

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

Petition: 45-018-12-1-5-00701-16
Petitioner: Phillip Cyprian
Respondent: Lake County Assessor
Parcel: 45-09-30-102-008.000-018
Assessment Year: 2012

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

Procedural History

1. Petitioner initiated his appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on February 19, 2013. The PTABOA issued its notice of final determination on September 18, 2014. Petitioner’s representative contends neither he nor his client received notice of the PTABOA hearing. Petitioner filed the Form 131 with the Board on March 3, 2016.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held a hearing on June 5, 2017. Neither the ALJ nor the Board inspected the property.
4. Joseph A. Gomeztagle, tax representative, was sworn as a witness for Petitioner.¹ Robert Metz and Joseph E. James, Lake County hearing officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant lot located at 1305 W. 37th Avenue in Hobart.
6. Respondent determined the assessed value to be \$10,200.

¹ Mr. Gomeztagle had power of attorney from Allen J. Mindel, the taxpayer’s attorney. The power of attorney authorized Mr. Gomeztagle to negotiate real property tax matters with the Hobart Township Assessor. The Respondent did not object to Mr. Gomeztagle’s representation at the Board’s hearing. The Board will assume that the taxpayer wanted Mr. Gomeztagle to follow the appeal to its disposition.

7. Petitioner claimed the assessment should be \$5,000.²

Record

8. The official record contains the following:

- a. A digital recording of the hearing
- b. Exhibits:

Petitioner Exhibit 1-3:	Photographs of the subject property,
Petitioner Exhibit 4:	Memorandum dated June 23, 2014,
Respondent Exhibit 1:	Comparable vacant land sales spreadsheet with Multiple Listing Service detail reports,
Respondent Exhibit 2:	Article 10-Constitution of the State of Indiana,
Respondent Exhibit 3:	Property record card (“PRC”),
Respondent Exhibit 4:	2012 pay 2013 tax statement,
Respondent Exhibit 5:	Form 114 dated August 8, 2014,
Respondent Exhibit 6:	Form 115 dated September 18, 2014,
Respondent Exhibit 7:	Tax representative’s power-of-attorney (“POA”),
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of Hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Objections

9. Mr. Metz objected to the admission of Petitioner Exhibits 1-3 because Petitioner failed to exchange the exhibits prior to the hearing as requested. Mr. Gomeztagle agreed that Respondent requested the evidence earlier but claimed the photographs had been provided to the previous assessor.
10. Under the Board’s small claims procedures, if a party requests evidence not later than ten business days prior to the hearing, the parties shall provide to the other party copies of any documentary evidence and the names and addresses of all witnesses intended to be present at the hearing at least five business days before the small claims hearing. 52 IAC 3-1-5(d).

² At the hearing, Petitioner claimed he had a prior agreement with the county for \$5,000. On Petitioner’s Form 131, it appears Petitioner originally entered an amount of \$5,000 but subsequently entered an amount of \$2,000.

11. Mr. Gomeztagle failed to provide the photographs before the hearing. Petitioner Exhibits 1-3 are therefore excluded. The Board notes, however, that the exclusion of the photographs does not change the outcome of the determination.

Burden

12. 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 the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
13. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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(b).
14. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. The assessed value decreased from \$15,300 in 2011 to \$10,200 in 2012. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

17. Petitioner's case:
 - a. Petitioner contends the property is over-assessed. The property was once listed for sale and the only potential offer was for \$5,000. In addition, the garage on the property is dilapidated and worthless. *Gomeztagle testimony; Pet'r Ex. 4.*

- b. Petitioner thought he had an agreement with the county assessor to value the property at \$5,000. According to Mr. Gomeztagle, Petitioner thought the issue was settled. Mr. Gomeztagle contends that neither he nor Petitioner received notice of the PTABOA hearing and were consequently unable to demonstrate to the PTABOA how much the property was actually worth. *Gomeztagle testimony*.
18. Respondent's case:
- a. The property consists of a vacant lot and no improvements are listed on the 2012 PRC. *Metz testimony; Resp't Ex. 3*.
 - b. Respondent contends the assessed value is supported by sales of other vacant properties. Mr. Metz contends there were eight purportedly comparable sales in the area with a median price of \$2.02 per square foot. Applying that amount to the subject property's 5,313 square feet results in a value of approximately \$10,700. *Metz testimony; Resp't Ex. 1*.
 - c. Respondent contends the Form 114 notice of the PTABOA hearing was mailed to the taxpayer on August 8, 2014, and not to the tax representative. Respondent contends that the tax representative's POA was not effective until a year later. *James testimony; Resp't Exs. 5 & 7*.

ANALYSIS

19. Petitioner failed to make a prima facie case for changing the assessed value.
- 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471

(Ind. Tax Ct. 2005). The valuation date for the assessment at issue in this appeal was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).

- c. Petitioner presented testimony and a document stating that someone had shown interest in purchasing the property for \$5,000 in June of 2014. The potential offer was more than two years after the appealed assessment date and Petitioner failed to offer any evidence relating the offer to the relevant valuation date. Petitioner offered no other probative evidence.
- d. Where a Petitioner has not supported his claim with probative evidence, a respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 20. Petitioner failed to make a prima facie case for a lower assessed value. Therefore, the Board finds in favor of Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the assessed value should not be changed.

ISSUED: September 1, 2017

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>>.