

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

Petition #: 53-005-05-1-4-00914
Petitioners: James and Miriam Gordon
Respondent: Bloomington Township Assessor (Monroe County)
Parcel #: 013-13580-00
Assessment Year: 2005

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 Petitioners initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 19, 2005.
2. The PTABOA mailed notice of its decision on March 27, 2006.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Monroe County Assessor on April 21, 2006. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated July 10, 2006.
5. The Board held an administrative hearing on September 13, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Milo Smith, Tax Representative,
 - b) For Respondent: Judy Sharp, Monroe County Assessor,
Ken Surface, Nexus Group,

Marilyn Meighen appeared as counsel for Bloomington Township and Monroe County.

Facts

7. The subject property consists of a two-story general retail structure on a parcel of land measuring 5,227 square feet (.12 acre) located at 421 E. Kirkwood Avenue, Bloomington, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed values of the subject property to be \$310,200 for the land and \$84,100 for the improvements, for a total assessed value of \$394,300.
10. The Petitioners requested an assessment of \$120,200 for the land and \$84,100 for the improvements, for a total assessed value of \$204,300.

Issue

11. Summary of the Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the Respondent valued the subject land at \$120,200 for the March 1, 2002, assessment date, but that the Respondent erroneously increased the land valuation to \$310,200 for the March 1, 2005, assessment date. *Smith testimony*. In support of this contention, the Petitioners submitted a Form 11 - Notice of Assessment of Land and Structures dated April 26, 2003, the subject's property record card (PRC) dated May 27, 2003, and a Form 115 - Notification of Final Assessment Determination (Form 115) dated November 26, 2003, indicating the subject's total assessed value to be \$204,300 with a land value of \$120,200 for the March 1, 2002, assessment date. *Petitioner Exhibits 1-3*. In addition, the Petitioners submitted a Notice of Assessment by Assessing Officer (Form 113) dated November 7, 2005, and a PRC dated November 28, 2005, indicating a total assessed value of \$394,300, with a land value of \$310,200. *See Petitioner Exhibits 4-5*.
 - b. The Form 113 indicates that the Respondent adjusted the land value due to a "depth factor update." *Smith testimony; Petitioner Exhibit 4*. The land value adjustment on the PRC accompanying the Form 113, however, was actually a "small acreage adjustment". *Smith testimony; Petitioner Exhibit 5*. The Petitioners claim that no changes were made to the land following the March 1, 2002, assessment; therefore, the land value determination made by the PTABOA pursuant to the Form 115 should remain in effect until the next general reassessment. *Smith testimony*.
 - c. The Petitioners also argue that the Respondent should not have applied a small acreage adjustment to the subject property, given that most of the properties in the area are of similar size to the subject property and therefore are not close to the one-acre standard lot used to establish the land base rate. *Smith testimony*.

12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent submitted a copy of Ind. Admin. Code tit. 50, r. 2.3-1-1(d), which provides "[n]o technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of 'True Tax Value,' and failure to comply with the Real Property Assessment Guidelines for 2002-Version A or other guidelines approved under subsection (c) does not in itself show that the assessment is not a reasonable measure of 'True Tax Value.'" *Respondent Exhibit 1*. The Respondent claims that the assessor must be concerned with the "bottom line" value of property, and that a taxpayer challenging a property's assessment must establish the bottom line value it seeks. *Meighen argument; Respondent Exhibit 2*.
 - b. The Respondent contends that the Petitioners bought the subject property pursuant to a real estate contract executed on December 12, 1989. *Surface testimony; Petitioner Exhibit 5*. The sale price set forth in the contract is \$300,000, to be paid as follows: two payments of \$25,000 due on December 31, 1989, December 31, 1990, and one hundred and twenty (120) monthly installments of \$3,167.50 commencing on January 1, 1990. *Petitioner Exhibit 5*. The seller conveyed title to the Petitioners by Trustees Deed, which was recorded on June 11, 1998. *Surface testimony; Respondent Exhibits 4-5*. Based on that contract, the Respondent contends that the Petitioners bought the subject property for approximately \$95,000 less than its current assessed value ten (10) years prior to the relevant valuation date of January 1, 1999. *Surface testimony; Meighen argument*.
 - c. The Respondent submitted a location map and a sales disclosure for a property located at 116 Indiana Avenue in Bloomington, less than a quarter mile from the subject property. *Surface testimony; Respondent Exhibit 6*. That property sold for \$601,000 on June 1, 2001. *Id.* The purchaser tore down the improvement situated on that property following the sale. *Surface testimony*. The Respondent contends that the 1989 contract sale price of the subject property and the sale price of the property located at 116 Indiana Avenue both demonstrate that the subject property is dramatically under-assessed. *Id.*
 - d. The Respondent contends that it changed the land assessment for the subject property after discovering that the depth factor (or small acreage adjustment factor) for commercial and industrial parcels of land smaller than one acre had been omitted from assessments. *Surface testimony; Respondent Exhibit 7*. That discovery came about after the county changed computer software systems. *Sharp testimony*. The Respondent further contends that assessors are responsible for making corrections to assessed values when errors are discovered, regardless of whether the corrections result in increases or decreases in assessments. *Id.*
 - e. The Respondent contends that Ind. Code § 6-1.1-9-1 specifically authorizes assessors to change assessments of properties that are undervalued or omitted. The Respondent

contends that Ind. Code § 6-1.1-13-1 also allows assessing officials to change a property's value for the preceding assessment date. *Meighen argument*.

- f. Finally, the Respondent points to an order issued by the Board in *F/C Michigan City Development v. Michigan Township Assessor* (Petition No. 46-022-03-1-4-00076 et al), where, according to the Respondent, the Board determined that the assessors have the authority to make corrections to assessments where they discover errors. *Meighen argument*.

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petition,
- b. The recording of the hearing labeled BTR #6158,
- c. Exhibits:

Petitioner Exhibit 1 - Subject's Form 11, dated April 25, 2003,
Petitioner Exhibit 2 - Subject's PRC, dated May 27, 2003,
Petitioner Exhibit 3 - Subject's Form 115, dated November 26, 2003,
Petitioner Exhibit 4 - Subject's Form 113, dated November 3, 2005,
Petitioner Exhibit 5 - Subject's PRC, dated November 28, 2005,

Respondent Exhibit 1 - 50 IAC 2.3-1.1,
Respondent Exhibit 2 - *Eckerling v. Wayne Township Assessor* (Ind. Tax 2006),
Respondent Exhibit 3 - Photograph and PRC of subject property,
Respondent Exhibit 4 - Sales Disclosure from 1989,
Respondent Exhibit 5 - Trust Deed and Real Estate Contract,
Respondent Exhibit 6 - Map and Sales Disclosure form for 116 and 116 ½ Indiana Avenue, Bloomington,
Respondent Exhibit 7 - REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A ch. 2 at 26, 71, 73,

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Notice of Appearance for Marilyn Meighen,
Board Exhibit D - Notice of County Assessor Appearance for Township,
Board Exhibit E - 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 failed to provide sufficient evidence to support their contentions. The Board reaches this decision for the following reasons:
 - a. The Petitioners make two distinct claims. First, the Petitioners contend that the Respondent erred in increasing the assessment determined by the PTABOA for the March 1, 2002, assessment year without any intervening change to the subject property having occurred. Second, the Petitioners contend that Respondent erroneously applied a small acreage adjustment to the subject land in determining the subject property’s March 1, 2005, assessment.

Change in the Assessment

- b. As an initial matter, the Petitioners do not cite to any authority for their claim that the Respondent was required to carry the March 1, 2002, assessment for the subject property forward to the next general reassessment. As the Respondent points out, Ind. Code § 6-1.1-9-1 provides that “[i]f a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been . . . undervalued on the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice . . . of the increase in assessment.” The required notice must inform the taxpayer of its rights to a preliminary conference and to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1. *Id.*
- c. Mr. Surface and Ms. Sharp both testified that the Respondent changed the subject property’s assessment after discovering a mistake that had resulted in an

undervaluation of commercial and industrial properties of less than one-acre. *Surface testimony; Sharp testimony*. The Petitioners received a Form 113 notifying them of the change of assessment and informing them of their right to appeal. *Petitioner Exhibit 4*. The Petitioners do not contend that the notice was deficient in any way. Consequently, the Respondent appears to have acted in accordance with Ind. Code § 6-1.1-9-1 when it increased the land portion of the subject property's assessment for the March 1, 2005, assessment date.

Correctness of Assessment

- d. As to the Petitioners' second contention, real property in Indiana is assessed based on its "true tax value," which does not mean fair market value. See IC 6-1.1-31-6(c). "True tax value" is defined as, "[t]he market value-in-use of property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.*; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- e. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. MANUAL at 3. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* To that end, Indiana promulgated a series of guidelines that explain the valuation process for both land and improvements. See REAL PROPERTY ASSESSMENT GUIDELINES for 2002 – Version A (GUIDELINES), Books 1 and 2. The property's market value-in-use (i.e., true tax value) established by use GUIDELINES, while presumed to be accurate, is merely a starting point. MANUAL at 6. Nevertheless, that presumption is rebuttable. A taxpayer is permitted to offer evidence relevant to the fair market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject of comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *Id.* at 5.
- f. The Petitioners did not offer any market-based evidence to establish the market value-in-use of the subject property. Instead, the Petitioners rely solely on the Respondent's methodology, contending that the Respondent should not have applied a small acreage adjustment to the base rate used to assess the subject land. The Petitioners' approach, however, is insufficient to rebut the presumption that the current assessment is correct. See Ind. Admin. Code tit. 50, r. 2.32-1-1(d) ("failure to comply with the ...Guidelines... does not in itself show that the assessment is not a reasonable measure of 'True Tax Value' [.]"); See also, *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to establish a prima facie case or error where taxpayers focused solely on assessor's methodology and did not offer evidence of property's market value-in-use).

- g. Where a petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to provide sufficient evidence to establish an error in the subject property's assessment. The Board finds in favor of the 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

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.