

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

Petition No.: 06-015-13-1-4-00366
Petitioner: William J. Titus
Respondent: Boone County Assessor
Parcel No.: 015-40200-00
Assessment Year: 2013

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

Procedural History

1. William Titus appealed his 2013 assessment to the Boone County Property Tax Assessment Board of Appeals (“PTABOA”), which mailed notice of its determination on December 18, 2013.
2. On February 5, 2014, Mr. Titus timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On May 12, 2015, the Board’s designated administrative law judge, Dalene McMillen, held a hearing on Mr. Titus’ petition. Neither she nor the Board inspected the property.
4. The following people testified under oath: William Titus and Dan Spiker from Government Utilities Technology Services.¹

Facts

5. The property under appeal contains a commercial building operated as a donut/pastry shop. It is located at 820 West South Street in Lebanon.
6. The PTABOA determined the following values:

Land: \$15,500 Improvements: \$180,400 Total: \$195,900.

¹ The Boone County Assessor, Lisa Garoffolo, appeared at the hearing but did not testify.

7. Mr. Titus requested the following assessment:

Land: \$15,500 Improvements: \$68,600 Total: \$84,100.

Record

8. The official record is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioners Exhibit 1: Grounds for 2013 appeal,
Petitioners Exhibit 2: 2011 property record card (“PRC”),
Petitioners Exhibit 3: 2012 PRC,
Petitioners Exhibit 4: October 28, 2013 e-mail from Mr. Spiker to Mr. Titus,
Petitioners Exhibit 5: Assessment notices (Form 11s) for 2011-2014

Respondent Exhibit 1: Boone County Appeal Worksheet,
Respondent Exhibit 2: 2013 PRC,
Respondent Exhibit 3: Income Works Evaluation Report,
Respondent Exhibit 4: Form 114 hearing notice,
Respondent Exhibit 5: Form 115 determination,
Respondent Exhibit 6: Form 131 petition,
Respondent Exhibit 7: The Board’s hearing notice,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

c. 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 his property’s assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. First, where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(a) and (b). Second, the assessor has the burden where a property’s gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over “the gross

assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase” I.C. § 6-1.1-15-17.2(d).²

10. Neither circumstance applies here. The subject property’s assessment remained the same between 2012 and 2013. Mr. Titus therefore has the burden of proof.

Summary of the Parties’ Contentions

11. Summary of Titus’ case:

- a. The subject building’s assessment increased by more than 250% between 2011 and 2012. Mr. Titus did not appeal until 2013, because he did not realize the effect the increase would have on his taxes until he received his tax bill in 2013. *Titus testimony; Pet’r Exs. 1-3, 5.*
- b. In the fall of 2011, the subject property suffered smoke damage from a small fire. As a result, Mr. Titus’ insurance company replaced damaged floor and ceiling tiles and painted the building. Essentially, the building was restored to its condition from twenty years ago. The changes were cosmetic and did not warrant increasing the building’s assessment by 250%. The building’s footprint remained the same, as did its roof, windows and doors. *Titus testimony; Pet’r Ex. 1.*
- c. The Assessor’s representative, Mr. Spiker, stated in an e-mail that he could not find any good comparable commercial property in the Lebanon area that had sold recently. He explained the increase only by saying that the building’s effective age had been changed to account for updating after the fire, and that the Assessor’s office had not updated its files for a very long time. *Titus testimony; Pet’r Ex. 4*
- d. Finally, if the Board finds that the 2013 assessment is correct, Mr. Titus contends that the increase from 2011 should be “phased-in” over several years. *Titus testimony.*

12. Summary of the Assessor’s case:

- a. Mr. Spiker agreed that the property suffered fire damage. After learning of the damage, the Assessor sent Gordon Husk, a field person, to visit the subject property. Mr. Husk found significant changes to the building’s interior. Because of those changes, the Assessor lowered the building’s effective age. *Spiker testimony; Resp’t Ex. 1 & 2.*
- b. Mr. Spiker agreed that he was unable to find comparable sales of retail buildings in Lebanon that were the same age and type as the subject property. He therefore felt the sales comparison approach could not reliably be used to value the property.

² Those provisions may not apply if there was a change in improvements, zoning, or use, or if the property was valued using the income capitalization approach in the prior appeal. I.C. § 6-1.1-15-17.2(c) and (d).

Although he analyzed the property's value using the income approach, he felt that approach was similarly unreliable because of a lack of available income data for comparable properties. According to Mr. Spiker, the cost approach, which is what the assessment was based on, is the most reliable approach for determining the property's value. *Spiker testimony; Resp't Ex. 3.*

Analysis

13. Mr. Titus failed to prove that the assessment should be reduced. The Board reaches this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “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). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Kooshtard* 836 N.E.2d at 506 n.6; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Rather than offer the types of evidence contemplated by the Manual and Tax Court, Mr. Titus focused on the increase in his building's assessment after the smoke damage was repaired. Because the building's footprint and basic components did not change, he believes the building's 2011 assessment of \$68,600 should be reinstated.
 - c. Each assessment and each tax year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (“Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”). By itself, a property's assessment in one year does little to prove its value in later years.
 - d. In addition, Mr. Titus' approach amounts to little more than a challenge to the Assessor's methodology in adjusting the building's effective age. The Tax Court has explained that those types of methodological challenges generally do not suffice to rebut an assessment's accuracy or establish a property's true tax value. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006) (Explaining that strict application of assessment regulations is not enough to rebut the presumption that the assessment is correct.”).

- e. Finally, Mr. Titus requested that the increase between 2011 and 2012 be “phased-in” over several years. He does not point to, nor do we find, any authority allowing us to order such relief.

Conclusion

14. Mr. Titus failed to make a prima facie case for changing his assessment. Thus, the Board finds in the Assessor’s favor and orders that the assessment will not be changed.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: August 12, 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>>.