

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

**Petition:** 36-009-06-1-4-00011  
**Petitioner:** Robert L. Poynter  
**Respondent:** Jackson County Assessor  
**Parcel:** 36-66-17-404-014.000-009  
**Assessment Year:** 2006

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 Jackson County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated August 24, 2007.
2. The PTABOA mailed notice of its decision, Form 115, on July 20, 2011.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131, on August 31, 2011. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on September 20, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on October 23, 2012. He did not inspect the property.
6. Tax Representative Milo Smith represented the Petitioner. County Assessor Beverly Gaiter represented the Respondent. Both were sworn in as witnesses.

**Facts**

7. The property is a paved vacant lot located at 1122 East Tipton Street in Seymour.
8. The PTABOA determined the assessed value for the land is \$206,300 and the improvement is \$4,600 (total \$210,900).

## Record

9. The official record for this matter contains the following:
  - a. Digital recording of the hearing,
  - b. Petitioner Exhibit 1 –Subject property record card (PRC) for 2006, Petitioner Exhibit 2– Copy of Indiana Code §6-1.1-4-4.5, Petitioner Exhibit 3– Subject PRC for 2007 through 2012, Board Exhibit A – Form 131 Petition, Board Exhibit B – Notice of Hearing, Board Exhibit C – Hearing Sign In Sheet,
  - c. These Findings and Conclusions.

## Contentions

10. Summary of the Respondent's case:
  - a. The PTABOA found the Petitioner presented no evidence to support his request to change the 2006 assessment to the 2005 assessed value. *Gaiter testimony.*
  - b. The land was assessed using the same rate as all property on the subject's road. *Gaiter testimony.*
  - c. The Petitioner purchased the subject property for \$825,000 in August of 2005. *Gaiter testimony.*<sup>1</sup>
  - d. The fact that Mr. Smith cannot find the annual adjustment factors on the property record cards does not mean I did not meet my burden of proof. *Gaiter testimony.*
11. Summary of the Petitioner's case:
  - a. The subject's assessment has decreased in subsequent years to \$119,000 for 2008 through 2011. *Smith testimony; Pet'r Ex. 1, 3.*
  - b. The assessor applied the annual adjustment incorrectly. Indiana Code §6-1.1-4-4.5 describes how annual adjustments are to be made. *Smith testimony; Pet'r Ex. 2.*
  - c. The Respondent did not meet her burden of proof that the annual adjustments were done correctly. All properties need to be adjusted uniformly based on sales in the neighborhood, and not by changing the subject's assessment because of the purchase price. *Smith testimony.*

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<sup>1</sup> Ms. Gaiter first testified that the subject property sold for \$810,000. She then changed her testimony to \$825,000 later in the hearing. As Petitioner Exhibit 3 demonstrates, the correct amount was \$825,000.

## Analysis

12. 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.

I.C. §6-1.1-15-17.2.

13. Turning to the case at hand, both parties agreed the 2006 assessment under appeal increased over 5% from the 2005 assessment. They further agreed the Respondent has the burden of proof. The Respondent, therefore, had the burden of proving the March 1, 2006 assessment is correct.
14. The Respondent did not make a prima facie case that supports the current assessment of the subject property under review.
  - a. Real property is assessed based on "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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Either party is permitted to offer evidence relevant to market value-in-use to sustain or rebut that presumption. 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. MANUAL at 5.

- b. Ms. Gaiter claimed the PTABOA determined the Petitioner presented no evidence to support his request to change the 2006 assessment to the 2005 assessed value. She also claimed the subject land was assessed using the same rate as all other parcels on that road. These assertions are not helpful in determining the subject property's market value-in-use as of the valuation date of January 1, 2005.
- c. Ms. Gaiter asserted the Petitioner purchased the property for \$825,000 in August of 2005. She did not present any evidence to support this assertion. Mr. Smith presented the subject PRC for 2006 that does reflect in the transfer of ownership section that the property was transferred for \$825,000 and was recorded on August 4, 2006. This does not explain the sale transaction in any detail. For example, it does not give a description of the specific property or any other arrangements of what was transferred or sold. Ms. Gaiter's de minimis evidence is not sufficient to make a prima facie case.
- d. Mr. Smith contended that the annual adjustment was not calculated correctly thereby causing the subject assessment not to be uniform or equal in relation with surrounding properties. He presented no evidence to support this contention. He alleged that an assessment cannot be changed based on its purchased price. Contrary to his opinion, sales information regarding the subject property is often the most persuasive way to prove a case.
- e. Because the assessor failed to provide probative evidence that the current assessment is correct, the Petitioner's duty to provide substantial evidence to support a more accurate assessment is 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); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113,1119 (Ind. Tax Ct. 1998)
- f. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the year before. In this case doing so reduces the assessment to \$152,600.

### **Conclusion**

- 15. The Respondent failed to make a prima facie case that supported the assessed value of subject property. The Board finds in favor of the Petitioner. The assessment will be changed to the previous assessment of 2005.

## Final Determination

16. In accordance with the above findings and conclusions, the 2006 assessed value will be changed to \$152,600.

ISSUED: January 4, 2013

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>