

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

Petition: 72-004-12-1-5-00081
Petitioners: Charles Wakelam & Julia Barger
Respondent: Scott County Assessor
Parcel: 72-02-34-400-055.000-004
Assessment Year: 2012

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Scott County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated July 16, 2012. The initial assessment valued the property at \$28,300 for land and \$68,700 for improvements for a total of assessment of \$97,000.
2. The PTABOA mailed notice of its decision regarding the 2012 assessment on October 12, 2012. The PTABOA determined that the property should be assessed at \$28,300 for land and \$50,100 for improvements for a total assessment of \$78,400.
3. The Petitioners appealed the determination to the Board by timely filing a Form 131 petition. He elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties on October 25, 2013.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on December 11, 2013. He did not inspect the property.
6. Tax Representative Jill Yount represented the Petitioners. Chief Deputy Assessor Jennifer Binkley represented the County Assessor. Jill Yount, Charles Wakelam, Jennifer Binkley, Aaron Shelhamer and the County Assessor Diana Cozart were sworn as witnesses. The Assessor did not provide any testimony.

Facts

7. The property is a rental property located at 3340 Red Bud Lane, Austin, Indiana. It has a detached garage with an attached apartment. There also are three mobile homes on this parcel. The mobile homes are assessed as real property. Red Bud Lane is not a public road.

8. The Petitioners contended the assessed value should be \$28,300 for land and \$5,000 for improvements for a total assessed value of \$33,300. The appeal is only a challenge to the assessment of the improvements.

Record

9. The official record contains the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Hand sketch map of subject property,
Petitioner Exhibit 1(a) – Photo of improvement at 3440,
Petitioner Exhibit 2 – Photo of improvement at 3440,
Petitioner Exhibit 3 – Photo of improvement at 3440,
Petitioner Exhibit 4 – Photo of improvement at 3446,
Petitioner Exhibit 5 – Photo of improvement at 3446,
Petitioner Exhibit 6 – Photo of improvement at 3446,
Petitioner Exhibit 7 – Photo of improvement at 3452,
Petitioner Exhibit 8 – Photo of improvement at 3452,
Petitioner Exhibit 9 – Photo of improvement at 3452,
Petitioner Exhibit 10 – Photo of improvement at 3452,
Petitioner Exhibit 11 – Photo of improvement at 3452,
Petitioner Exhibit 12- Photo of improvement at 3452,
Petitioner Exhibit 13- Photo of improvement at 3458,
Petitioner Exhibit 14- Photo of improvement at 3458,
Petitioner Exhibit 15- Photo of improvement at 3458,
Respondent Exhibit 1 – Income analysis,
Respondent Exhibit 2 – Subject PRC,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
 - d. These Findings and Conclusions.

Burden

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 the 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.

Ind. Code § 6-1.1-15-17.2.

11. The assessed value under appeal is less than the prior year's assessor's assessment. Therefore, Indiana Code section 6-1.1-15-17.2 does not apply. The parties agreed the Petitioners have the burden of proof.

Contentions

12. Summary of the Petitioners' case:
 - a. The Petitioners purchased the property for \$37,700 on June 6, 2008. There are three mobile homes (3440, 3452, and 3458 Red Bud Lane) and one garage with an apartment on this property (3446 Red Bud Lane). Mr. Wakelam put a new roof on the mobile home located at 3440 Red Bud Lane costing \$2,000. He lives next to subject property. *Yount testimony; Pet'r Ex. 1*. The three mobile homes and the garage with apartment are all on the same parcel. *Yount testimony*.
 - b. As of the March 1, 2012, assessment date only the improvement at 3446 Red Bud Lane was being rented. The apartment is being rented for \$450 per month less \$100 for utilities. 3446 Red Bud Lane is the only improvement that is currently rentable. There are no gutters and the roof is in poor condition. *Yount testimony; Wakelam testimony; Pet'r Exs. 1, -15*.
 - c. The three mobile homes are not in rentable condition. *Yount testimony; Wakelam testimony; Pet'r Exs. 1, 1(a)-15*.
 - d. The mobile home at 3458 Red Bud Lane was last rented in August of 2010. *Wakelam testimony*.
 - e. The mobile homes are not rentable and have furnaces that need to be replaced, rotted flooring, ceilings that leak, damaged cabinets, rot around windows, smoke damage, and frozen water pipes. *Yount testimony; Wakelam testimony; Pet'r Exs. 1, 1(a) -15*.

- f. The property could possibly be worth \$60,000 if it was fixed up. There are \$20,000 of improvements that need to be done. The property should be assessed around \$40,000. The \$37,000 purchase price and the \$2,000 new roof comes to around \$40,000. *Yount testimony.*
 - g. The subject property was put on the market for \$50,000. Nevertheless, a bank would not loan that amount of money for it. *Wakelam testimony.*
 - h. Mr. Wakelam purchased the property because he did not like the type of tenets the prior owner was renting to and wanted more control over who his neighbors were. *Wakelam testimony.*
 - i. Homes could not be built where the other three mobile homes are located. There is not sufficient road frontage to build on those sites. Red Bud Lane is a private lane and is not a public road. *Wakelam testimony.*
13. Summary of the Respondent's case:
- a. The Assessor conceded that the PTABOA value is incorrect. Initially, the Assessor contended the value should be \$58,000 for the property based on the income approach using \$725 as gross rent for both properties and a gross rent multiplier (GRM) of 80. The historical and typical GRM for Scott County is greater than 80. The GRM of 80 was used due to the poor condition of the subject property, which is not typical for the Scott County area. *Binkley testimony; Shelhamer testimony; Resp't Ex.1.*
 - b. At the PTABOA hearing, the Petitioners stated that 3446 Red Bud Lane was rented for \$400 per month and the mobile home at 3452 Red Bud Lane was rented through December of 2011 for \$325 per month. *Binkley testimony.*
 - c. A spreadsheet on the computer located in the Assessor's office calculates the GRM for Scott County in the 90 to 95 range. The GRM is determined using arms length type sales that are valid sales. Foreclosure and auction sales are not valid sales and are not used to determine the GRM for this area. *Shelhamer testimony.*
 - d. The Assessor ultimately contended that the total assessed value should be \$56,400. The improvement value on page 1 of 3 of the PRC has a value of zero because it is not income producing. The improvement value for the garage and the apartment on page 2 of 3 is \$27,100, and the improvement value on page 3 of 3 is \$1,000. The assessed value for land is \$28,300 and improvements assessed value is \$28,100. Based on these figures, the correct assessment for subject property is \$56,400 using the income approach to value. This assessed value appears on the PRC in the last column labeled Worksheet.

Analysis

14. The Petitioners failed to present a prima facie case for a change in the assessment. The Board reached this decision for the following reasons:
- a. 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 a similar user, from the property." 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. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* 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. *Id.* at 3.
 - b. Regardless of the method used to challenge an assessment's presumption of accuracy, a party must explain how its evidence relates to 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). For the 2012 assessment, the valuation date was March 1, 2012. 50 IAC 21-3-3 (2010).
 - c. The Petitioners contended the purchase price and a new roof costing \$2,000 indicates the market value of the subject property should be \$40,000.
 - d. The Petitioners bought the property on June 06, 2008, for \$37,700. His purchase was over three years before the assessment and valuation date of March 1, 2012. The purchase price of the property can be a good way to prove an accurate market value-in-use for assessment purposes. Here, however, the Petitioners failed to demonstrate the relevance of the purchase date to the market value-in-use as of the assessment date.
 - e. The Petitioners claimed the improvement identified as 3446 Red Bud Lane was the only improvement on this property that was rentable on the assessment date. The Petitioners also presented fifteen photos of the improvements to support his claim that all the improvements were in poor condition—referring to items such as broken furnaces, ceilings that leak, rotted floors and windows, smoke damage, damaged cabinets, and frozen water pipes. But he failed to quantify the effect the poor condition of the improvements had on the market value of the property.
 - f. The Petitioners alleged the property needed \$20,000 of improvements to make it worth \$60,000. This opinion of value is not supported by evidence or facts. The Petitioners must sufficiently explain the connection between the evidence and

Petitioners' assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999) (stating that conclusory statements are statements, allegations, or assertions that are unsupported by any detailed factual evidence).

- g. When taxpayers fail to provide probative evidence supporting their position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence 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*, 704 N.E.2d at 1119.
- h. While the Petitioners failed to make a prima facie case for reducing the subject property's assessment, the Assessor conceded the property was worth only \$56,400 for 2012. The Board accepts the Assessor's concession.

Conclusion

- 15. The Petitioners failed to make a prima facie case. The Board, though, accepts the Assessor's concession that the subject property's assessment must be reduced to \$56,400 for 2012.

Final Determination

In accordance with the above findings and conclusions, the 2012 assessment will be reduced to \$56,400

ISSUED: February 7, 2014

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 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>>.