

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

Petition: 45-027-06-1-5-00001
Petitioners: Bharati and Vijay Patel
Respondent: Lake County Assessor
Parcel: 45-07-20-306-019.000-027
Assessment Year: 2006

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

Procedural History

1. Bharati and Vijay Patel (“Petitioners”) initiated this assessment appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its notice of final determination on April 12, 2011.
2. Petitioners filed the 131 Petition with the Board electing to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On April 17, 2012, the Board issued a Notice of Defect in Completion of Assessment Appeal Form. Petitioners did not respond. On June 4, 2012, the Board issued a Final Determination denying the petition for failure to comply with the notice. Petitioners requested a rehearing and on July 3, 2012, the Board issued a Notice of Intent to Rehear Petition.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held a hearing on January 11, 2016. Neither the ALJ nor the Board inspected the property.
5. Vijay Patel, taxpayer, represented Petitioners. Robert Metz, Lake County Hearing Officer, represented Respondent. Both were sworn and testified.

Facts

6. The subject property is a single-family home located at 8700 Northcote Avenue in Munster.
7. For 2006, the PTABOA determined the assessed value was \$40,000 for the land and \$860,000 for the improvements for a total assessed value of \$900,000. At the hearing, Petitioners requested a total assessed value of \$670,000.

Record

8. The official record contains the following:

- a. A digital recording of the hearing,
- b. Exhibits:

Neither Petitioners nor Respondent offered any exhibits.

Board Exhibit A: Form 131 petition with attachments

Board Exhibit B: Notice of Defect in Completion of Assessment Appeal Form dated April 17, 2012

Board Exhibit C: Board Final Determination dated June 4, 2012

Board Exhibit D: Notice of Intent to Rehear Petition

Board Exhibit E: Notice of Hearing

Board Exhibit F: Hearing sign-in sheet

- c. These Findings and Conclusions.

Burden

- 9. 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 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.
- 10. 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).
- 11. 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," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "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).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence of the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, the assessment reverts to the previous year's value. *See* Ind. Code § 6-1.1-15-17.2(b).
14. There was some confusion at the hearing as to who had the burden in this appeal. Petitioners contended that, based on a stipulation agreement for the 2002 assessment year in the amount of \$599,400, the 2006 assessment reflected a 25% increase for each year from 2002 to 2006. It is unclear how Petitioners arrived at that result.¹
15. Respondent initially made reference to a Form 11 which he claimed showed a decrease in the assessed value from 2005 to 2006. However, as the hearing progressed, Respondent conceded that he had mistakenly been referring to a Form 11 for 2012 which was immaterial to this appeal.
16. Ultimately, neither party presented any evidence of the actual 2005 assessed value. In such a case, the Board has found that a party seeking to take advantage of the burden-shifting statute must walk the Board through the relevant issues and provide the information necessary to apply the statute. Because Petitioners failed to do so, they retained the burden of proving the assessment is incorrect and what the correct assessment should be. *See Indiana Limestone v. Monroe County Assessor*, Pet. No. 53-006-11-1-5-00080 et. al. (October 19, 2015).

Summary of Parties' Contentions

17. Petitioners' case:
 - a. Petitioners contend that the home on the subject property was constructed in 1989 for \$360,000. They claim to have an original contract, a closing statement, and an appraisal. *Patel testimony*.
 - b. Petitioners appealed their 2002 assessment and eventually agreed to a stipulated amount of \$599,400. In 2006, their assessment increased significantly. They contend that the increase from 2002 to 2006 amounted to approximately 25% per year. *Patel testimony; Board Ex. A*.

¹ The 2002 stipulation agreement was received by the Board on March 16, 2005, and appears as an attachment to Board Exhibit A.

- c. Petitioners contend the increase in the assessment value between 2002 and 2006 should only have been 3% per year, which would have reflected an appropriate cost of living adjustment. They contend that using a 3% annual increase from 2002 to 2006 would have resulted in an approximate value of \$670,000 for 2006. *Patel testimony.*
- d. Petitioners appealed their 2012 assessed value. The PTABOA heard the appeal and arrived at a final determination of \$715,000. Petitioners contend that, based on the 2012 determination, the 2006 value should be somewhere between the 2002 value of \$599,400 and the 2012 value of \$715,000. *Patel testimony.*

18. Respondent's case:

- a. Even though it was difficult to find relevant sales due to the amount of time that had passed since the year at issue, Respondent believes the 2006 value is correct and should stand. He does not believe the 2012 assessed value is relevant or reflective of what the value should have been in 2006. *Metz testimony.*
- b. Respondent contends that the construction cost is also irrelevant. Furthermore, Petitioners did not present any evidence to support their claim that the value increased by 25% per year, or that the value should have only increased by 3% per year based on a cost of living adjustment. *Metz testimony.*

ANALYSIS

- 19. 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 by a similar user, from the property." 2011 Real Property Assessment Manual at 2 (incorporated by reference at 50 IAC 2.4-1-2); see also Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. Manual at 2. Assessing officials primarily use the cost approach. Manual at 3. 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. Manual at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. Manual at 3.
- 20. 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 Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2006 assessment was March 1, 2006. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

21. The house was constructed in 1989. The length of time between the year of construction and the assessment year at issue is significant. Petitioners stated that they have an original contract, a closing statement, and an appraisal that all document the 1989 construction cost of \$360,000. They did not offer any of those documents as evidence.
22. Petitioners contend that the increase in the assessment between 2002 and 2006 was a 25% increase per year. They further contend that only a 3% cost of living increase per year over that same period would have been appropriate. However, Petitioners did not explain how they arrived at their contentions and thus such claims carry little probative value. A taxpayer has the duty to walk the Board through every element of its analysis and cannot assume the evidence speaks for itself. *Long*, 821 N.E.2d at 421. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. See *Whitely Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998).
23. Petitioners appealed the 2012 assessment, which resulted in a final determination of \$715,000. They claim that as a result of that determination, the 2006 value should be somewhere between the 2002 value of \$599,400 and the 2012 value of \$715,000. But each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, their 2012 assessment has no probative value.
24. Petitioners failed to make a prima facie case that the assessment was incorrect for 2006. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

Petitioners failed to establish a prima facie case. In accordance with these above findings and conclusions, the Board finds for Respondent and the 2006 assessment will not be changed.

ISSUED: April 12, 2016

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>>.