

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

Petition: 36-009-06-1-4-00014
Petitioner: Chickamauga Properties, Inc.
Respondent: Jackson County Assessor
Parcel: 36-66-19-300-011.000-009
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Jackson County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated August 24, 2007.
2. The PTABOA mailed notice of its decision, Form 115, on July 20, 2011.
3. The Petitioner appealed to the Board by timely filing a Form 131 petition on August 31, 2011, and elected to have the case heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 29, 2013. He did not inspect the property.
5. Certified Tax Representative Milo E. Smith represented the Petitioner. Jackson County Assessor Beverly Gaiter appeared as the Respondent. Both were sworn as witnesses.

Facts

6. The property is a bowling alley at 643 South Airport Road in Seymour.
7. The PTABOA determined the assessed value is \$232,300 for the land and \$247,500 for the improvements (a total of \$479,800).

Record

8. The official record for this matter contains the following:
 - a. Digital recording of the hearing,
 - b. Petitioner Exhibit 1 – Property record card (PRC) for the subject property, Petitioner Exhibit 2 – 2005 tax bill details,

Petitioner Exhibit 3 – 2006 tax bill details,
Petitioner Exhibit 4 – PRC for the subject property,
Petitioner Exhibit 5 – 2006 Jackson Township sales ratio study,
Respondent Exhibits – None,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

- c. These Findings and Conclusions.

Contentions

9. Summary of the Respondent's case:

- a. Although the Petitioner contends the subject assessment is not uniform or equal, the ratio study and factors were approved by the state. Therefore, the assessment is uniform and equal. *Gaiter testimony.*
- b. The assessed value increasing from one year to the next does not mean the assessed value is incorrect. *Gaiter testimony.*

10. Summary of the Petitioner's case:

- a. The true tax value increased 55% in one year. There was a bubble in the assessment shown by the increase from 2005 to 2006. The bubble disappeared in 2009 and the assessment remained at \$303,700 through 2009 and 2010. In 2011 the assessment went to \$301,800 and 2012 it was changed to \$323,000. *Smith testimony; Pet'r Exs. 1-4.*
- b. The land value increased to \$239,400 in 2007. Then it decreased to \$137,000 in 2008 and decreased again to \$119,100 in 2009. The land value has remained at \$119,100 for the last four years. *Smith testimony; Pet'r Ex. 4.*
- c. The true tax value for the building should be \$177,500 rather than \$230,800. The true tax value for the commercial canopy should be \$2,470 instead of \$3,200. The true tax value for the paving should be \$10,350 and not \$13,500. The total true tax value for the parcel should be \$309,500. Nothing on the PRC states a sales ratio study was applied. *Smith testimony; Pet'r Ex. 1.*
- d. Of the 52 commercial or industrial properties that sold in Jackson Township in 2006, just three sales occurred in the Petitioner's neighborhood. Only one of those sales was of a commercial property. And according to the DLGF's rules, one sale should not be used to raise an assessment. *Smith testimony; Pet'r Ex. 5.*
- e. The Guidelines say no market adjustment is to be made if there are not enough sales in the neighborhood. *Smith testimony.*

Analysis

11. 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.

Ind. Code § 6-1.1-15-17.2.

12. Turning to the case at hand, both parties agreed the Respondent had the burden of proving the 2006 assessment is correct. *Gaiter testimony*; *Smith testimony*.
13. The Respondent did not make a prima facie case that the current assessment is correct.
 - a. Real property is assessed based on "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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Either party is permitted to offer evidence relevant to market value-in-use to sustain or 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 Respondent presented no such evidence to establish the market-value-in-use of the property.

- c. Instead, the Respondent testified about how the mass appraisal system and annual trending is supposed to work, as well as how she met those responsibilities. She implied that this assessment draws validity from the fact that the assessed value is within an acceptable range for mass appraisals as determined by the sales ratio study. An appeal of an individual assessment, however, is an entirely different thing. The Respondent provided no authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property for the purposes of this appeal. Such unsubstantiated conclusions 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).
- d. The Respondent argued the increase from 2005 to 2006 does not prove the assessment is incorrect, but that is not the standard. Rather, the burden was on the Respondent to prove the current assessment is correct through the presentation of market-based evidence.
- e. The Respondent did not support the accuracy of the existing assessment with any meaningful market value-in-use evidence.

Conclusion

- 14. The Respondent failed to make a prima facie case that supported the assessed value of the subject property. The Board finds in favor of the Petitioner.

Final Determination

- 15. The 2006 assessment will be changed to the 2005 assessed value, which was \$309,500.

ISSUED: August 19, 2013

Commissioner, Indiana Board of Tax Review

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- 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>