2. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) failed to hold a hearing within 180 days, as required by Ind. Code § 6-1.1-15-1(k).
3. The Petitioner filed Petitions for Review of Assessment (Form 131s) with the Board, on April 14, 2014. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed). For both years, he elected the Board’s small claims procedures.
4. The Board issued notices of hearing on September 24, 2015.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board’s consolidated administrative hearing on November 24, 2015. She did not inspect the property.
6. Anant Patel appeared *pro se* and was sworn as a witness.¹ Attorney Frank Agostino appeared for the Respondent. Daniel Boecher was sworn as a witness for the Petitioner. St. Joseph County Assessor Rosemary Mandrici was sworn as witness for the Respondent.

Facts

7. The property under appeal is classified as “commercial small retail” located at 247 Dixieway North in South Bend.

¹ Mr. Patel signed the Form 131s as “officer.”

8. For 2012, the subject property record card indicates a total assessment of \$622,700 (land \$44,800 and improvements \$577,900).
9. For 2013, the subject property record card indicates a total assessment of \$638,700 (land \$44,800 and improvements \$593,900).
10. The Petitioner did not request a specific assessment. At the hearing, Mr. Patel requested a value “somewhere in the middle of his analysis.”

Record

11. The official record for this matter is made up of the following:

- a) Petitions for Review of Assessment (Form 131s) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

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| Petitioner Exhibit 1: | “2012 and 2013 Valuation Infor. for 247 North Dixieway,” “Assessed valuation comparison for 247 N. Dixieway and 118 Rhodes,” “AIA Construction Cost Breakdown,” |
| Petitioner Exhibit 2: | American Institute of Architects (AIA) Document G702, signed November 29, 2011, |
| Petitioner Exhibit 3: | Geographic Information System (GIS) reports for properties utilized in the Petitioner’s assessed valuation comparison. |
| Respondent Exhibit A: | March 1, 2011, assessment detail dated November 24, 2015, |
| Respondent Exhibit B: | March 1, 2012, assessment detail dated November 24, 2015, |
| Respondent Exhibit C: | Subject property record card. |
| Board Exhibit A: | Form 131s with attachments, |
| Board Exhibit B: | Notices of hearing, dated September 24, 2015, |
| Board Exhibit C: | Hearing sign-in sheet, |
| Board Exhibit D: | Notice of Appearance by Frank J. Agostino. |

- d) These Findings and Conclusions.

Objections

12. Mr. Agostino objected to Petitioner's Exhibit 3 arguing "it lacks a foundation by the Petitioner as relevant." The Petitioner replied by stating the evidence helps support his case. The ALJ took the objection under advisement.
13. In examining the record, the Board finds the material contained in Petitioner's Exhibit 3 was simply offered to provide more detail to evidence previously admitted to the record in Petitioner's Exhibit 1. Whether that evidence is relevant to the subject property's market value-in-use is therefore a question that goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules Mr. Agostino's objection, and Petitioner's Exhibit 3 is admitted.
14. Mr. Patel objected to Respondent's Exhibit C arguing the property record card states the incorrect address. The Respondent responded by stating "you would have to check with the Treasurer's Office and the Auditor's Office, they submit and enter the mailing address." The ALJ did not rule on the objection at the hearing.
15. After examining Respondent's Exhibit C, it appears this is an accurate copy of the subject property record card. The "incorrect address" appears to solely be the mailing address, not the address of the property. The mailing address listed on the subject property record card is also a property owned by the Petitioner. Accordingly, the Petitioner's objection is overruled, and Respondent's Exhibit C is admitted.

Contentions

16. Summary of the Petitioner's case:
 - a) The property's 2012 and 2013 assessments are too high. According to construction costs, the cost to build the subject property was \$261,960. However, this amount is an estimate because the subject property's construction costs were combined with another property owned by the Petitioner. The total budgeted construction cost for both properties, as of November 29, 2011, was \$436,600. *Patel argument; Pet'r Ex. 2.*
 - b) As of March 1, 2012, and March 1, 2013, the subject property was only "67% complete." Accordingly, "as of both assessment dates \$175,513 had been spent on the building." The building was constructed by a "sister company" that is "in the same family." *Patel argument; Pet'r Ex. 2.*
 - c) The Petitioner also offered an analysis of other "unrelated parcels" assessments to prove the subject property's assessments are excessive. The subject property's current land assessment is \$44,800 for 0.17 acres of land. This assessment equates to approximately \$263,000 per acre. The average assessed value per acre of the "six

unrelated properties” in the Petitioner’s analysis equates to roughly \$88,000 per acre.² Applying the “average assessed value per acre” to the subject property would result in a land assessment of \$14,967. *Boecher testimony; Pet’r Ex. 1, 3.*

- d) The Petitioner also analyzed the assessment of an office building located “just three doors down” from the subject property. This property was assessed at \$42.91 per square foot in 2012 and \$44.33 per square foot in 2013. Applying those square foot values to the subject property, at 67% of completion, would result in an improvement value of \$281,853.48 for 2012, and \$291,169.59 for 2013. *Boecher testimony; Pet’r Ex. 1, 3.*
- e) Further, this same office building is situated on 0.63 acres, over three times larger than the subject property’s lot. The value of office space is “driven by parking ratio.” Consequently, the Petitioner has had “difficultly leasing his offices.” Thus, the assessment should fall “somewhere in the middle of the construction value and the comparable assessment.” *Patel argument; Boecher testimony; Pet’r Ex. 1.*

17. Summary of the Respondent’s case:

- a) The property is assessed correctly. The assessments accurately reflect the market value-in-use of the property for each year. *Agostino argument; Mandrici argument.*
- b) The 2012 assessment was based on cost tables issued by the Department of Local Government Finance (DLGF), the size of the building, and land values. For 2013, the Respondent applied new cost tables issued by the DLGF to the data that was included on the property record card. The cost tables were not deviated from in developing the assessments. The land assessment does contain an adjustment because the parcel is less than one acre. However, that adjustment was derived from the assessment manual. *Mandrici testimony; Resp’t Ex. C.*
- c) The cost data presented by the Petitioner is flawed because “the parties to the transaction were related.” The market-based data presented by the Petitioner is also flawed. The Petitioner averaged several assessments and applied the average assessment to the subject property. The Petitioner failed to establish comparability between his “unrelated properties” and the subject property. Further, comparing the subject property to one office building does not establish any “general rule or comparison.” *Agostino argument (referencing Pet’r Ex. 1, 2, 3).*

Burden of Proof

18. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax*

² The “unrelated parcels” include a pawn shop, a doctor’s office, a retail store, a fast-food restaurant, a two-story office building, and another office building.

Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

19. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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(b).
20. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
21. Initially there was some confusion regarding the property’s 2011 assessment. It appears the 2011 assessment was originally \$564,800, but then was increased, apparently by the PTABOA, to \$808,400. *See Resp’t Ex. C*. Because neither party offered any documentary evidence regarding the increase, the reason for the increase and whether the PTABOA acted within its authority, remains unclear. Nonetheless, the parties agreed that the Petitioner was billed based on a 2011 assessment of \$808,400. Thus, that is the 2011 assessment as last corrected, and therefore, according to Ind. Code § 6-1.1-15-17.2(a)(3), serves as the baseline for determining who has the burden for the 2012 appeal.
22. The 2012 assessment was \$622,700. This is a decrease from the 2011 assessment. The parties agreed that the burden should remain with the Petitioner for 2012. As such, the ALJ made a preliminary determination that the burden for 2012 remains with the Petitioner. The Board adopts the ALJ’s preliminary determination.
23. The burden for the 2013 assessment year will depend on the Board’s findings for 2012.

Analysis

24. The Petitioner failed to make a prima facie case for reducing the 2012 or 2013 assessments.
 - a) 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 or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

- b) 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 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2013 assessment, the valuation date was March 1, 2013. *Id.*
- c) Here, the Petitioner offered the same evidence and argument for both 2012 and 2013. To support his argument that the assessment should be reduced, the Petitioner first offered an "AIA document" purporting to indicate the property's construction cost as of November 29, 2011. According to this document, it appears the combined construction cost for the subject property and another property located at 118 Rhodes Street, was \$436,600. The Petitioner contends that \$261,960 is applicable to the subject property. Further, because the property was only 67% complete, only \$175,513 had been spent on the property.³
- d) While this evidence may have some probative value, it is not enough to make a case for reducing the assessment. First, construction was completed by what the Petitioner conceded was "a sister company," and therefore a related part. Thus, it is not clear, and the Petitioner failed to offer any assurances, that all relevant costs were included in the document, and that costs were recorded at their true market value.
- e) Second, even if the total cost were accepted on its face, the Board finds a lack of credible evidence as to how that cost should be divided between the subject property and the property at 118 Rhodes Street. Further, the Petitioner failed to present anything substantiating his claim that the property was only 67% complete as of March 1, 2012. Both of those percentages appear to be, at best, guesses or estimates.
- f) The Petitioner also offered a comparison to other properties' assessments. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).
- g) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and

³ It appears from the subject property record card, the property was assessed at 66% complete. *See Resp't Ex. C.*

assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- h) Here, the Petition failed to provide any of the required analysis. For the land assessment comparison, the Petitioner chose parcels of various sizes, between 0.16 and 1.36 acres, with no adjustments made to account for the differences in size. In fact, Mr. Boecher admitted in cross-examination that “you can’t take a smaller parcel and compare it to a larger parcel.” Yet, that is precisely what the Petitioner did. The Petitioner also failed to prove how the purportedly comparable properties are comparable to the subject property, and the Petitioner failed to account for any differences. Further, the Petitioner failed to show how simply averaging the values of “unrelated” parcels comports with generally accepted appraisal principles.
- i) Similarly, the Petitioner’s attempt to derive a value for the structure lacks probative value. Here, the Petitioner utilized only one “comparable” three-story office building. The Petitioner did not compare the purportedly comparable office building to the subject property. Nor did he provide any evidence of adjustments made to account for differences. And, as Mr. Agostino argued, the Petitioner failed to offer any evidence to support the notion that using only one comparable property establishes any type of rule or comparison, or comports with generally accepted appraisal principles.
- j) The Petitioner failed to make a prima facie case that the 2012 and 2013 assessments are incorrect. Where the Petitioners have not supported their 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).

Conclusion

- 25. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2012 and 2013 assessments will not be changed.

ISSUED: February 22, 2016

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 of 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>>.