

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

Petition No.: 45-026-07-1-5-00034
Petitioner: Anjum Zia
Respondent: Lake County Assessor
Parcel No.: 45-07-05-326-005.000-023
Assessment Year: 2007

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

Procedural History

1. The Petitioner initiated his assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written document January 29, 2009.
2. The PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days.¹ *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition on May 6, 2011. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under a subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.")
4. The Board issued a notice of hearing to the parties dated March 12, 2012.
5. The Board held an administrative hearing on April 30, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner:² Anjum Zia, property owner,

¹ The Board notes that the PTABOA held a hearing in 2011 and issued a Form 115, Notification of Final Assessment Determination, on June 15, 2011 – which was long after its 180 day time limit expired and, in fact, after the Petitioner filed its Form 131 Petition with the Board.

² Margie Zia was also present at the hearing, but she was not sworn as a witness and presented no evidence.

For Respondent: Margot Miller, hearing officer.

Facts

7. The property under appeal is a commercial building located at 6158 Indianapolis Boulevard, Hammond, Lake County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the assessor determined the assessed value of the Petitioner's property to be \$95,900 for the land and \$25,400 for the improvements, for a total assessed value of \$121,300.
10. For 2007, the Petitioner requested an assessed value of \$54,500 for the land and \$20,800 for the improvements, for a total assessed value of \$75,300.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner contends that the assessed value of his property increased by more than 5% over the previous year's assessment. *Zia testimony*. According to Mr. Zia, the land value increased from \$54,500 to \$95,900. *Id.*
 - b. Mr. Zia further contends that other properties in his neighborhood are assessed at a lower base rate. *Zia testimony*. Mr. Zia testified that his property was assessed at \$180,000 an acre for 2007, while an adjacent property was assessed at \$50,000 an acre and the property behind his business was assessed at \$45,000 an acre. *Id.* Mr. Zia further contends a property on Summer Street and Columbia was assessed for only \$13,000, although he admitted that its location is not as busy as the subject property's location. *Id.*
 - c. In addition, the Petitioner contends that the building and parking lot on his property is in poor condition. *Zia testimony*. In support of his contention, Mr. Zia submitted photographs showing the condition of the parking lot and the roof and siding on the building. *Petitioner Exhibits 1-7*. Mr. Zia admitted that the pictures were from 2009, but he contends the poor condition of the parking lot and building existed in 2006. *Zia testimony*.
 - d. Finally, the Petitioner contends that he has problems renting the property because the building is small and tenants usually vacate the building within a year or so. *Zia testimony*. Moreover, Mr. Zia contends, the property's location at the bottom of a bridge is detrimental to its value because traffic cannot stop. *Id.* According to Mr. Zia, the property has been vacant since January 2009. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent's representative contends that the Petitioner's land is properly assessed. *Miller testimony*. In support of this contention, Ms. Miller submitted a list of land values for neighborhoods in Hammond and assessment information for the subject property and a comparable property in the same neighborhood. *Respondent Exhibit 1*. According to Ms. Miller, land values in the neighborhood were established based on sales and the Petitioner's property is assessed at the same land rate as other properties in the neighborhood. *Miller testimony*.
 - b. Ms. Miller further argues that the Petitioner's analysis should be given little weight. *Miller testimony*. According to Ms. Miller, Mr. Zia compared his property to properties on Summer Street, which is not a main thoroughfare like Indianapolis Boulevard. *Id.* Ms. Miller contends that property values on Indianapolis Boulevard are much higher than the value of properties located on side streets. *Id.*
 - c. Finally, Ms. Miller contends that the pictures submitted by the Petitioner do not reflect the condition of the property on the relevant assessment date. *Miller testimony*. According to Ms. Miller, the Petitioner's current vacancy and maintenance issues do not reflect the condition or value of the property in 2007 when the property was being operated as a liquor store. *Respondent Exhibit 1*.

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petition,
 - b. A digital recording of the hearing labeled 45-026-07-1-5-00034 Anjum Zia,
 - c. Exhibits:
 - Petitioner Exhibits 1-7 – Photographs showing the exterior condition of the subject property,
 - Respondent Exhibit 1 – Form 134, letter from the Lake County PTABOA, plat map, list of land values for Hammond, assessment information for the subject property, and 2009 assessment information for a neighboring property,
 - Respondent Exhibit 2 – Property record card for the subject property,
 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of hearing dated March 12, 2012,
 - Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

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.

15. Here, the Petitioner's property's assessed value increased from \$75,300 in 2006 to \$121,300 in 2007. This is an increase of 61%. The Respondent, therefore, has the burden of proving the Petitioner's property's assessment is correct.
16. The Respondent failed to sufficiently support the subject property's March 1, 2007, assessed value. The Board reaches this conclusion for the following reasons:
- a. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines as "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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See Id.* A market-value-in-use appraisal prepared according to USPAP often will be considered probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

³ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

- b. Regardless of the method used to rebut an assessment's presumption of accuracy, 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- c. The Respondent's representative first submitted a list of land rates for various neighborhoods in Hammond to show the difference in value between properties on Summer Street and properties on Indianapolis Boulevard. However, simply showing that different neighborhoods have different land values does nothing to show that the Petitioner's property's land was assessed correctly.
- d. The Respondent's representative also submitted assessment information for a neighboring property to show that the properties were assessed uniformly. However, Ms. Miller failed to present any evidence as to how those values were determined or to show that the assessed value of the Petitioner's property reflected the property's market value-in-use. Instead, Ms. Miller merely testified that the land values "were based on sales." While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- e. In order to carry its burden, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case). Here, the Respondent failed to provide any evidence of the property's market value-in-use. Because the Respondent failed to establish a prima facie case that the property's 2007 assessment was correct, the property's assessed value must therefore be reduced to its 2006 level.

Conclusion

- 17. Because the property's assessed value increased more than 5% between 2006 and 2007, the Respondent bore the burden of proving that the subject property's March 1, 2007, assessment was correct. The Respondent failed to make a prima facie case supporting that assessment. The Board therefore finds in favor of the Petitioner and holds that the property's assessment must be reduced to the previous year's value of \$75,300.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should be lowered to \$54,500 for the land and \$20,800 for the improvements, for a total assessed value of \$75,300 for the 2007 assessment year.

ISSUED: June 8, 2012

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.