

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

Petitions: 10-009-07-1-4-10000
10-009-08-1-4-10002
10-010-09-1-4-00001
10-009-10-1-4-00028
Petitioner: Centra Credit Union
Respondent: Clark County Assessor
Parcel: 10-21-03-300-099.000-009
Assessment Years: 2007, 2008, 2009, and 2010

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

Procedural History

1. The Petitioner initiated assessment appeals with the Clark County Property Tax Assessment Board of Appeals (PTABOA) by timely filing Form 130 petitions.
2. The PTABOA mailed its Notification of Final Assessment Determination (Form 115) for each appeal on the dates listed below.

<u>Appeal year</u>	<u>Date mailed</u>
2007	July 8, 2009
2008	June 29, 2010
2009	March 29, 2011
2010	October 24, 2011

3. The Petitioner timely filed Forms 131 with the Board and elected to have these appeals heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 11, 2012. He did not inspect the property.
5. Certified tax representative Milo Smith, represented the Petitioner and was sworn as a witness. Attorney Marilyn Meighen represented County Assessor Vicky Kent Haire, who was present, but did not testify. Ken Surface was sworn as a witness for the Respondent.

Facts

6. The property is a credit union located at 2125 Veterans Parkway in Jeffersonville.

7. The PTABOA determined the assessment for each year in the amounts listed below.

<u>Appeal year</u>	<u>Assessment</u>
2007	\$1,000,200 (land \$359,800 and improvements \$640,400)
2008	\$1,064,300 (land \$359,800 and improvements \$704,500)
2009	\$1,083,900 (land \$359,800 and improvements \$724,100)
2010	\$1,065,500 (land \$359,800 and improvements \$705,700)

8. The Petitioner requested a total assessment of \$840,900 for 2007, but did not specify amounts for 2008, 2009, or 2010.

Contentions

9. Summary of the Petitioner's case:

- a. This building was built new in 2006 and first assessed as of March 1, 2007. *Smith testimony.*
- b. The Petitioner initially appealed both land and improvements, but withdrew the land valuation issue at the Board's hearing. The Assessor originally assessed the building as grade C. At the PTABOA hearing the grade was changed from C to B+2. That change increased the assessment from \$840,900 to \$1,000,200. *Smith testimony.*
- c. The B+2 grade is not fair and uniform. Of ten or twelve banks in Clark County, only one was assessed with a grade of B+2. The remaining bank buildings were assessed with grades of B or C. *Smith testimony.*
- d. The PTABOA's Notifications of Final Assessment Determination (Forms 115) did not address the issues raised on the Form 130 appeals. *Smith testimony.*

10. Summary of the Respondent's case:

- a. In July 2006, a third party purchased a 3.9 acre parcel (parent parcel) for \$1,280,000. Subsequently, this land was separated into two smaller parcels, one of which was purchased by the Petitioner and is the subject of this appeal. (The subject property, 1.799 acres, is identified as part B on Exhibit A.) *Resp't Exs. A, B.* The subject property was unimproved and part of the larger parent parcel on March 1, 2006. It remained unimproved until the Petitioner built on the site in 2006-2007. *Meighen argument; Resp't Exs. D, E, F.*
- b. As a result of the appeal of the 2007 assessment, the property was reviewed and several changes were made at the PTABOA level. The pricing schedule was changed from General Commercial Mercantile to General Commercial Residential, previously omitted paving was assessed, and the grade was changed

to B+2. Banks in Clark County are assessed with grades ranging from C-1 to B+2. *Surface testimony.*

- c. The parent parcel of 3.9 acres was sold in 2006 for \$1,280,000. The sale occurred during the time for sales used to determine land values for the assessment years under appeal and indicates a value of \$328,205 per acre. *Surface testimony; Resp't Exs. A, B.* There is no record of a sales disclosure form in conjunction with the Petitioner's subsequent land purchase. *Surface testimony.*
- d. The cost approach is the best approach to use to determine the value of a new building. A building permit was issued for the structure on October 30, 2006, with the project valuation estimated at \$795,000. *Surface testimony; Resp't Ex. F.* The record does not establish whether that amount also includes soft costs.¹ *Meighen argument.* The Respondent did not determine if personal property was included, but typically new construction costs shown on building permits do not include personal property. *Surface testimony.*
- e. The sales price of property is the best indication of value. *Meighen argument, citing Hubler Realty Co. v. Hendricks County Assessor, 938 N.E.2d 311 (Ind. Tax Ct. 2010).*
- f. The total 2007 assessment on the property should be \$1,397,800. This figure is based on \$328,205 per acre for 1.799 acres (land total \$602,800), plus the \$795,000 construction costs identified on the building permit obtained by the Petitioner. *Meighen argument.*

Record

- 11. The official record for this matter is made up of the following:
 - a. The Petitions,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Property record card for the property under appeal,
Petitioner Exhibit 2 – Form 115 Determinations,
Petitioner Exhibit 3 – Indiana Code 6-1.1-4-4.4,
Petitioner Exhibit 4 – Department of Local Government Finance Fact Sheet,
Annual Adjustment of Assessed Values,
Respondent Exhibit A – Aerial map showing original parcel,
Respondent Exhibit B – Sales disclosure form for the parent parcel,
Respondent Exhibit C – Property record card for parent parcel,
Respondent Exhibit D – Property record card for the property under appeal,

¹ The Respondent apparently is referring to indirect costs such as “building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees...” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Intro. at 1 (incorporated by reference at 50 IAC 2.3-1-2).

Respondent Exhibit E – Aerial map,
Respondent Exhibit F – Building permit for the Petitioner’s property,
Respondent Exhibit G – Neighborhood valuation form,²
Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d. These Findings and Conclusions.

Burden

12. According to Ind. Code 6-1.1-4-4.4(b), “[i]f the assessor changes the underlying parcel characteristics, including age, grade, or condition, of a property, from the previous year’s assessment date, the assessor shall document: (1) each change; and (2) the reason that each change was made. In any appeal of the assessment, the assessor has the burden of proving that each change is valid.”
13. 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.

14. To shift the burden of proof under either statute the assessment under appeal is compared to the previous year’s assessment. Both statutes focus on changes from a prior assessment. There was no 2006 assessment of this parcel. The parcel under appeal was part of a bigger parcel on March 1, 2006. The improvements were not built until after March 1, 2006. Neither statute shifts the burden to the assessor for the assessment of a new property. The Petitioner has the burden of proof in the 2007 appeal.

² The Respondent withdrew Exhibit G.

15. Although the PTABOA subsequently increased the 2007 valuation, the assessor assessed the subject property for \$840,900 for 2007.³ The Respondent admitted that the assessor's 2008 valuation increased by more than 5%. The Respondent has the burden of proof in the 2008 appeal. *Smith testimony; Meighen argument.*
16. The parties disagree about the amount of the assessor's assessment for 2008, but the weight of the evidence shows it was \$1,064,300. The Form 130 filed by the Petitioner initiated the appeals process for the 2008 assessment. On this document, the Petitioner described the property's current assessment at \$359,800 for land and \$704,500 for improvements (a total assessment of \$1,064,300). This evidence refutes the Petitioner's contention that the assessed value of \$1,064,300 was established by the PTABOA, which had not seen the appeal at the time the Form 130 was filed. The 2008 Form 115 also contradicts the Petitioner's argument: "Per PTABOA hearing the Board voted no changes would be made to this parcel." The Form 115 shows a total 2009 assessed value of \$1,083,900. The difference is less than a five percent increase over the assessor's 2008 assessment. The Petitioner has the burden of proof for the 2009 appeal.
17. The 2010 assessment dropped to \$1,065,500. Because there was no increase, the Petitioner has the burden of proof for the 2010 appeal.

Discussion of the Merits

18. The Petitioner did not meet the burden of proving that the 2007, 2009, or 2010 assessments should be changed.
 - 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); 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. *Id.* at 3. Indiana has 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. MANUAL at 5.
 - b. The Petitioner complained that the PTABOA's Forms 115 did not include sufficient information to address its issues for each year. The Board's proceedings, however, are *de novo*. The Board owes no deference to the PTABOA determination. The PTABOA's purportedly insufficient or incomplete

³ The assessor's original 2007 valuation was appealed to the PTABOA, who raised the assessment to over one million dollars. One reason for the increase was changing the grade from a C to a B+2. The Petitioner presented no evidence the grade was changed since then.

determination regarding the issues presented on the Form 130 petitions did not hinder the Petitioner's ability to present relevant evidence and argument about its contentions during the Board's hearing. *See* Ind. Code § 6-1.1-15-4.

- c. The Petitioner's contentions regarding grade focus solely on the methodology used to assess the property. The Indiana Tax Court has consistently rejected arguments that simply contest the methodology used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). Instead, a party must show the assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct.)
 - d. The Petitioner presented no probative evidence about the market value-in-use of its property. Consequently, the Petitioner failed to prove the existing assessed values are wrong or what more accurate assessed values would be.
19. The Respondent did not prove the 2008 assessment should be maintained or increased.
- a. The Respondent attempted to make a case based on the cost approach to value the subject property. But the evidence related to both the cost of the land and the cost of the improvements has significant problems.
 - b. For the land valuation, the Respondent simply used the average price per acre from the sale of the parent parcel, which was \$328,205 per acre. The Respondent concluded that the subject parcel of 1.799 acres would have an identical value per acre, but there was no meaningful comparison of the part of the land that became the subject parcel to the balance of the parent parcel.⁴ Unsubstantiated conclusions, however, do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). When seeking to establish comparability of land, the relevant characteristics to compare include features such as location, accessibility, and topography. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer failed to establish comparability of parcels of land where, among other things, the taxpayer did not compare the topography and accessibility of parcels). The proponent also must explain how any differences between the properties affect their relative market values-in-use. *Long at 471*. The Respondent failed to provide the required analysis related to her proposed land value.
 - c. Furthermore, the Respondent simply relied on the building permit that was filed on October 30, 2006. The permit lists the project valuation at \$795,000. But when relying on the cost approach to value, the analysis has to provide sufficient

⁴ Although they are contiguous, there appears to be some substantial difference between the two parts. The property record card for the other parcel (Respondent Exhibit C) shows a negative 99% influence factor.

information to determine what is and what is not included in the total cost. The Respondent provided only a one line total cost amount with no explanation about specifically what was included. For example, Mr. Surface did not know if soft costs or personal property were included in the building permit amount. Further, nothing in the record established this building permit reflects the final actual cost of the building, which may have differed from the initial estimate listed on the permit. The Respondent failed to prove a credible valuation on the cost basis.⁵ Therefore the 2008 assessment must be returned to its 2007 value, which was \$1,000,200.

Conclusion

20. The Petitioner failed to make a case that the assessed values for 2007, 2009, and 2010 should be changed. The Respondent also failed to make a case for keeping or even increasing the 2008 assessment. The 2008 assessment must be returned to the 2007 assessed value.

Final Determination

In accordance with the above findings and conclusions, the assessed value will not be changed for 2007, 2009, and 2010. The 2008 assessment, however, is reduced to \$1,000,200.

ISSUED: October 9, 2012

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁵ Relying on the same arguments, the Respondent further requested the Board to increase the 2007 assessment to \$1,397,807. As discussed, these arguments are not persuasive and the Board declines to increase the assessment.

- 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>>