

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

Petition: 37-031-12-1-1-00001
Petitioner: Harry L. Davis, III
Respondent: Jasper County Assessor
Parcel: 37-09-08-000-015.000-031
Assessment Year: 2012

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

Procedural History

1. The Petitioner initiated his assessment appeal with the Jasper County Property Tax Assessment Board of Appeals (PTABOA) by written request on November 16, 2012.
2. The PTABOA issued notice of its decision on March 11, 2013.
3. The Petitioner filed a Form 131 petition with the Board on April 18, 2013, and elected to have this appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing on June 26, 2013.
5. Administrative Law Judge Ellen Yuhan held the administrative hearing on August 8, 2013.
6. Harry L. Davis III and County Assessor Dawn Hoffman were sworn as witnesses at the hearing. Marilyn Meighen appeared as counsel for the Respondent.

Facts

7. The subject property is an agricultural parcel located at 1000 West, Fair Oaks. The only portion of the property under appeal is a 75 foot by 75 foot section of land with a cellular communications tower affixed to it.
8. The ALJ did not conduct an on-site inspection of the property.
9. The PTABOA determined that the total assessed value of the property for 2012 was \$36,200; the site value for the cell tower land was \$20,000.

10. On the Form 131 petition, the Petitioner requested a total assessed value of \$22,000 or less.

Contentions

11. Summary of the Petitioner's case:
 - a. In 1999, the previous owner of the subject property signed a lease with AT&T for a 75 foot by 75 foot portion of the farm property with access to County Road 1000. That portion of the property is the subject of this appeal. The Petitioner assumes proper notice of the cell tower was given to Jasper County and that the appropriate permits were filed; however, the county made no zoning change to support commercial activity. No new parcel identification was created to identify the use of the property. The property was and continues to be part of the agricultural property. *Davis testimony; Pet'r Ex. B at 1.*
 - b. The cell tower is not real property and does not change the value of the underlying ground. If the tower were removed, the land would revert back to the agricultural designation to match the rest of the parcel. Conversely, the land would not revert back, if this site was in a generally recognized commercial area with the appropriate zoning. *Pet'r Ex. at 3.*
 - c. The Jasper County Assessor and the PTABOA determined that an increase in valuation was necessary because of the lease income received for the use of the land as a commercial property. The Assessor applied a 5% capitalization rate to the annual lease payment of \$3,225 to determine that the property's market value was \$60,000 but reduced that value to \$20,000. If the Assessor had confidence in the income calculation, she would not have reduced it by two-thirds because it cannot be justified. *Davis testimony; Pet'r Ex. B at 1.*
 - d. The lease payment is based on the use of the site for the tower and other improvements. Assuming that the tower is worth 90% of the total value of the improvements and the remaining improvements are worth the other 10%, if the lease payment is allocated between the personal property value of the tower and the real property value of the other improvements, only 10% or \$300 of the annual lease payment can be used for a capitalization rate calculation, yielding a value of \$6,000 based on a 5% rate. A higher capitalization rate would lower this value even more. *Pet'r Ex. B at 3.*
 - e. Because the "commercial" site in question cannot be clearly identified within the parcel for tax purposes, it can be argued that the lease payment is for the entire parcel and is no different than a crop lease, which would not increase the overall valuation of the land. Therefore, an increase of \$20,000 or an effective doubling of the parcel valuation cannot be justified on the basis of lease revenue alone. *Pet'r Ex. B at 4.*

- f. The higher valuation also carries a higher tax cap because it is a commercial property. The Petitioner already pays income taxes on the lease payments and is concerned that an excessive valuation also will result in higher property taxes. *Pet'r Ex. B at 2.*
- g. While the Assessor claims that she has attempted to value all cell towers in Jasper County the same way, this is not necessarily a one size fits all issue. The Respondent's method may be a simple solution but not a realistic one due to the vast differences in locations for these installations that are not easily taken into consideration under the present guidelines. There is an issue with the inflexibility of the rules and guidelines as well as how they were applied in this case. *Davis testimony; Pet'r Ex. at 3.*
- h. Respondent's Exhibit B is a sale for a half-acre parcel. The subject property is only 75 foot by 75 foot, which explains a difference in valuation. Location would also certainly be a factor in the valuation. *Davis testimony.*

12. Summary of the Respondent's case:

- a. In 2011, all of the land in the subject parcel was assessed as agricultural land with a value of \$15,600. In 2012, the Respondent discovered that many cell towers in the county were being valued as agricultural land and decided to reassess the land. Cell tower land throughout the county is now valued at a \$20,000 per site. *Hoffman testimony.*
- b. Originally, the Respondent assessed the subject cell tower land at \$20,000. When gathering information for the appeal, the Respondent reviewed the Petitioner's lease agreement in order to develop the income approach as a basis for value. The income approach, however, depended on estimating expenses and capitalization rates. Accordingly, the Respondent determined that sales information was a better indication of value. *Hoffman testimony.*
- c. The subject property's site value is actually under-assessed in light of a sale of a similar property. Global Signal Acquisitions (Global Signal) purchased 0.553 acres in 2010 for \$150,000 in order to erect a cell tower. That sale price would be a more accurate assessment for the subject property. The higher site value is further supported by the sale of a permanent easement to SBA Structures in 2012 for \$92,500 for the purpose of erecting a tower. *Hoffman testimony; Resp. Ex. B and C.*
- d. Factors that may affect the value of other types of property, such as proximity to the interstate or the quality of the school system, do not affect cell towers. As long as the tower can receive signals, it can be built anywhere. For example, the subject site is 1.6 miles from an interstate, the Global Signal site is adjacent to an interstate, and the SBA Structures site is approximately 14 ½ miles from an interstate. *Hoffman testimony.*

- e. The Respondent contends that the Petitioner failed to establish a prima facie case. In the alternative, the Respondent argues that, if the Board determines that the Respondent maintains the burden of proof, the site value should be changed to reflect the \$150,000 sale. *Meighen argument.*

Record

13. The official record for this matter contains the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit A – Form 131 petition,
Petitioner Exhibit B – Letter to the IBTR dated April 16, 2013,
Petitioner Exhibit C – Original Notice of Assessment, Form 11,
Petitioner Exhibit D – Jasper County PTABOA determination,
Petitioner Exhibit E – Original Option and Lease Agreement for Cell Tower,
Petitioner Exhibit F – Second Amendment to Cell Tower Lease Agreement,
Petitioner Exhibit G – Taxpayer and Property Information Sheet for AT&T,
Petitioner Exhibit H – First Amendment to Sublease Agreement for Cell Tower,
Petitioner Exhibit I – Correspondence with the Jasper County Assessor and related documents,

Respondent Exhibit A – Property record card and photograph of the subject property,
Respondent Exhibit B – Property record card, sales disclosure form, warranty deed,
and photograph for Global Signals Acquisitions IV, LLC,
Respondent Exhibit C – Sales disclosure form for an easement at 5879 East 600
South, Francesville, IN,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing, dated June 26, 2013,
Board Exhibit C – Hearing Sign-In Sheet,
- d. These Findings and Conclusions.

Burden

14. 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 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.

15. Both parties agree that the assessed value in this case increased by more than 5% from 2011 to 2012. The parties, however, disagree as to whether the assessed property changed from 2011 to 2012.
16. The Respondent contends that, prior to 2012, the entire subject property was assessed as agricultural land. When the Respondent discovered that there was a cell tower on the property, she added \$20,000 to the value of the underlying land for the 2012 assessment. The Petitioner contends that the use of the property has not changed since the inception of the lease agreement in 1999 and continues to be a part of the agricultural property that existed at that time.
17. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*.
18. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Because the subject property’s 2012 assessment accounted for a change in the use of the property that was not accounted for in the 2011 assessment (or in prior years), the Assessor was not assessing the “same property” in 2012 as she did in 2011. Accordingly, the Board concludes that Indiana Code § 6-1.1-15-17.2 does not apply in this case and that the Petitioner maintains the burden of proof.

Analysis

19. The Petitioner failed to provide sufficient evidence to establish a prima facie case that his property’s 2012 assessment was incorrect. The Board reached this decision for the following reasons:

- 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). 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.* Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011 (incorporated by reference at 50 IAC 2.4-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. MANUAL at 3.
- b. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required 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 a 2012 assessment was March 1, 2012. 50 IAC 27-5-2 (2010). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
- c. According to Indiana Code § 6-1.1-4-13(a), "land shall be assessed as agricultural land only when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). "Those portions of agricultural parcels that include land and buildings not used agriculturally, such as homes, homesites, and excess land and commercial or industrial land and buildings, shall be adjusted by the factor or factors developed for other similar property within the geographical stratification." 50 IAC 27-6-1.
- d. In this case, the Petitioner argues that the land is and always has been agricultural land. According to the Petitioner, the lease payments for the ground are no different than a crop lease and, if the cell tower were removed, the land would revert to agricultural use. There is no dispute that the property at issue has a communications tower on it. Thus, the land on which the cell tower sits is not currently used as agricultural land and cannot be assessed as agricultural land. *See* Ind. Code § 6-1.1-4-13(a). Instead, the cell tower land is used for commercial gain and should be assessed accordingly. *See* 50 IAC 27-6-1.
- e. The Petitioner attempted to calculate a value based on the income approach, but failed to show that his evidence of market value-in-use conformed to generally accepted appraisal practices. More specifically, the Petitioner's opinion that only 10% of the lease is attributable to the land is unsupported. Furthermore, even though the Petitioner used the 5% capitalization rate that he claimed the Respondent used, neither party presented evidence to support the use of that rate. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in

making its determination. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).

- f. Thus, the Board concludes that the Petitioner failed to make a prima facie case that the assessment was incorrect. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003.)

Conclusions

20. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value shall remain unchanged.

ISSUED: January 10, 2014

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 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>>.