

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

Petition: 02-074-13-1-4-00110
Petitioner: Richard J. Kriz II
Respondent: Allen County Assessor
Parcel: 02-12-01-411-013.000-074
Assessment Year: 2013

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

Procedural History

1. The Petitioner initiated his 2013 assessment appeal with the Allen County Assessor on August 27, 2013.
2. The Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on February 3, 2014, lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on March 20, 2014. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on July 17, 2014.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on October 16, 2014. He did not inspect the property.
6. Richard J. Kriz II appeared *pro se* and was sworn as a witness. Attorney John Rogers appeared for the Respondent. Robert Williamson was sworn as a witness for the Respondent.

Facts

7. The property under appeal is an unimproved parcel located at 1305 East Washington Boulevard in Fort Wayne.
8. The PTABOA determined the land assessment is \$7,500.
9. The Petitioner claimed the land assessment should be \$2,500.

Record

10. The official record for this matter contains the following:

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Summary of Petitioner’s arguments in power-point format, including the appeal history and background, comparable properties and values, suggested valuation, assessment methods, and the definition of “commercial.”

Respondent Exhibit 1: Respondent’s Motion Regarding Burden of Proof, dated October 3, 2014,

Respondent Exhibit 1A: City of Fort Wayne Board of Zoning Appeals Agenda for July 19, 2012,

Respondent Exhibit 1B: Affidavit of Robert Williamson, dated October 2, 2014,

Respondent Exhibit 2: Indiana Code 6-1.1-15-17.2,

Respondent Exhibit 3: Affidavit of Judy Roy, dated October 8, 2014,

Respondent Exhibit A: Respondent’s Position Statement,

Respondent Exhibit B: 2013 subject property record card,

Respondent Exhibit C: City of Fort Wayne Board of Zoning Appeals Agenda for July 19, 2012,¹

Respondent Exhibit D: 2011 REAL PROPERTY ASSESSMENT GUIDELINE, ch. 2, page 12, and 50 IAC 2.4-1-1 et seq.,

Respondent Exhibit E: INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, FOR PROPERTY APPRAISAL AND ASSESSMENT (2d ed.), Glossary, page 2,

Respondent Exhibit F: Map indicating comparable sale locations,

Respondent Exhibit G: Property record cards, photographs, sales disclosures, and verifications for comparable sales,

Respondent Exhibit H1: Sales Comparison Analysis,

Respondent Exhibit H2: Explanation of qualitative adjustments,

Respondent Exhibit I: Mr. Williamson’s qualifications.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Hearing notice dated July 17, 2014,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Notice of Appearance for John Rogers.

- d) These Findings and Conclusions.

¹ Respondent Exhibits 1A and C are the same.

Contentions

11. Summary of the Petitioner's case:

- a) The subject property is assessed too high. The Petitioner has owned the property for over 40 years, and it has been bare ground for the past 35 years. Until recently, there has been no interest or action taken toward redevelopment. The current assessment is an 1800% increase over the 2012 level. *Kriz argument; Pet'r Ex. 1.*
- b) The subject property is located near Indiana Tech's college campus. Indiana Tech owns the majority of the surrounding properties. Further, the properties owned by Indiana Tech have a higher value, because Indiana Tech is the only interested buyer in the neighborhood. Consequently, properties in the immediate area that are not owned by Indiana Tech have little value, regardless of usage. *Kriz argument; Pet'r Ex. 1.*
- c) Indiana Tech offered to purchase the subject property sometime around 2011. In fact, the offer was for more than the current assessment of \$7,500. The Petitioner declined the offer due to Indiana Tech's "dishonesty in approaching him." It was at this point Mr. Kriz decided to pursue redevelopment. He requested zoning variances from the city, and they were approved. However, he was unaware of the fact that requesting a zoning variance would trigger commercial reclassification. When he was advised that his planned development would have a very poor return on investment, he decided not to go through with it. Thus, the subject property has very little, if any, value as it currently sits. *Kriz testimony; Pet'r Ex. 1.*
- d) The Respondent's choice for purportedly comparable properties is flawed. Specifically, the property at 1232 Maumee is not bare ground. In fact, this property consists of a full apartment complex. In terms of zoning, this property has far fewer limitations than the subject property, because it was grandfathered in. For instance, this property violates the 35% building-footprint rule, and there is no requirement for on-site parking. *Kriz argument (referencing Resp't Ex. G); Pet'r Ex. 1.*
- e) On the other hand, the surrounding properties chosen by the Petitioner are more comparable to the subject property. While Mr. Kriz admits he did not have time to "check the size of the properties he chose," only one out of approximately ten has a value near \$7,500. That one property is an Indiana Tech property. *Kriz argument; Pet'r Ex. 1.*
- f) Because there is no market for the subject property, and no improvement located on the property, none of the assessment methods are applicable here. Accordingly any assessment above the 2012 level of \$400 is without support. *Kriz argument; Pet'r Ex. 1.*

12. Summary of the Respondent's case:

- a) The subject property is assessed correctly. It is located in an area where Indiana Tech has purchased the majority of the adjacent land for future development. The remaining properties, including the subject property, are being held by investors in hopes that Indiana Tech will continue to expand and purchase their lots. *Williamson argument; Resp't Ex. A.*
- b) Because of the lack of vacant land sales, the Respondent utilized the "abstraction method" to estimate the subject property's value. This method, which the Guidelines allow in such an instance, provides that the improvement cost be deducted from the sale prices of improved parcels to yield a residual land value. *Williamson testimony, Resp't Ex. A, D, E.*
- c) The Respondent examined six improved property sales within the subject property's neighborhood, all less than a mile away. The Respondent contacted the buyer and seller in each transaction to verify the accuracy of the data and to confirm that each sale was an arm's-length transaction. The Respondent attempted to compare the properties to the subject property; however insufficient data was available to make quantitative adjustments for differences. Qualitative comparisons, however, were made for things such as traffic count, shape, size, topography, and zoning. *Williamson testimony, Resp't Ex. A, H1, H2.*
- d) Consequently, of the six comparable properties, only one was superior to the subject property. This superior property was excluded from the final analysis. By not including the superior property in the final analysis, the Respondent was able to determine the absolute minimum value that the subject property would likely sell for. The average sale price of the five remaining properties equated to \$8,000. The median sale price of these properties equaled \$7,600. Thus, both the average and the median sale price support the subject property's current assessment. *Williamson testimony, Resp't Ex. A, H1, H2.*
- e) Finally, according to the affidavit of Judy Roy, Vice President of Finance and Administration for Indiana Tech, Indiana Tech offered to purchase the subject property. In fact, Indiana Tech "agrees that the \$ (sic) amount to purchase the subject that was offered exceeds the subject's contested 2013 assessed value of \$7,500." The Petitioner, however, refused the offer because it was his opinion that "the subject was worth more than the \$ (sic) amount offered to purchase." *Rogers argument; Resp't Ex. 3.*

Burden of Proof

13. 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. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

14. 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).
15. Second, Ind. Code section 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 IC 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.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the Respondent filed a Motion Regarding Burden of Proof, requesting the Board to determine that the Petitioner has the burden of proof in this appeal. While the Respondent conceded that the assessment increased more than 5%, the increase in the assessment was primarily due to a “change in zoning.”² More specifically, while the subject property appears to be zoned “R-2” the Petitioner requested, and was granted, several variances from the zoning requirements within the R-2 classification. These included a reduction in the required number of parking spaces, a reduction in the setback requirements for a development, and reduction in landscaping standards. The variances for the subject property were granted in July of 2012. *Rogers argument; Resp’t Ex. 1, 1A.*
17. Further, the Respondent argued that Ind. Code § 6-1.1-15-17.2(c) does not require that the zoning classification has to change to render the burden-shifting statute inapplicable. On the contrary, Ind. Code § 6-1.1-15-17.2(c) only requires the existence of “zoning that was not considered in the assessment for the prior tax year.” Here, the Respondent argued the zoning standards were not considered for the 2012 assessment, however they were considered for the 2013 assessment. *Rogers argument; Resp’t Ex. 1, 1A.*
18. The Petitioner failed to offer any evidence or argument to rebut the Respondent’s motion. At the hearing, the ALJ made a preliminary determination that the burden remains with the Petitioner.
19. The Board adopts the ALJ’s preliminary determination. As the Respondent argued, the relevant statute, Ind. Code § 6-1.1-15-17.2(c), does not specifically require a change in

² The March 1, 2012, assessment is \$400 and the March 1, 2013, assessment is \$7,500.

zoning *classification*, but merely a change in zoning, to render it inapplicable.³ Here, the zoning changed in July of 2012 and the changes were not considered in the assessment for March 1, 2012. Thus, even though the assessment increased more than 5%, according to Ind. Code § 6-1.1-15-17.2(c) the burden remains on the Petitioner.

Analysis

20. 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.
21. Regardless of the method used, a party must explain how the evidence relates to the appealed 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 Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2013, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).
22. Here, the Petitioner offered a list of approximately 15 assessments for other unimproved parcels on East Washington Boulevard, in what appears to be an assessment-comparison analysis. Indeed, Ind. Code § 6.1-1-15-18(c)(2) allows a party to submit comparable property assessments to prove value. But other assessments do not automatically show the market value-in-use of the property under appeal. The party relying on those assessments must use generally accepted appraisal methods to show that the other properties are comparable, and explain how any relevant differences affect the properties' value. *See* Ind. Code § 6.1-1-15-18(c)(2); *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014); *see also Long supra* at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).
23. The Petitioner's presentation, however, fell short of meeting those requirements. True, the parcels he chose are apparently unimproved. And they are located on the same street, although several blocks apart. However, the Petitioner failed to offer any detail regarding

³ As with all determinations, the Board's conclusions are limited to the facts and arguments before it. The Board does not address whether or not any change in zoning will necessarily avoid the burden-shifting provisions of the statute.

the parcels, or any explanation as to why they are comparable. Also, he failed to present property record cards for the purportedly comparable properties. Moreover, he failed to identify or make adjustments for any differences between the purportedly comparables and the subject property. Consequently, the Petitioner's list of land assessments lacks probative value.

24. The Petitioner's remaining arguments are conclusory. He provided little explanation or support for his "suggested assessment." In fact, he argued that the generally accepted methods to assess and appraise property are not applicable to the subject property. But as stated above, it is the Petitioner's burden to prove the property's value. Conclusory statements are not sufficient to establish value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
25. It may be true that the market for the subject property is atypical. But the Petitioner failed to support that argument with probative evidence. A taxpayer's conclusion that development would have a poor return does not establish a value for the property. Thus, the Board finds that the Petitioner failed to raise a prima facie case that his property was over-valued for the 2013 assessment year.
26. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

27. The Board finds for the Respondent. The 2013 assessment will not be changed.

Final Determination

In accordance with these findings and conclusions, the 2013 assessment will remain at \$7,500.

ISSUED: March 13, 2015

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>>.