

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

Petition: 71-007-11-1-4-00002
Petitioner: JSK Investments, Inc.
Respondent: St. Joseph County Assessor
Parcel: 71-03-25-152-005.000-007
Assessment Year: 2011

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Introduction

1. The parties agreed the Petitioner had the burden of proof. The Petitioner presented some evidence as to the value of the property but the Board found none of the evidence probative because it was not sufficiently related to the value-in-use of the subject property for the year under appeal. The Petitioner has failed to make a prima facie case. Therefore, the Board finds the property's total assessment will remain at \$634,400.

Procedural History

2. On April 19, 2012, the Board received a Form 131 Petition for Review of Assessment from JSK Investments, Inc. (JSK) electing to have the petition heard under the Board's small claims procedures. This petition sought to appeal years 2009, 2010, and 2011 for the property with parcel number 71-03-25-152-005.000-007. A defect notice was issued that indicated the Petitioner needed to attach Form 115 determinations, Form 130 petitions or equivalent documents, and that a separate Form 131 must be filed for each assessment year under appeal. The Petitioner responded with a letter dated June 19, 2012, but did not cure all the defects. The Board elected to set the matter for a hearing. At the hearing JSK withdrew the appeal for years 2009 and 2010, which was agreed to by the Respondent.
3. On May 21, 2012, the St. Joseph County Assessor's office received a Form 130 Petition for Review from JSK.¹

¹ It appears that this was not timely. The Form 130 was filed after the Form 131 was filed with the Board. The Board need not address the procedural issues as it finds for the Respondent on other grounds.

4. On April 16, 2014, the Board's designated Administrative Law Judge, Tom Martindale (ALJ), held a hearing on JSK's petition. Neither the Board nor the ALJ inspected the subject property.

5. The following people testified under oath:

For the Petitioner: Norman Patel
Anant Patel
Philip Krause

For the Respondent: Rosemary Mandrici

The following people were sworn but did not testify:

John Leader
Sue Tranberg

6. The property under appeal is a multi-family dwelling located at 118 Rhodes Street in South Bend.

7. It does not appear that the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) acted on this petition.²

The existing assessed value for 2011 is \$634,400.

8. JSK requested the following assessment on the Form 131 petition:

Land: \$17,500 Improvements: \$200,000 Total: \$217,500

Record

9. The official record for this matter is made up of the following:

- a. The Form 131 petition and attachments,
- b. A digital recording of the hearing,

² The Form 130 was incorrectly filed after the Form 131, but over 180 days passed between the filing of the Form 130 and the date of the hearing. In that time it does not appear the PTABOA chose to act on the Form 130. Though the PTABOA may have decided not to act because of the pending Form 131, the Board need not address the procedural issue as it finds for the Respondent on other grounds. In *Anant J. Patel v. St. Joseph County Assessor*, (June 26, 2014), the Board dismissed a 2011 appeal that was filed prior to the Form 130 for that year. However, in that case the Petitioner was attempting to appeal three years from a single Form 131, a violation of the Board's procedural rules. In the case at hand, the Petitioner originally filed three years on a single Form 131, but cured the defect by withdrawing the appeals for 2009 and 2010.

c. Exhibits:

Petitioner's Ex. A1 – Appraisal Report,
Petitioner's Ex. A2 – Application and Certification for Payment and construction costs breakdown,
Petitioner's Ex. A3 – Sales Disclosure Form,
Petitioner's Ex. A4 – Combined Closing Statement ,
Petitioner's Ex. B – Calculation of Land Value³,
Petitioner's Ex. F – Record of taxes paid,
Petitioner's Ex. G – Letter from St. Joseph County Building Dept.

Respondent's Ex. 1 – Property record card for the subject property,
Respondent's Ex. 2 – Construction Permit.

Board Ex. A – Form 131 petition,
Board Ex. B – Notice of Hearing,
Board Ex. C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Summary of the Contentions

10. The Petitioner offered the following evidence and arguments:

- a. JSK called Phillip Krause, an Indiana licensed appraiser, who presented his report on the subject property. Mr. Krause testified that the property is an eight unit apartment complex and that each unit rents for \$750.⁴ Mr. Krause stated that he usually gets three years of income data but that he only had records for one year in this case. The property was 50% vacant in that year. He did pro forma estimations of income and expense. To estimate income he multiplied \$750 by four units and came to a total of \$36,000 for one year. He estimated pro forma expenses at 45%, which gave a net operating income of \$20,000 (rounded). A capitalization rate of 10% was applied, which brought the total value estimate from an income approach to \$195,000 (rounded). *Krause testimony; Pet'r Ex. A1.*
- b. Mr. Krause also used the sales comparison approach to value the property. He came up with a value of \$25,000 per unit, which when multiplied by eight units, brings the total value of the property to \$200,000. *Krause testimony; Pet'r Ex. A1.*

³ The Respondent asked that Petitioner's Ex. B only be admitted as a demonstrative exhibit and not be considered a record of any governmental body. Because the Petitioner laid no foundation for this exhibit, the Board sustains the objection.

⁴ Mr. Krause's testimony seemed to suggest that the \$750 figure refers to actual rent while the appraisal report makes a reference to market rent, it is unclear which is correct.

- c. Norman Patel testified for JSK as to the percent completion as of March 1, 2011. He supported this testimony with a letter from the St. Joseph County/South Bend Building Dept. dated March 12, 2010, that indicated the property was 70% complete. *N. Patel Testimony; Pet'r Ex. G.*⁵
 - d. JSK also asked the Board to consider the construction costs of the property. Norman Patel testified about his estimates of how much he spent between the subject property and another property that shared a construction contract. He stated that he was unable to produce documentation that showed an exact figure, but thought he spent more on the subject property. *N. Patel testimony; Pet'r Ex. A2.*
 - e. JSK offered the records of its sale of the property in July or August of 2013. *N. Patel testimony; Pet'r Ex., A3, A4.*
 - f. JSK offered testimony indicating it had paid all taxes for the subject property on time.⁶ *N. Patel Testimony; Pet'r Ex. F.*
11. The Respondent offered the following evidence and arguments:
- a. The property record card shows an assessed value of \$634,400 for 2011. The assessment was developed from a field inspection, construction costs from the Manual, square footage, perimeter area ratio and use of the property. *Mandrici testimony; Resp't Ex. 1.*
 - b. Ms. Mandrici presented a construction permit for the subject property, but the value listed on a construction permit does not reflect actual value of a property. *Mandrici testimony; Resp't Ex. 2.*
 - c. Ms. Mandrici addressed Petitioner's Exs. A3 and A4. She noted that an assessment does use sales figures as a component of trending. However this sale, which was dated July 29, 2013, was outside the valuation period for a March 1, 2011 assessment. *Mandrici testimony; Pet'r Ex. A3, A4.*
 - d. By cross-examining Mr. Krause, Respondent's counsel ascertained that the appraisal reported an opinion of value as of October 13, 2013. Mr. Krause admitted he did not develop an opinion of value for March 1, 2011. *Krause cross.*

⁵ This letter is dated March 12, 2010. When first presented and when first referenced during the Petitioner's case-in-chief Petitioner's Ex. G was treated as referencing the subject property's completion as of 2010. During the cross examination of Norman Patel and continuing throughout the rest of the hearing, the Petitioner (and it appears the Respondent's Counsel) began treating the letter as if it was dated March of 2011.

⁶ Respondent objected to this testimony and moved to strike on the grounds that it was not relevant to the assessment. The presiding ALJ allowed the testimony with the caveat that the Board would decide what weight to give it. The Board upholds that ruling noting that this testimony has no probative value for the matter at hand.

Burden of Proof

12. Generally, the taxpayer has the burden to prove that an assessment is incorrect 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). A burden-shifting statute creates two exceptions to that rule in Ind. Code § 6.1-15-17.2 as amended by P.L.97-2014. 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). 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.” Under those Circumstances, “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. These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach.
13. In this case the property’s assessed value did increase by more than 5%, but it was the result of new construction. Therefore, the burden-shifting provisions do not apply. Ind. Code § 6-1.1-15-17.2(c)(1). Both parties agreed the Petitioner had the burden of proof.

Analysis

14. The Petitioner did not make a case for any assessment change. The Board reached this conclusion for the following reasons:
- a. Indiana assesses real property based on its true tax value, which is the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property. Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative.

- b. Regardless of the method used to prove a property's true 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2011 assessment, both the assessment and valuation dates were March 1, 2011. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
- c. The Petitioner's primary piece of evidence was the appraisal report provided by Mr. Krause. The Respondent correctly pointed out that this appraisal was dated October 13, 2013. This date is over two and a half years from the valuation date. All evidence must be related to the valuation date. *See Long* 821 N.E.2d at 471. The Petitioner provided no explanation as to how the appraisal related to March 1, 2011. The Board can give the appraisal no weight.
- d. The sale of the property fails for the same reason. The property sold on July 29, 2013.⁷ No testimony was given to relate this sale to the valuation date as required by *Long*. In addition to this, the sale does not appear to be an arms-length transaction. The sales disclosure form indicates that a family or business relationship existed between the buyer and seller.
- e. The Petitioner also argued that the construction cost represents the actual value of the property. However, the evidence about the construction cost is problematic because there is no clear record of the actual cost. The Petitioner presented a document that shows the combined construction for the subject property and another property that was built simultaneously. The Petitioner testified that he did not have documentation to breakdown costs between the two properties. Therefore, the Board can give no weight to this evidence.
- f. The Petitioner argued that because the property was only 70% complete, it should be assessed a lower value. This claim was supported with a letter from the St. Joseph County/South Bend Building Dept. The letter is dated March 12, 2010. During the hearing the parties began treating the letter as if it was dated 2011, but it is not. No evidence was presented about completion as of March 1, 2011. Nor was any evidence given relating the percentage complete to market value-in-use. Absent such testimony the Board will give this evidence no weight.

Conclusion

15. Because JSK did not present evidence sufficient to raise a prima facie case for a reduction, the Respondent's duty to support the assessment was not triggered. *See Lacy*

⁷ The Closing Statement has a closing date of July 29, 2013, while the Sales Disclosure Form has a conveyance date of August 1, 2013.

Diversified Indus. v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, the Board need not address the rest of Respondent's arguments.

FINAL DETERMINATION

16. The Petitioner bore the burden of proof in this appeal. It failed to raise a prima facie case that it is entitled to any reduction. Thus, the Board orders no change to the 2011 assessment.

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: July 11, 2014

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>>.