

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

Petitions: 53-005-06-1-4-00058
53-005-07-1-4-00042
Petitioner: Kooshtard Property V
Respondent: Monroe County Assessor
Parcel: 0132534003¹
Assessment Year: 2006 & 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 these cases 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. Mr. Milo Smith represented the Petitioner. Attorney 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 at 3205 East 3rd Street in Bloomington.

¹ In 2007, this parcel was assigned a new parcel number. The new parcel number is 53-05-35-300-016.000-005.
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8. The PTABOA determined the 2006 assessed value is \$536,600 for land and \$56,400 for improvements (total \$593,000). The PTABOA determined the 2007 assessed value is \$536,600 for land and \$65,000 for improvements (total \$601,600).
9. The Petitioner requested a 2006 total assessed value of \$163,000 for land and \$56,400 for improvements (total \$219,400). The Petitioner did not request a specific assessed value for 2007. The Petitioner requested that the land value should not be calculated using a land base rate of \$675,000.

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 D – Summary of Contentions,
Petitioner Exhibit D-1 – A list of Monroe County commercial and industrial sales,
Petitioner Exhibit D-2 – Annual Adjustment of Assessed Values Fact Sheet from
the Dep't of Local Gov't Finance, page 1,
Petitioner Exhibit D-“C-H” – Copies of Respondent’s Exhibits C-H,
Petitioner Exhibit D-3 – A copy of Ind. Code § 6-1.1-4-4.5,
Petitioner Exhibit D-4 – Pages 1 and 2 from a February 2009 DLGF memo
“Annual Adjustment Guidance”,
Petitioner Exhibit D-5 – Subject property record card,
Petitioner Exhibit D-6 – Subject property record card,
Petitioner Exhibit E – Summary of Contentions,
Petitioner Exhibit E-1 – A list of Monroe County commercial and industrial sales,
Petitioner Exhibit E-2 – Annual Adjustment of Assessed Values Fact Sheet from
the Dep't of Local Gov't Finance, page 1,
Petitioner Exhibit E-“C-H” – Copies of Respondent’s Exhibits C-H,
Petitioner Exhibit E-3 – A copy of Ind. Code § 6-1.1-4-4.5,
Petitioner Exhibit E-4 – Pages 1 and 2 from a February 2009 DLGF memo
“Annual Adjustment Guidance,”
Petitioner Exhibit E-5 – Subject property record card,
Petitioner Exhibit E-6 – Subject property record card,
Petitioner Exhibit E-7 – Subject property record card,
Petitioner Exhibit 5% – 2009 amendment, Ind. Code § 6-1.1-15-1(p),
Respondent Exhibit 3-A – Photograph of the subject property,
Respondent Exhibit 3-B – Subject property record card,
Respondent Exhibit 3-C – Map,

Respondent Exhibit 3-D – Property record card for
Parcel 53-05-35-300-051.000-005,
Respondent Exhibit 3-E – Property record card and sales disclosure form for
Parcel 53-05-35-300-020.000-005,
Respondent Exhibit 3-F – Property record card, sales disclosure form and
photograph for Parcel 53-08-03-204-086.000-009,
Respondent Exhibit 3-G – Property record card and sales disclosure form for
Parcel 53-05-34-400-010.000-005,
Respondent Exhibit 3-H – Statement regarding statutory amendments,
Respondent Exhibit 3-I – Property record card, sales disclosure form and
photograph for Parcel 53-04-36-404-006.000-012,

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 (2) 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. D-2 and E-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. Of the five sales offered by the Respondent, only one sale is included in the County's 2006 ratio study. *Smith testimony; Pet'r Ex. D-1, E-1.*
- c) According to the Department of Local Government Finance, a “ratio study sample with fewer than five (5) sales must not be used due its exceptionally poor reliability.” The 2002 land base rate of \$205,000 should not have been increased to \$675,000 for 2006 and 2007 based on one comparable sale in the area. *Smith testimony; Pet'r Ex. D-4 and E-4.*
- d) Under a 2009 statutory amendment, Ind. Code § 6-1.1-15-1(p), the assessor has the burden to prove the assessment is correct when the assessed value increased by more than 5%. *Smith testimony; Pet'r Ex. 5%.*

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) For the 2006 and 2007 commercial and industrial valuation, 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. Using data other than sales data is not contrary to rules or law governing the assessment process. *Surface testimony.*
- c) The subject property is an auto repair shop with gas pumps and convenience mart items. The land base rate for the subject property is \$675,000 per acre. *Surface testimony; Resp't Ex. 3-A and 3-B.*
- d) The map (Exhibit 3-C) shows the area where the subject property is located. The subject property is the black area on the map. The parcel marked with an "X" is a similar property, another convenience mart with gas pumps, and a land value base rate of \$675,000 per acre. A Marsh grocery store property located directly behind the subject property sold for \$6 million in October 2005. This sale was used in the ratio study and used to help establish land base rates. *Surface testimony; Resp't Ex. 3-C, 3-D and 3-E.*
- e) A Village Pantry located within two miles of the subject property sold for \$450,000 in September 2004. That sale shows reliability of assessed value to sale price. The Village Pantry sale was used in the ratio studies. The 2006 sale of \$1,850,000 for a property on East 3rd Street was not used in the ratio study, but it did provide information assisting in establishing land value. *Surface testimony; Resp't Ex. 3-F and 3-G.*
- f) The sale of the JT Petroleum property is important because by comparing the 2007 sale price of \$925,000 (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; Surface cross; Resp't Ex. 3-I.*
- g) The statutory amendment placing the burden of proof on the assessor cannot be applied retrospectively to pending appeals. *Meighen argument; Resp't Ex. 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

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.

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 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.

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. 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>>