

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

Petitions: 15-003-11-1-4-00177
15-003-11-1-4-00340
Petitioner: Jack Tandy
Respondent: Dearborn County Assessor
Parcels: 15-07-32-102-083.000-003
15-07-32-102-082.000-003
Assessment Year: 2011

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner initiated Form 130 appeals for the 2011 assessment with the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 25, 2011.
2. The PTABOA mailed its Notifications of Final Assessment Determination (Forms 115) on November 29, 2011.
3. The Petitioner timely filed Form 131 Petitions with the Board on December 29, 2011. He elected to have these appeals heard according to small claims procedures.
4. Administrative Law Judge Rick Barter held the administrative hearing on November 27, 2012. He did not inspect the property.
5. Petitioner Jack Tandy appeared pro se. Attorney Andrew D. Baudendistel represented the Respondent. Mr. Tandy, County Assessor Gary R. Hensley and Jeffrey D. Thomas were sworn as witnesses.

Facts

6. The property consists of two adjoining commercial parcels. One parcel is assessed for land only. The other parcel is assessed for land and improvements. Both parcels are located along Importing Street between Mechanic Street and Bridgeway Street in Aurora.

7. The PTABOA determined the assessment for parcel 15-07-32-102-083.000-003 is \$59,500 for land and \$0 for improvements. The PTABOA determined the assessment for parcel 15-07-32-102-082.000-003 is \$163,000 for land and \$236,300 for improvements. The total assessed value for both parcels is \$458,800 as of March 1, 2011.
8. The Petitioner claims the assessed value should be \$35,000 for the land-only parcel. He claims the assessed value for the improved parcel should be \$60,000 for land and \$200,000 for improvements. Thus, his proposed assessed values would total \$295,000.

Contentions

9. Summary of the Petitioner's case:
 - a. The subject property is over-assessed. There are multiple vacant properties in the area. Although there have been several sales, values in the neighborhood have gone down. *Tandy testimony; Pet'r Ex. A-J.*
 - b. The former Peoples Savings Bank has a 15,000 square foot improvement and a 106-foot-by-106-foot paved parking lot. It was empty and on the market for three years. Eventually it sold for \$130,000. *Tandy testimony; Pet'r Ex. B.*
 - c. The former YMCA property at 404 Green Blvd. has 3.37 acres, an improvement with 22,160 square feet and a 90-vehicle parking lot. It was listed for \$550,000 and sold for only \$100,000. *Tandy testimony; Pet'r Ex. C.*
 - d. The Alcott property at 305 Sunnyside Avenue has 0.4 acres and an improvement of 3,760 square feet. It sold for \$112,000 in August of 2010 after being listed for \$130,000. *Tandy testimony; Pet'r Ex. D.*
 - e. The former Aurora Elementary School on Washington Street is on 3.6250 acres and has a building with 32,000 square feet. In February 2007 it sold for \$131,000. *Tandy testimony; Pet'r Ex. E.*
 - f. The Aurora Supply Building, a 45,000 square foot structure that had been empty for three years, sold in December of 2009 for \$175,000 on a land contract. *Tandy testimony; Pet'r Ex. F.*
 - g. Since Wal-Mart moved into the area there has been a negative impact on values of commercial property in downtown Aurora. *Tandy testimony.*
 - h. The Petitioner tried to sell a four-room office suite in Aurora, but the potential buyer selected a Lawrenceburg property instead. In Lawrenceburg, property tax rates are lower and other incentives may be offered. *Tandy testimony.*
 - i. There are several vacant commercial properties in downtown Aurora. *Tandy testimony; Pet'r Ex. G.*

- j. The Petitioner tried to sell the subject property for \$300,000. He was unsuccessful. Public Service looked at the subject property, but bought a different property where they built a new building. Now nobody is buying buildings that are 40 years old. They just build new ones. *Tandy testimony.*
 - k. The subject property is located in a flood plain and the Ohio River frequently floods the area. *Tandy testimony; Pet'r Ex. H, J.*
10. Summary of the Respondent's case:
- a. Dearborn County officials followed state standards and contracted with Tyler Technologies. Their ratio studies are based on valid sales from the 14 months prior to each March 1 assessment date. The disputed assessments in this case were calculated using the cost Guidelines and adjusted based on trending. *Hensley testimony.*
 - b. The value of the Petitioner's land-only parcel was lowered by the PTABOA from \$104,100 to \$59,500 when it placed a negative 60% influence factor on the parcel because of flooding. *Hensley testimony.*
 - c. Two appraisals were prepared using both the sales comparison approach and the income approach. The Petitioner did not provide data regarding leases or actual rental income. Therefore, the income approach used in the appraisals is computed using market rents as of March 1, 2011. The conclusions of value are \$440,000 for the improved parcel and \$40,000 on the land-only parcel. The combined total is \$484,000. The combined appraised values exceed the combined current assessments of the two parcels. *Thomas testimony; Resp't Ex. 1.*
 - d. When selecting sales of properties that are comparable to the property under appeal, location is crucial. The appraiser examined the entire Aurora community of commercial buildings. It is also important that the sales are arm's-length transactions and did not occur under duress. For example, the bank sale identified by the Petitioner was the result of liquidation proceedings and the sale of the YMCA was the result of a lawsuit. *Thomas testimony; Resp't Ex. 1.*
 - e. Additionally, these appeals are based on a valuation date of March 1, 2011. The Petitioner's arguments about the sales he identified do not consider the values of the properties on the appropriate valuation date. *Thomas testimony; Resp't Ex. 1.*

Record

11. The official record contains the following:
- a. The Petition,

- b. Digital recording of the hearing,
- c. Petitioner Exhibit A – Summary of the Petitioner’s contentions,
 Petitioner Exhibit B – Photographs and notes related to the sale of Peoples Savings Bank,
 Petitioner Exhibit C – Data sheet for the YMCA at 404 Green Blvd.,
 Petitioner Exhibit D – Data sheet for the Alcott property at 305 Sunnyside,
 Petitioner Exhibit E – Photograph and property record card for Aurora Elementary School,
 Petitioner Exhibit F – Photograph and promissory note related to sale of Aurora Supply,
 Petitioner Exhibit G – List of vacant properties in downtown Aurora,
 Petitioner Exhibit H – Brochure about downtown Aurora Alley Tour,
 Petitioner Exhibit I – Photographs of two unidentified properties,
 Petitioner Exhibit J – Three pages of flood dates and river depths,
- d. Respondent Exhibit 1 – Appraisal of each Tandy parcel as of March 1, 2011,
- e. Board Exhibit A – Form 131 Petition,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing sign-in sheet,
- f. These Findings and Conclusions.

Analysis

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that the 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

13. The Petitioner did not claim the assessments increased by more than 5% from the 2010 assessments. The Forms 115 and property record cards show the 2011 assessments under appeal did not increase at all. Accordingly, in these appeals Ind. Code § 6-1.1-15-17.2 does not require the Respondent to prove the assessments are correct.
14. The Petitioner needed to prove the assessed value is wrong and what a more accurate assessed value would be.
15. The Petitioner needed to 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”).
16. The Petitioner failed to make a prima facie case for any change in assessed value.
 - a. 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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.
 - b. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
 - c. The Petitioner presented evidence about sales of several properties in downtown Aurora. One sale occurred in 2007, another in 2009, and one in 2010. The evidence offered by the Petitioner had no dates for the others. The Petitioner presented nothing to relate that sales data to the relevant valuation date. Therefore, those sales have no probative value here. *Long*, 821 N.E.2d at 471.

- d. Furthermore, in order to use comparable sales as evidence and draw any legitimate conclusion about the value of the subject property, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of properties. *Long*, 821 N.E.2d at 470. The Petitioner was “responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties.” *Id.* at 471.
 - e. According to the Petitioner, the actual value of his property is less because it is in a designated flood plain and it floods. Nothing in the record disputes the fact that the subject property is in the flood plain and has flooding issues. In fact, the Respondent admitted a negative influence factor had already reduced the assessed valuation for that very reason. The Petitioner presented no probative evidence to quantify any additional influence of flooding on the market value-in-use of the subject property. His unsubstantiated conclusions regarding the impact of the flooding do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The evidence about flooding problems does not prove the assessed values for the subject property must be changed.
 - f. The Petitioner also complained about the presence of Wal-Mart and the many vacant commercial structures in Aurora resulting from that presence. He provided a list of 17 vacancies, primarily on Second Street and Third Street, in downtown Aurora as of October 24, 2011. But he provided virtually no other information about those properties, how they compare to the subject property, or even if they would actually compete for the same kind of potential buyers or tenants. Nothing in the record disputes the fact that these vacancies exist, although only the Petitioner’s conclusory testimony links those vacancies to Wal-Mart. More importantly, even if other vacancies reduce the value of the Petitioner’s property to some degree, he once again provided no probative evidence to quantify that impact on the market value-in-use of the subject property. Therefore, without more facts and explanation, the presence of Wal-Mart and the large number of vacant commercial structures does not help to prove the disputed assessed value is wrong. Similarly, they do not prove what a more accurate market value-in-use for the subject property might be.
17. 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

18. The Petitioner failed to make a prima facie case for a lower assessed value. The Board finds in favor of the Respondent. The assessment will not be changed.

Final Determination

In accordance with the above findings and conclusions, the total assessed value of the property will not be changed.

ISSUED: February 1, 2013

Commissioner, Indiana Board of Tax Review

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- 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>.