

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

Petitions: 53-005-06-1-4-00055
53-005-07-1-4-00047
Petitioner: Kooshtard Property V LLC
Respondent: Monroe County Assessor
Parcel: 013-00580-00¹
Assessment Year: 2006 and 2007

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

Procedural History

1. The Petitioner initiated an assessment appeal for the 2006 assessment with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 15, 2006. The Petitioner initiated an assessment appeal for the 2007 assessment with the PTABOA by written document dated January 14, 2008.
2. The PTABOA mailed its decision on the 2006 assessment appeal on May 29, 2007. The PTABOA mailed its decision on the 2007 assessment appeal on April 25, 2008.
3. The Petitioner appealed both decisions to the Board by filing Forms 131 on June 27, 2007, and June 9, 2008. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued notices of hearing to the parties dated June 3, 2009.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on September 9, 2009. She did not conduct an inspection of the property.
6. Milo Smith represented the Petitioner. Marilyn Meighen represented the Respondent. The following persons were sworn as witnesses at the hearing:
For the Petitioner — Milo Smith,
For the Respondent — County Assessor Judy Sharp,
Ken Surface, Nexus Group.

Facts

7. This is a case about a commercial property located at 527 East 3rd Street in Bloomington.

¹ A new parcel number was assigned to this parcel in 2007. The new parcel number is 53-01-30-058-000.000-005.

8. The PTABOA determined the 2006 assessed value is \$635,200 for land and \$136,300 for improvements (total \$771,500). The PTABOA determined the 2007 assessed value is \$635,200 for land and \$144,500 for improvements (total \$779,700).
9. The Petitioner requested a 2006 total assessed value of \$317,000 for land and \$100,000 for improvements (total \$417,000). The Petitioner did not request a specific assessed value for 2007. The Petitioner requested that the land value should not be \$20 with a 100% market factor adjustment.

Record

10. The official record for this matter is made up of the following:
 - a) Petitions for Review of Assessment (Form 131) with attachments,
 - b) Notice of Hearing,
 - c) Hearing Sign-In Sheet,
 - d) Digital recording of the hearing,
 - e) Petitioner Exhibit B – Summary of Contentions,
Petitioner Exhibit B-1 – A list of Monroe County commercial and industrial sales,
Petitioner Exhibit B-2 – Annual Adjustment of Assessed Values Fact Sheet from
the Dep’t of Local Gov’t Finance, page 1,
Petitioner Exhibit B-“B-F” – Copies of Respondent’s Exhibits B-F,
Petitioner Exhibit B-3 – A copy of Ind. Code § 6-1.1-4-4.5,
Petitioner Exhibit B-4 – A copy of a February 2009 DLGF memo “Annual
Adjustment Guidance”,
Petitioner Exhibit B-5 – Subject property record card,
Petitioner Exhibit B-6 – Subject property record card,
Petitioner Exhibit C – Summary of Contentions,
Petitioner Exhibit C-1 – A list of Monroe County commercial and industrial sales,
Petitioner Exhibit C-2 – Annual Adjustment of Assessed Values Fact Sheet from
the Dep’t of Local Gov’t Finance, page 1
Petitioner Exhibit C-“B-F” – Copies of Respondent’s Exhibits B-F,
Petitioner Exhibit C-3 – A copy of Ind. Code § 6-1.1-4-4.5,
Petitioner Exhibit C-4 – A copy of a February 2009 DLGF memo “Annual
Adjustment Guidance”,
Petitioner Exhibit C-5 – Subject property record card,
Petitioner Exhibit C-6 – Subject property record card,
Petitioner Exhibit C-7 – Subject property record card,
Respondent Exhibit 2-A – Subject property record card,
Respondent Exhibit 2-B – Subject property sales disclosure form,
Respondent Exhibit 2-C – Map,

Respondent Exhibit 2-D – Property record card, sales disclosure form, and photograph for Parcel 53-08-03-204-086.000-009,
Respondent Exhibit 2-E – Photograph and sales disclosure form for Parcel 013-19870-00,
Respondent Exhibit 2-F – Photograph, property record card, and sales disclosure form for Parcel 53-04-36-404-006.000-012,
Respondent Exhibit 2-G – None,
Respondent Exhibit 2-H – Statement regarding statutory amendments,

f) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) According to the Annual Adjustment of Assessed Values Fact Sheet published by the Department of Local Government Finance, "Trending requires the assessors to research sales of properties in a particular area over the previous two years. Using that information, assessors then estimate the values of other properties in the same area to determine an assessed value." *Smith testimony; Pet'r Ex. B-2 and C-2.*
- b) The list of commercial and industrial sales for Monroe County includes only one of the five sales included in the Respondent's evidence. Only the sale identified as Respondent Exhibit E is included in the County's 2006 ratio study. *Smith testimony; Pet'r Ex. B-2, C-2, B- "B-F" and C- "B-F".*
- c) According to a memo distributed by the Department of Local Government Finance providing annual adjustment guidance, a "ratio study sample with fewer than five (5) sales must not be used due its exceptionally poor reliability." Because only one of the six sales presented by the Respondent is found in the 2006 ratio study, the 2002 land base rate of \$7 should not have been increased to \$20 with a 100% market factor adjustment for 2006 and 2007 based on one comparable sale in the area. *Smith testimony; Pet'r Ex. B-4 and C-4.*

12. Summary of the Respondent's case:

- a) Nexus Group is the company hired by Monroe County to perform various assessing functions such as compiling new construction data, "trending", completing sales ratio studies, and more. The Department of Local Government Finance approved Monroe County's 2006 and 2007 sales ratio studies. *Surface testimony.*
- b) A lack of commercial sales does not necessarily negate the need for market adjustments. For the 2006 and 2007 commercial and industrial valuations,

Monroe County did not rely solely on sales data. Because commercial and industrial sales are very limited, Monroe County also relied on other data such as appraisal information, income information provided through previous appeals, communication with investors, realty listings, etc. *Surface testimony.*

- c) The subject property is a convenience mart with gas pumps. In 2001, the property sold for \$1.4 million. The subject property's assessment is approximately \$700,000 for 2006 and 2007. *Surface testimony; Resp't Ex. 2-A and 2-B.*
- d) The map (Exhibit 2-C) shows the area where the subject property is located. The location of the subject property is indicated on the far left of the map. The parcel shown as a black box on the far right of the map is a Village Pantry with gas pumps. It sold for \$450,000 in September 2004. The Village Pantry sale was used in the ratio study. *Surface testimony; Resp't Ex. 2-C and 2-D.*
- e) In May 2006, the Jiffy Treat property, located two blocks north of the subject property, sold for \$660,000. Following the purchase, the building located on the Jiffy Treat property was razed. The sale indicates the value of vacant land in the area. Based on the sale, the indicated vacant land value for the Jiffy Treat property is approximately \$60 per square foot (\$660,000 for .12 acres) compared to the subject property's land base rate of \$40 a square foot (\$20 with a 100% market factor). *Surface testimony; Resp't Ex. 2-E.*
- f) The sale of the JT Petroleum property is important because by comparing the 2007 sale price of \$925,000 (which includes \$100,000 for personal property) to the 2006 assessed value it shows that the Monroe County valuation of convenience marts is at market levels. *Surface testimony; Resp't Ex. 2-F.*
- g) The statutory amendment placing the burden of proof on the assessor cannot be retrospectively applied to pending appeals. *Meighen argument; Resp't Ex. 2-H.*

Analysis

13. A petitioner who seeks 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. *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). In making its case, a petitioner must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).²

² The Petitioner initiated these assessment appeals with the PTABOA in 2006 and 2008. Although it is not clear when the PTABOA hearings were held, the notices of the PTABOA’s determination were mailed on May 29, 2007, and April 25, 2008. The Petitioner filed the Form 131 Petitions on June 27, 2007, and June 9, 2008. Effective July

14. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It 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); 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. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. 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.
15. Regardless of the approach used to prove a property’s value-in-use, a 2006 assessment must reflect its value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. An appraisal or any other evidence of value must have some explanation as to how it demonstrates or is relevant to value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
16. Each assessment year is separate and distinct. *See Quality Stores, Inc. v. State Bd. of Tax Comm’rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (each tax year stands on its own and where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
17. The Petitioner did not present any probative evidence about what a more accurate valuation of the property might really be. Rather, its case focused on why the land base rate was improperly determined and why trending to update value had not been done properly. But Mr. Smith’s conclusions that proper procedures were not followed in determining the land base rate or trending are not probative evidence. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence). Furthermore, his conclusions disregard the fact that a 2006 assessment must be based on a different valuation date. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3; *Long*, 821 N.E.2d at 471. The 2002 through 2005 assessments relate back to a value as of January 1, 1999.

1, 2009, Ind. Code § 6-1.1-15-1(p) provides that a taxpayer may obtain a review of a county board’s or township official’s action with respect to the taxpayer’s assessment—and if the assessment increased by more than five percent over the assessed value for the immediately preceding assessment, the assessor has the burden of proving that assessment is correct. The Petitioner provided no indication that this new provision applies retroactively and the Board is aware of no authority for doing so. Therefore, that new subsection does not transfer the burden of proof to the Respondent in this case. That responsibility remained with the Petitioner. The Board reserves other questions about the application of Ind. Code § 6-1.1-15-1(p) for another day.

They do not help to prove what a more accurate assessment for 2006 might be. *Long*, 821 N.E.2d at 471; *Quality Stores*, 740 N.E.2d at 942; *Barth*, 699 N.E.2d at 806.

18. More importantly, a taxpayer must show through the use of market-based evidence that the assessed value does not accurately reflect market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). Here, the Petitioner did not do so, and consequently, the Petitioner failed to make a prima facie case. *Id.* at 678, (“In challenging their assessment, the Eckerlings have offered [no] ... market value-in-use evidence. Rather, they have focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error.”)
19. Where the Petitioner fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1221-1222.

Conclusion

20. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, 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, 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>>