

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

**Petitions:** 36-009-06-1-4-00009  
36-009-06-1-4-00017  
**Petitioner:** Fidelity Federal Savings & Loan  
**Respondent:** Jackson County Assessor  
**Parcels:** 36-66-17-317-018.000-009  
36-66-17-317-020.000-009  
**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 assessment appeals with the Jackson County Property Tax Assessment Board of Appeals (PTABOA) by filing two petitions, Form 130, both dated August 24, 2007.
2. The PTABOA mailed notices of its decisions, Forms 115, on July 20, 2011.
3. The Petitioner appealed to the Board by filing Petitions for Review of Assessment, Form 131, on August 31, 2011. The Petitioner elected to have both appeals heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing for both appeals on May 29, 2013. He did not inspect the property.
5. Certified Tax Representative Milo E. Smith represented the Petitioner. County Assessor Beverly Gaiter appeared as the Respondent. Both Mr. Smith and Ms. Gaiter were sworn as witnesses.

**Facts**

6. A commercial bank is located on the two parcels. They are located at 222 West Second Street in Seymour.
7. For petition 36-009-06-1-4-00009, the PTABOA determined the assessed value for the land is \$51,900 and the assessed value of the improvements is \$125,100 (total \$177,000). For petition 36-009-06-1-4-00017, the PTABOA determined the assessed value for the land is \$74,900 and the assessed value of the improvements is \$1,056,900 (total \$1,131,800).

## **Record**

8. The official record for this matter contains the following:
  - a. Digital recording of the hearing,
  - b. Petitioner Exhibits Set A (for appeal 36-009-06-1-4-00009),  
Petitioner Exhibit 1 – Subject property record card (PRC),  
Petitioner Exhibit 2 – 2005 tax bill detail,  
Petitioner Exhibit 3 – 2006 tax bill detail,  
Petitioner Exhibit 4 – PRC,  
Petitioner Exhibit 5 – 2006 Jackson Township sales ratio study,  
Petitioner Exhibits Set B (for appeal 36-009-06-1-4-00017),  
Petitioner Exhibit 1 – Subject PRC,  
Petitioner Exhibit 2 – 2005 tax bill detail,  
Petitioner Exhibit 3 – 2006 tax bill detail,  
Petitioner Exhibit 4 – PRC,  
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. The goal of the Assessor's Office is to assess property based on market value-in-use regardless of what the previous assessment was or what the future assessment might be. *Gaiter testimony.*
  - b. Although the Petitioner contends the assessments are not uniform or equal, different factors were not applied to selected parcels in the neighborhood. *Gaiter testimony.*
  - c. The trending factor does not print on the PRC and the factors are not stored in a place that is retrievable from the computer system. At this late date, the factors cannot be determined. *Gaiter testimony.*
  - d. The ratio study demonstrates some adjustment was needed to reflect the market value-in-use of properties in the neighborhood. In some instances the assessed values are lower than the selling prices. In other instances the assessed values are higher than the selling prices. No information was provided to determine how the

parcels that sold compare to the Petitioner's properties. *Gaiter testimony, referring to Pet'r Set A, Ex. 5.*

10. Summary of the Petitioner's case:

- a. The tax bill for parcel 36-66-17-317-018.000-009 verifies the assessed value for 2005 was \$129,400. For 2006 it is \$177,000. The increase in the assessed value from 2005 to 2006 is approximately 36%. *Smith testimony; Pet'r Set A, Ex. 2.*
- b. The PRCs for both parcels do not show the annual adjustment. *Smith testimony; Pet'r Set A, Ex.1; Pet'r Set B, Ex. 1.*
- c. For parcel 36-66-17-317-018.000-009, the drive-in teller has a computed value of \$47,800 and is adjusted by 19% depreciation. This adjustment does not increase the true tax value to \$50,700. The Respondent contended a market factor was applied, but she does not know what it was. The rules require the assessor to reflect the annual adjustment on the PRC by at least a memorandum entry so the taxpayer knows the factor. *Smith testimony; Pet'r Set A, Ex. 1.*
- d. The assessment was \$182,500 for 2007. It decreased to \$126,000 in 2008 and 2009. It was \$124,300 in 2010 and 2011. The property is assessed for \$105,200 in 2012. *Smith testimony; Pet'r Set A, Ex. 4.*
- e. There were 52 sales of commercial or industrial properties in Jackson Township in 2006. Six sales were vacant land. There were 11 sales in the Petitioner's neighborhood. The sale prices are very low, except for one outlier sale that was \$1,150,000. Excluding that outlier, the average sale price is \$77,650 compared to an assessed value of \$177,000 for the Petitioner's parcel. The sales ratio study does not support raising the assessment by 36% from the prior year's assessment. *Smith testimony; Pet'r Set A, Ex. 5.* The assessment should remain at \$129,400. *Smith testimony.*
- f. Similar evidence and argument applies to parcel 36-66-17-317-020.000-009. The assessed value for 2005 was \$855,900. It was increased by 32% to \$1,131,800 for 2006. *Smith testimony; Pet'r Set B, Ex. 1.* The 2006 assessment should remain at \$855,900. *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. In these cases, the Respondent had the burden to prove the 2006 assessments were correct.
13. The Respondent did not make a prima facie case that supports the current assessments.
  - 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 evidence to establish the market-value-in-use. Further, the Respondent did not explain how the current assessments were determined and was unable to explain what trending factor was used.
  - c. The Respondent merely claimed the properties were assessed using the same trending factor as the other properties in the Petitioner's neighborhood, although she could not identify this factor. This kind of testimony/argument is not helpful in determining the actual market value-in-use of the subject property.
  - d. According to the Respondent, the ratio study demonstrates some adjustment was needed to reflect the market value-in-use of properties in the neighborhood. Even if true, this fact does not prove the true tax value of the two parcels under appeal.

- e. The Respondent did not support the accuracy of the existing assessments with any meaningful market value-in-use evidence. Accordingly, she failed to meet her burden of proof. Therefore, these 2006 assessments must be reduced to their 2005 assessed values.

**Conclusion**

- 14. The Board finds in favor of the Petitioner.

**Final Determination**

- 15. In accordance with the above findings and conclusions, the assessments will be changed. The assessments will be changed to their previous years' assessed values. The 2006 assessed value will be reduced to \$129,400 for petition 36-009-06-1-4-00009 and the 2006 assessed value will be reduced to \$855,900 for petition 36-009-06-1-4-00017.

ISSUED: August 21, 2013

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Commissioner, Indiana Board of Tax Review

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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>