

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

**Petition:** 36-009-06-1-4-00013  
**Petitioner:** Irwin Union Bank & Trust  
**Respondent:** Jackson County Assessor  
**Parcel:** 36-66-17-319-001.002-009  
**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 an assessment appeal with the Jackson County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated August 24, 2007.
2. The parcel number and assessed values on the Notification of Final Assessment Determination (Form 115) attached to the appeal do not match the parcel under appeal. Neither party could find a Form 115 pertaining to the property under appeal. Both parties, however, agreed the assessment of record for 2006 is \$0 for land and \$690,700 for improvements. They also agreed the PTABOA made no changes to the assessment. In effect, there is no Form 115 for this parcel for a 2006 appeal. Nevertheless, the passage of time with no PTABOA determination allows the Petitioner the opportunity to proceed with the appeal.
3. The Petitioner appealed to the Board by filing a Form 131 petition on August 31, 2011, and elected to have the appeal heard according to small claims procedures.
4. The Board issued notice of hearing to the parties on April 24, 2013.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 29, 2013. He did not inspect the property.
6. Certified Tax Representative Milo E. Smith represented the Petitioner. County Assessor Beverly Gaiter appeared as the Respondent. Both of those individuals were sworn as witnesses.
7. The property is a commercial bank located at 202 East Tipton Street in Seymour.

## Record

8. The official record for this matter contains the following:
  - a. Digital recording of the hearing,
  - b. Petitioner Exhibit 1 – Property record card (PRC) for the subject property,  
Petitioner Exhibit 2 – Tax bill detail for the 2005 assessment,  
Petitioner Exhibit 3 – Tax bill detail for the 2006 assessment,  
Petitioner Exhibit 4 – The 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 Petitioner contended the subject assessment is not uniform or equal, but it is equal. The same factors were used for all the parcels in the neighborhood. *Gaiter testimony.*
  - b. The ratio study demonstrates some adjustment was needed to reflect the market value-in-use of properties located in the Petitioner's neighborhood because in most cases the assessed values are lower than the selling prices. *Gaiter testimony; Pet'r Ex. 4.*
  - c. The state approved the sales data and ratio study. *Gaiter testimony.*
10. Summary of the Petitioner's case:
  - a. The bank has a computed assessed value of \$496,210. There are no depreciation, obsolescence, or market adjustments, but the true tax value increased to \$563,100. The paving, teller area, and canopy are similar in that there are no adjustments, but the true tax values are higher than the computed values. No adjustment factor is shown for an annual or market adjustment. *Smith testimony; Pet'r Ex. 1.*
  - b. The tax bills verify the assessed value for 2005 was \$575,500 and for 2006 the assessed value was \$690,700. The increase in the assessed value is greater than 5%. *Smith testimony; Pet'r Ex. 2, 3.*
  - c. There were 52 sales of commercial or industrial properties in Jackson Township in 2006. Six sales were vacant land. There were eight sales in the Petitioner's

neighborhood, with sale prices ranging from \$20,000 to \$250,000. The average sale price is \$70,625. The current assessed value of the Petitioner's property is almost ten times that amount. *Smith testimony; Pet'r Ex. 4.*

- d. The Guidelines say no market adjustment should be made if there are not enough sales in the neighborhood. *Smith testimony.*
- e. There is no reason to apply any annual adjustment based upon the sales ratio study. The annual adjustment factor cannot be determined. The assessment should be returned to \$575,500. *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 this case, both parties agreed the Respondent had the burden of proving the 2006 assessment is correct.
- 13. The Respondent did not make a prima facie case that supports the current assessment.
  - 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 such evidence to prove the market-value-in-use of the subject property.
- c. The Respondent merely claimed the subject property was assessed using the same trending factor as the other properties in the Petitioner's neighborhood. (The Respondent, however, was unable to determine the number actually used.) Even if this claim is true, it is not helpful in determining the actual market value-in-use for this particular property.
- d. The Respondent claimed the assessment/sales ratio study demonstrated some adjustment was needed to reflect the market value-in-use of properties in the neighborhood. Again, even if true, this point is of no value in arriving at the correct assessed value for this particular property. The Assessor offered no support for the notion that a ratio study can be used to prove an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officers Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, says otherwise:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . . **However, ratio study statistics cannot be used to judge the level of appraisal of an individual parcel.** Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

- e. The Respondent claimed she met her responsibilities by providing the assessment/sales ratio study was approved by state officials. The Respondent implied that the subject assessment draws validity from the fact that the disputed assessment is within an acceptable range for mass appraisals. An appeal of an individual assessment, however, is an entirely different thing. The Respondent provided no authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property for the purposes of this appeal. Her unsubstantiated conclusions do not constitute probative evidence.

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

- f. The Respondent did not support the accuracy of the existing assessment with any meaningful market value-in-use evidence. Accordingly, she failed to meet her burden of proof. Therefore, the parcel's March 1, 2006, assessment must be reduced to the 2005 assessed value.

### **Conclusion**

14. The Respondent failed to make a prima facie case that supported the assessed value of the subject property. The Board finds in favor of the Petitioner.

### **Final Determination**

15. In accordance with the above findings and conclusions, the assessment will be changed back to the 2005 assessment, which was \$575,500.

ISSUED: August 26, 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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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, 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>