

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

Petition **03-003-04-1-4-00010**
Petitioners: **Gilda Wettschurack, Jayne Hege, and Susan Mudge**
Respondent: **Columbus Township Assessor (Bartholomew County)**
Parcel: **19-95-24.43-9300**
Assessment Year: **2004**

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated May 27, 2005.
2. The PTABOA mailed notice of its decision to the Petitioners on July 20, 2005.
3. The Petitioners appealed to the Board by filing a Form 131 with the county assessor on August 19, 2005. They elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 20, 2007.
5. Administrative Law Judge Paul Stultz held the hearing in Columbus on August 29, 2007.
6. The following persons were present and testified at the hearing:
For the Petitioners – Milo E. Smith, certified tax representative,
For the Respondent – Barbara J. Hackman, Columbus Township Assessor.

Facts

7. The subject property is an office building located at 444 Fifth Street in Columbus.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$39,400 for land and \$295,000 for improvements (total \$334,400).
10. The Petitioners requested an assessed value of \$39,400 for land and \$150,000 for improvements (total \$189,400).

Contentions

11. Summary of Petitioners' contentions:
 - a. All real property must be assessed according to the 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2) and the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). *Smith testimony; Pet'rs Ex. 7.* Local assessing officials did not follow these rules when assessing the Petitioner's property. *Smith testimony.*
 - b. The current effective age is not correct. The Respondent did not explain the effective age calculation on the property record card. To determine the effective age, the actual age must be correlated with the structure's condition classification. *Smith testimony; Pet'rs Exs. 4, 5.* There has been no change to the footprint of the structure. The correct effective age is 1925, the year of construction. *Smith testimony; Pet'rs Ex. 7.*
 - c. Taxpayers are not required to obtain an appraisal to successfully appeal property tax assessments. *Smith testimony; Pet'rs Ex. 1.* True tax value is determined under the rules adopted by the State Board of Tax Commissioners. The rules for real property assessment adopted under Ind. Code § 6-1.1-31-6(c) must be followed. *Smith testimony; Pet'rs Exs. 2, 3.*
12. Summary of Respondent's contentions:
 - a. The sales information for 6 comparable properties supports the current assessed value of the subject property. *Hackman testimony; Resp't Ex. 9.*
 - b. The value developed using the income approach also supports the current assessed value. *Hackman testimony; Resp't Ex. 10.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 –Indianapolis Star article dated August 25, 2007,
Petitioner Exhibit 2 – Manual, page 2,
Petitioner Exhibit 3 – Indiana Code 6-1.1-31-13,
Petitioner Exhibit 4 – Guidelines Appendix F, page 7,
Petitioner Exhibit 5 – Guidelines Appendix F, page 5,

Petitioner Exhibit 6 – Subject property record card,
Petitioner Exhibit 7 – Summary,
Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Photograph of subject property,
Respondent Exhibit 3 – Form 130 petition,
Respondent Exhibit 4 – Form 115 (PTABOA determination),
Respondent Exhibit 5 – The Board’s Final Determination for Joy and George
Dutro’s 2003 appeal,
Respondent Exhibit 6 – *Koostard Property VI, LLC v. White River Twp. Assessor*,
836 N.E.2d 501 (Ind. Tax Ct. 2005),
Respondent Exhibit 7 – Property Assessment Valuation Manual pages 160, 161,
182, and 183,
Respondent Exhibit 8 – 50 IAC 2.3-1-1,
Respondent Exhibit 9 – List of six sales used as comparables with photographs,
Respondent Exhibit 10 – Income approach calculations,
Board Exhibit A – Form 131 Petition for Review of Assessment,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
- c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It 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); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to 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. *Id.* at 5. Additionally, Indiana’s assessment regulations for the 2002 general reassessment provide that an assessment must reflect value as of January 1, 1999. *Id.* at 4. If a party presents evidence of value relating to a different time, there must also be some explanation of how that value demonstrates, or is relevant to, the value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005).
 - b. The Petitioners pointed to a newspaper article regarding appraisals not being required for property tax appeals. *Pet’rs Ex. 1*. They are correct that taxpayers are not required to obtain an appraisal in order to appeal assessments. This fact does not, however, relieve the Petitioners of their burden to present market-based evidence showing that their suggested value is correct. Appraisals are not the only type of market-based evidence. For example, other market-based evidence could be comparable sales, sales information for the subject property, or any other information developed using accepted appraisal principles. *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); MANUAL at 5.
 - c. The Petitioners presented no appraisal, sales information, or other market data in support of their arguments. On the Form 131 petition, the Petitioners acknowledged they possess no evidence of the market value of the property and they have “no idea” whether the market value of their property is higher or lower than the assessed value. *Bd. Ex. A at 2*. Rather than offering evidence relevant to market value-in-use, the Petitioners based their arguments entirely on a strict application of the Guidelines.
 - d. The goal under Indiana’s new assessment scheme is to ascertain market value-in-use. Even if the Respondent’s assessment did not fully comply with the Guidelines, the Petitioners failed to show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of

the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Indiana Tax Court has denied the same argument that the Petitioners raise in the current case. See *Kooshtard*, 836 N.E.2d 501 (holding that the taxpayers failed to show that the assessment did not reflect the true tax value of the subject property despite the fact that the assessor may have technically misapplied the Guidelines in figuring the effective age of the subject property).

- e. When a taxpayer fails to provide probative evidence supporting its 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, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

- 16. The Petitioners failed to make a prima facie case. The Respondent's obligation to rebut Petitioners' evidence was not triggered. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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>