

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

Petition: 72-003-09-1-4-00001
Petitioner: Indiana Bank & Trust Company
Respondent: Scott County Assessor
Parcel: 72-04-01-100-006.000-003
Assessment Year: 2009

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition dated June 1, 2010.
2. The PTABOA mailed notice of its decision on July 30, 2010.
3. The Petitioner filed a Form 131 with the Board on September 9, 2010, and elected to have this case heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on October 27, 2011. He did not inspect the property, nor did the Board.
5. Certified tax representative Milo Smith was sworn as the only witness for the Petitioner. County Assessor Diana Cozart, Jennifer Binkley, and consultant Aaron Shelhamer were sworn as witnesses for the Respondent.

Facts

6. The subject is commercial property currently used and assessed as a bank. It is located at 2879 North US Highway 31 in Austin.
7. The PTABOA determined that the 2009 assessment is \$326,000 (\$25,000 for the land and \$301,000 for the improvements).
8. The Petitioner requested a total assessment of \$250,000.
9. The property record card shows the 2008 assessment was \$127,100. It increased to \$326,000 for 2009. That increase was far more than 5%. The Petitioner claimed Ind. Code § 6-1.1-15-17 puts the burden of proof on the Respondent to show that the assessment is correct. The Respondent agreed on that point. Consequently, the Respondent's case was presented first.

Contentions

10. Summary of the Respondent's case:

- a. Even though the Respondent has the burden of proof, the assessment increase from 2008 to 2009 is easily explained. *Shelhamer argument.*
- b. Originally the subject property was a bank, but during the 1990's it was converted to a medical office and assessed as such through 2008. Between March 1, 2008, and March 1, 2009, the building was converted back to a bank. (This conversion did not involve adding any new square footage to the building.) *Shelhamer testimony; Resp't Ex. 5.*
- c. The Petitioner bought the subject property in 2008, but that purchase price does not indicate what the assessment should be. After that purchase there was substantial remodeling and special features related to bank use were added. *Shelhamer testimony.*
- d. The building permit for the remodeling work indicates only new lights and outlets valued at \$8,500. *Resp't Ex. 5.* But that information is incomplete. The subject property was inspected after the renovation and it was found the Petitioner did more than the building permit states in converting the subject property back to a bank. In addition to the lights and outlets, the Petitioner completely remodeled the interior, re-installed the drive-up window, the teller view, the bank vault, and the vault doors. None of these items were valued for the 2008 assessment. *Shelhamer testimony.*
- e. Any time a property is rehabilitated or remodeled, an effective age adjustment is necessary for that property. Here, the effective age was determined by combining 50% of the year remodeled with 50% of the year constructed. The PTABOA determination on Form 115 explains: "The effective year was estimated by taking 50% of the year remodeled & 50% of the year constructed & combining the totals. This calculation resulted in an estimated effective age around 1990 (rounded). The percentages were chosen due to the complete interior remodeling of the structure due to a change in use. Formula: (year remodeled x .5) + (year constructed x .5) = estimated effective age" *Resp't Ex. 3.* Bank special features were added and the use was changed from medical office to bank. The Respondent also applied a trending adjustment that is not specifically shown on the property record card. *Shelhamer testimony.*

11. Summary of the Petitioner's case:

- a. Pursuant to Ind. Code § 6-1.1-15-17, the Respondent has the burden of proof to show that this assessment is correct. The Respondent failed to meet that burden. *Smith argument.*

- b. The effective age should not have been changed. Specific instructions for assessors regarding depreciation computations generally state that only the actual age and the condition of the property need to be considered. The Respondent did not follow those instructions. *Smith testimony; Pet'r Ex. 10, 11.*
- c. The Petitioner bought the property for \$195,000 in August 2008. The footprint of the building did not change with the renovation and only “cosmetic” changes were made to the interior. Many of the changes involved personal property. The property did not undergo enough renovation to warrant a significant change to the assessment. (Mr. Smith also admitted he had not inspected the subject property.) *Smith testimony; Pet'r Ex. 6.*
- d. A memorandum issued on January 11, 2011, by Department of Local Government Finance (DLGF) Director Barry Wood states that assessments should only be changed when there is clear market evidence that valuations no longer meet assessment level and uniformity standards, or when there are significant physical changes to a property. *Smith testimony; Pet'r Ex. 8.* In *Miller Brewing Co. v. Indiana Dep't of State Revenue*, No. 49T10-0607-TA-69, 2011 WL 3630147 (Ind. Tax Ct. Aug. 18, 2011), the Tax Court held that a taxpayer should be able to rely on an agency's interpretation of its own statutes. *Smith argument; Pet'r Ex. 9.*
- e. The Petitioner has no dispute with adding the bank features to the assessed value. On that basis the assessment should be approximately \$250,000. *Smith testimony.*

Record

- 12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit A – Two page statement of contentions,
 Petitioner Exhibit 1 – Form TS-1A, Special Message to Property Owner,
 Petitioner Exhibit 2 – Form 130 petition page 1,
 Petitioner Exhibit 3 – PTABOA determination,
 Petitioner Exhibit 4 – Property record card (PRC),
 Petitioner Exhibit 5– Notice from the Indiana Board of Tax Review,
 Petitioner Exhibit 6 – Cost spreadsheet,
 Petitioner Exhibit 7 – Page 7 from *Standard of Mass Appraisal of Real Property—2011*, published by the International Association of Assessing Offices (IAAO),
 Petitioner Exhibit 8 – Memo from Barry Wood dated January 11, 2011, pages 1 and 3 of 7,

Petitioner Exhibit 9 – Copy of decision in *Miller Brewing Co. v. Indiana Dept. of State Revenue*, (Ind. Tax Ct. Aug. 18, 2011),
Petitioner Exhibit 10 – Real Property Assessment Guideline, Appendix F, page 5,
Petitioner Exhibit 11 – Real Property Assessment Guideline, Appendix F, page 7,

Respondent Exhibit 1 – Form 130 petition,
Respondent Exhibit 2 – PTABOA hearing notice,
Respondent Exhibit 3 – PTABOA determination,
Respondent Exhibit 4 – Form 131 petition,
Respondent Exhibit 5 – Application for remodeling permit,
Respondent Exhibit 6 – Photograph of subject property,
Respondent Exhibit 7A – PRC for 1989,
Respondent Exhibit 7B – PRC for 2007,
Respondent Exhibit 7C – PRC for 2009,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d. These Findings and Conclusions.

Analysis

13. Ordinarily, a Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. In 2011, however, the General Assembly enacted Ind. Code § 6-1.1-15-17, which contains a burden-shifting provision for certain proceedings. It states:

“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.”

14. Both parties agreed this assessment increased more than 5% from 2008 to 2009 and both parties agreed the Respondent has the burden to prove the current assessment is correct. (Even though the subject property was remodeled and changed uses between March 1, 2008 and March 1, 2009.) The Board accepts the agreement on that point for this case.

15. The Respondent failed to make a prima facie case that the assessed value of \$326,000 is correct.
- 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 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use 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).
 - b. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to 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. An assessor could use any of those same methods to establish that the existing assessed value is correct. But in this case the Respondent offered no substantial market-based evidence of the subject property's actual market value-in-use.
 - c. The Respondent sought to support the assessed value with general evidence about the remodeling, conversion from a medical office to a bank, adjusting effective age, and trending. While those factors probably were important for initial mass assessment purposes, in this appeal that evidence does not prove the property's actual market value-in-use. The Respondent failed to make a prima facie case. *See Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006).
 - d. Consequently, the Petitioner's obligation to prove the existing assessed value is wrong and to prove a more accurate assessed value was not triggered.
16. Unfortunately, Ind. Code § 6-1.1-15-17 offers no guidance about how an assessment should be changed when the Respondent fails to prove the assessment is correct. The 2008 assessment was only \$127,100. In this case that number would be too low for the 2009 assessment because it fails to account for the physical changes to the subject property that clearly took place between March 1, 2008, and March 1, 2009. The Petitioner even acknowledged that the value of the special features related to returning the property to use as a bank should be added. Furthermore, the Petitioner admitted that an assessment of approximately \$250,000 would be appropriate. Lacking probative,

market-based evidence about what the actual market value-in-use really is, the Board will accept the value admitted by the Petitioner.

Conclusion

17. The Respondent agreed that the Assessor had the burden of proof, but then failed to make a prima facie case that the current assessed value is correct. Consequently, the assessment must be reduced to the value that the Petitioner admitted.

Final Determination

In accordance with the above findings and conclusions, the total assessed value of the subject property will be changed to \$250,000 for land and improvements.

ISSUED: _____

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>>