

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

Petition: 36-009-06-1-4-00008
Petitioners: C. R. Royal & R. L. Poynter
Respondent: Jackson County Assessor
Parcel: 36-66-17-401-006.000-009
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 Petitioners 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 Petitioners appealed to the Board by filing a Petition for Review of Assessment, Form 131, on August 31, 2011. The Petitioners 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 Petitioners. County Assessor Beverly Gaiter represented the Respondent. Both were sworn in as witnesses.

Facts

7. The property is a commercial garage. It is located at 380 South Jackson Park Drive in Seymour. *Pet'r Ex. 1*
8. The PTABOA determined the assessed value for the land is \$43,000 and the improvement is \$85,900 (total \$128,900).

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. Due to a technicality as to when the Board scheduled this hearing, it now becomes my burden to prove the assessment is correct. *Gaiter testimony.*
 - b. I have evidence that I did not bring with me that shows the subject property was assessed using the same trending factors as all the properties in the neighborhood. *Gaiter testimony.*
 - c. The Petitioners presented no evidence to show what the correct assessment should be. *Gaiter testimony.*
11. Summary of the Petitioners’ case:
- a. The Assessor presented no evidence to support the annual adjustment that was applied to increase the assessment. *Smith testimony; Pet’r Ex. 2.*
 - b. The subject’s assessment decreased to \$111,300 for the years 2008 through 2011. *Smith testimony; Pet’r Exs. 1, 3.*
 - c. The Respondent did not meet her burden of proof that the annual adjustments were done correctly. *Smith testimony.*

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 agree 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 subject property was assessed using the same trending factors as the other properties in subject neighborhood. This assertion is not helpful in determining the subject property's market value-in-use as of the valuation date of January 1, 2005.
 - c. Ms. Gaiter complained the burden of proof was on the Assessor due to a technicality. Actually, the burden of proof lies with Ms. Gaiter due to change in the Indiana Code. *See ¶12 above.*

- d. Ms. Gaiter avowed she did not bring any evidence that would help support the 2006 assessment. Ms. Gaiter's de minimis evidence is not sufficient to make a prima facie case.
- e. The Respondent did not support the accuracy of the existing assessment with any meaningful market value-in-use evidence.
- f. Since the Respondent 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)
- g. 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 \$109,000.

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 Petitioners. The assessment will be changed to the previous year's assessed value.

Final Determination

- 16. In accordance with the above findings and conclusions, the assessment will be changed to the previous assessment of 2005.

ISSUED: January 4, 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>