

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

Petition: 40-006-12-1-4-00001
Petitioner: Tena, LLC.
Respondent: Jennings County Assessor
Parcel: 40-03-20-100-003.000-006
Assessment Years: 2012

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Jennings County Property Tax Assessment Board of Appeals (“PTABOA”) by filing Form 130 dated June 8, 2012.
2. The PTABOA mailed notice of its decision, Form 115, on November 30, 2012.
3. The Petitioner appealed to the Board by filing Form 131 petition on January 3, 2013. The Petitioner elected to have the case heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on July 31, 2013. He did not inspect the property.
5. Certified tax representative Milo Smith represented the Petitioner and Jennings County Assessor Linda Kovacich appeared as the Respondent. Both Smith and Kovacich were sworn as witnesses.

Facts

6. The subject parcel is a mobile home park located at West County Road 950 North, Elizabethtown, Indiana. On appeal, the Petitioner alleges that the assessment is incorrect because it more than doubled from the previous year and that the neighboring properties were assessed differently. *See* Form 131.
7. The PTABOA determined the assessed value is land \$87,100 and improvements \$32,800 for a total assessment of \$119,900. The Petitioners did not claim any specific value on the Form 131.

Record

8. The official record for this matter contains the following:
- a. The Form 131 Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 - Copy of subject property record card (PRC),
Petitioner Exhibit 2 - Geographic information system (GIS) map of subject parcels and surrounding area and four PRC's of comparable properties,
 - d. Respondent Exhibit A - Letter from PTABOA requesting income and expense information,
Respondent Exhibit B - Email from Mr. Smith's office denying requested income and expense information,
Respondent Exhibit C - Income and expense analysis,
Respondent Exhibit D - Subject 2011 PRC,
Respondent Exhibit E - Subject 2012 PRC,
Respondent Exhibit F - Geneva Township mobile home park land order,
Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - e. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that an 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). Recently, 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.

The 2011 assessment was \$54,400.00 and the 2012 assessment was \$119,900. This increase is more than 5%. Moreover, in this case the parties agree the Respondent has the burden of proving the 2012 assessment is correct.

Contentions

10. Summary of the Respondent's case:

- a. Initially, the parcel was assessed using the cost approach. When the Respondent appealed the assessment, in order to verify the initial assessment, the PTABOA requested income and expense data from this mobile home park. The Petitioner declined to provide the requested information. *Kovacich testimony; Resp't Exs. A, B.*
- b. Because the Petitioner declined to provide the requested information, the Respondent relied on income and expense data from two other Jennings County mobile home parks. Based on this information, the value of the subject property was calculated using the income approach. *Kovacich testimony.*
- c. Using the two Jennings County mobile home parks as a guide, the Respondent calculated vacancy rates based on the total number of lots minus the number of mobile homes reported for January 1, 2013. The subject mobile home park's actual vacancy rate was 25%. *Kovacich testimony.*
- d. The 30% income to expense ratio was based on the ratio for mobile home parks that provided information. Potential gross income minus vacancy and other expenses equals net operating income. *Kovacich testimony; Resp't Ex. C.*
- e. Three hypothetical rent rates of \$125, \$150, and \$175 per lot were used to determine potential gross income for the subject mobile home park. The three hypothetical rents would range from \$114,033 at \$125 month to \$159,647 at \$175 per month. The assessed value of \$119,900 is at the low side of the indicated values. *Kovacich testimony, Resp't Ex. C.*
- f. The capitalization rate relied on RealtyRates.com. The national average capitalization rate for mobile home parks is 9.78 %. The Respondent also relied on the Geneva Township tax rate to calculate a loaded capitalization rate. Specifically, the tax rate of 1.964 makes the loaded capitalization rate 11.74%. The net operating income divided by the loaded capitalization rate establishes the value of the property. *Kovacich testimony; Resp't Ex. C.*
- g. The assessment increased from 2011 to 2012 primarily due to properly classifying the property. In 2011, the subject property was erroneously classified as excess residential acreage. In 2012, it was properly classified as primary undeveloped usable commercial land and the assessment increased as a result. Additionally,

the land order for 2012 assessments values all mobile home parks in Jennings County with base rates for primary, secondary, and undeveloped land of \$30,000, \$20,000, and \$10,000 per acre. This land was assessed correctly for 2012 based on the land order. *Kovacich testimony; Resp't Exs. D, E, F.*

- h. The comparable properties submitted by the Petitioner have different uses. Specifically, they include a utility storage building, a car dealership, a residential single family manufactured home, and a residential single family stick built home. *Kovacich testimony; Pet'r Ex. 2.*
11. Summary of the Petitioner's case:
- a. The subject parcel has no access from State Road 7. Access is only by a country road. It has a circular drive with mobile home lots around the circle. It has a base primary rate of \$30,000 per acre. *Smith testimony; Pet'r Ex. 1.*
 - b. A comparable property that is almost touching the subject property has 1.12 acres valued at \$15,000 per acre. The total land assessed value is \$16,700. *Smith testimony; Pet'r Ex. 2.*
 - c. Another comparable property has three acres on the other side of the road from the first comparable and the land is also assessed at \$15,000 per acre. The last two comparable properties are residential acreage and the land is assessed at \$15,000 per acre. *Smith testimony; Pet'r Ex. 1.*
 - d. This assessed land value increased from \$23,000 to \$87,100. None of the neighboring assessments increased. *Pet'r Ex. 1.* The total assessed value should go back to the prior year's assessment of \$54,400 (\$23,000 for land; \$31,400 for improvements). Regardless of how the property is used, land is compared to land in the same neighborhood. It makes no difference how it is being used. The essential factor is how land can be used. *Smith testimony.*

Analysis

12. The Respondent failed to make a prima facie case that the current assessment is correct.
- 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); 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.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. 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. *Id.* at 3.

- b. It is appropriate to consider the historic and projected income and expense data of the property in question. Unfortunately, in this case, such information is not in the record. It is also necessary to consider data from other comparable properties in order to make accurate, realistic projections about the income stream. Where the income and expense data for the subject property is out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis. Considering both types of income and expense data helps to protect against distortions and inaccurate value estimates caused by extraneous factors (such as bad management or poor business decisions) that really have nothing to do with the inherent value of a property.
- c. The Respondent failed to establish that the purported income capitalization valuation shown in her calculations conforms to generally accepted appraisal principles. The capitalization rate used by the Respondent is a national rate obtained from the two mobile home park appeals that obtained the rates from RealtyRates.com. The capitalization rate used by the Respondent in this case is not probative evidence without a meaningful explanation as to how information obtained from a national source relates to the market in Jennings County. A relevant, credible capitalization rate needs to be more representative of the local market than one based on a national average.
- d. Similarly, the Respondent failed to establish that the net operating income her calculations attribute to the subject property actually conforms to generally accepted appraisal principles. Her conclusion about a 30% income to expense ratio appears to be based on very little substantial evidence. And it is not clear how the Respondent arrived at her hypothetical rent rates of \$125, \$150, and \$175 considering the mobile home park appeals that she relied on had rates of \$220 and \$165. Again, the Respondent failed to adequately support how she arrived at these figures upon which the entire income approach for this assessment was based.
- e. The Respondent failed to present a prima facie case that the current assessment is correct. As a result, the Petitioner's duty to provide substantial evidence to support a more accurate assessment is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the year before. Therefore, the assessment will be changed to that value.

Conclusion

13. The Board finds in favor of the Petitioner. The assessment will be changed to the previous year assessed value. The 2012 assessed value will change to \$54,400.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the assessment will be changed to the previous assessment as of 2011.

ISSUED: November 22, 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>