

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

Petition: 91-021-12-1-5-00132
Petitioner: David Cox
Respondent: White County Assessor
Parcel: 91-73-33-000-135.600-021
Assessment Year: 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner filed a Form 130 petition with White County Property Tax Assessment Board of Appeals (“PTABOA”) contesting the subject property’s assessment. On August 20, 2013, the PTABOA issued a determination.
2. The Petitioner then timely a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On August 13, 2014, the Board’s designated administrative law judge, Ellen Yuhan, held a hearing on the petition. Neither she nor the Board inspected the property.
4. The Petitioner and the Respondent’s representative, Scott Potts, were sworn and testified.

Facts

5. The property consists of two open-sided barn buildings located on N. Railroad Street, Monticello.
6. The PTABOA determined the following assessment:

Land: \$7,200	Improvements: \$11,100	Total \$18,300
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7. The Petitioner requested the following values:

Land: \$7,000	Improvements: \$5,000	Total \$12,000
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Record

8. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Respondent Exhibit 1: 2010 property record card for the subject property,
Respondent Exhibit 2: 2011 property record card for the subject property,
Respondent Exhibit 3: 2012 property record card for the subject property,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

9. 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). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

10. Indiana Code § 6-1.1-15-17.2, also known as the burden-shifting statute, creates an exception to that general rule under certain circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2 (a) and (b). In those instances, the assessor has the burden of proving that the assessment under appeal is correct. *Id.* If the assessor fails to meet her burden, the assessment must be reduced to the previous year's level or to another amount established by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). The statute does not apply if the assessment under appeal is based on structural improvements, zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c).

11. Here, the Petitioner's assessment increased by approximately 35% between 2011 and 2012, going from \$13,600 to \$18,300. The Respondent's witness and representative, Scott Potts, testified that the Respondent's office reviewed the property in advance of the 2012 general reassessment and found that some data needed to be corrected, including the

size of the buildings' footprints, their quality grades, and their condition ratings. The Respondent did not intend to make those corrections until the 2012 general reassessment, but inadvertently made them for 2011.

12. The changes led to an assessment of \$13,600 for 2011. According to Mr. Potts, the 2011 assessment should have remained at \$27,100—the property's assessment level from 2008 through 2010—even though he acknowledged that the property was valued too high for those years. He characterized what happened with the Petitioner's property as an aberration, because data gathered during the general reassessment process was not entered for most other taxpayers until 2012. *Potts testimony.*
13. For 2012, the Respondent applied new cost and depreciation tables to the corrected data, which increased the assessment to \$18,300. According to the Respondent, had the 2011 assessment remained at \$27,100 as it should have, the 2012 assessment would have actually represented a substantial decrease instead of a 35% increase. For those reasons, the Respondent apparently believes that the Petitioner should have the burden of proof.¹
14. The Board disagrees. The Respondent does not claim that the property changed in any way between 2011 and 2012. For example, she did not point to any structural changes to the buildings or to any changes in the property's zoning or use. She instead simply argues that she did not intend to assess the property with the correct data until 2012. Thus, the assessment for the "same property" increased by more than 5% between 2011 and 2012. That increase shifts the burden to the Respondent to prove that the 2012 assessment was correct. If she fails to do so, the Petitioner is entitled to have the assessment reduced to its 2011 level of \$13,600. To the extent he seeks any further reduction, he has the burden of proving that lower amount.

Contentions

15. Summary of the Respondent's case:
 - a. As explained above, the Respondent reviewed the property and made corrections to the buildings' footprints, quality grades, and condition ratings. She then applied the 2012 cost and depreciation schedules to that corrected data to arrive at \$18,300, which she claims best represents the property's value. *Potts testimony and argument; Resp't Exs. 1-3.*
16. Summary of the Petitioner's case:
 - a. The buildings are animal loafing shelters. They are open, just like a place where farm animals would loaf if they were on a farm. They have no side walls or end walls.

¹ It is not clear whether Mr. Potts described the property's assessment history to contest assigning the burden of proof to the Respondent, as substantive evidence of the property's value, or for both purposes. For purposes of this discussion, the Board assumes that he offered that history for both purposes.

One pole supports the roof truss. There is no gas, electric, or water service. The buildings were for a lumber company to pull its trucks in on either side. *Cox testimony*.

- b. The life of a pole barn is 25 to 30 years. The Petitioner's buildings are 40 and 60 years old, respectively. Given their ages, they have some obsolescence. They also have rotten boards, and the Petitioner has not done anything to them for the 30 years he has owned them. *Cox testimony*.
- c. A nearby building owned by Gutwein is assessed at \$19,600. It is an enclosed building that is 50% finished. A building across the street owned by Schmeer² is a steel-trussed pole barn assessed at \$12,000. It was a grocery store with air-conditioning and 600-amp service. Thus, there is a huge disparity between the assessments for his open, agricultural buildings and the assessments of the commercial buildings surrounding them. *Cox testimony*.

Analysis

- 17. The Assessor failed to make a prima facie case that the 2012 assessment was correct. Therefore, the Petitioner is entitled to have the assessment reduced to its 2011 level. The Petitioner, however, did not make a case for any further reduction. The Board reaches these conclusions for the following reasons:
 - a. In Indiana, real property is assessed based on its true tax value, which the 2011 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 by a similar user, for the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of the Professional Appraisal Practice often will be probative. *See Id.*; *see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. The Respondent did not offer any market value-in-use evidence to support the assessment. She instead simply contended that she correctly identified the buildings' physical characteristics and applied the appropriate cost and depreciation tables from

² The Petitioner did not give the Board anything to indicate how the names for the two property owners should be spelled. “Schmeer” and “Gutwein” represent the Board's best guesses.

the 2011 Real Property Assessment Guidelines. Strictly applying the Guidelines does little to show a property's true tax value in an assessment appeal. *See Eckerling* 841 N.E. 678. Thus, the Respondent failed to make a prima facie case that the assessment was correct, and the Petitioner is entitled to have the property's assessment reduced to its 2011 level of \$13,600.

- c. That does not end the Board's inquiry because the Petitioner requested a total assessment of \$12,000 (\$5,000 for the buildings). As explained above, he has the burden of proving that lower amount.
- d. To do so, he pointed to the assessments for two neighboring buildings, which he claimed were superior to his buildings. He identified a few ways in which he believed that the other buildings were superior to his, but did not attempt to compare the buildings in terms of other relevant characteristics that affect market value-in-use. His analysis falls short of the type of comparison contemplated by generally accepted appraisal or assessment practices and therefore does not suffice make a prima facie case that his property was over assessed. *See Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value); *see also*, I.C. § 6-1.1-15-18(c) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable). In any case, once one accounts for the reduction of the total assessment to \$13,600, the buildings are assessed for less than either of the neighboring buildings.
- e. Finally, the Petitioner referred to various problems with his buildings and claimed that they were obsolete. But he did not offer probative evidence to quantify how those problems affected the property's market value-in-use or even to show a likely range of values for the property. *See Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 289 (Ind. Tax Ct. 2003) (explaining that a taxpayer seeking an obsolescence adjustment must both identify factors causing an actual loss in value and quantify the obsolescence).

Conclusion

18. The Respondent failed to meet her burden of proving that the assessment was correct. As a result, the Petitioner was entitled to have the assessment reduced to \$13,600. The Petitioner did not prove that he was entitled to any further reduction.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2012 assessment must be changed \$13,600.

ISSUED: February 9, 2015

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.