

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

Petition: 15-018-09-1-5-00869
Petitioner: Welbourne G. Williams, Trustee
Respondent: Dearborn County Assessor
Parcel: 15-01-29-200-086.000-018
Assessment Year: 2009

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition dated May 5, 2010.
2. The PTABOA issued notice of its decision on September 1, 2010.
3. The Petitioner appealed to the Board by filing a Form 131 petition on October 18, 2010. He elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 7, 2011.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 13, 2011. He did not inspect the property.
6. Welbourne G. Williams, County Assessor Gary R. Hensley, Jim Davis, and Jeffrey D. Thomas were sworn as witnesses:

Facts

7. The property is an unimproved parcel located in a single-family housing subdivision on Easy Way Drive in Guilford.
8. The PTABOA determined not to change the Respondent's original 2009 assessment and left the total assessment at \$32,000.
9. The Petitioner requested a total assessed value of \$27,800.
10. In 2008 the assessed value was \$27,800. Both parties agreed that the \$4,200 increase from 2008 to 2009 is over 5%. With that increase, the Petitioner claimed the Respondent has the burden of proof. The Administrative Law Judge made a preliminary ruling that,

pursuant to Ind. Code § 6-1.1-15-17, the Respondent had the burden of proof. Accordingly, the Respondent presented his case first.

Contentions

11. Summary of the Respondent's case:

- a. The Respondent should not have the burden of proof in this case. The Petitioner previously did not raise the "5% rule" as an issue. *Hensley testimony.*
- b. The increase in the assessment was based on the trending process. A ratio study comparing sale prices to assessments in the Petitioner's neighborhood showed that the assessment of the subject property needed to be increased. *Davis testimony.*
- c. While there may not have been any sales in this same subdivision in 2008, a neighborhood is not necessarily limited to a subdivision. The Petitioner's neighborhood might include more than just his subdivision. Thus, sales from outside the subdivision could have been used for the ratio study and trending. *Davis testimony.*

12. Summary of the Petitioner's case:

- a. Pursuant to Ind. Code § 6-1.1-15-17, the Respondent should have the burden of proof in this case because the assessment of the subject property increased 15% from 2008 to 2009. The Respondent did not appear at the PTABOA hearing. The Petitioner did raise this burden issue at the PTABOA hearing, where he submitted a letter from Barry Wood about it. Nevertheless, the PTABOA determined that the burden was on the Petitioner to prove the property's value. *Williams testimony; Pet'r Ex. 2009-4.*
- b. Everyone knows the real estate market collapsed in 2007 and property values decreased greatly as a result. Consequently, the assessment also should have decreased, but base rates in the subject property's subdivision continued to increase. *Williams testimony; Pet'r Ex. 2009-7.*
- c. The Petitioner does not have access to the data that supposedly supports the Respondent's position. There were no sales in the subject property's subdivision in 2008 or the first quarter of 2009. Therefore, there is no basis for an assessment increase. *Williams testimony.*

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 Petition,

- b. A digital recording of the hearing,
- c. Petitioner Exhibit 2009-1 – Form 131 Petition,
 Petitioner Exhibit 2009-2 – Form 130 Petition with the 2008 and 2009 property record cards attached,
 Petitioner Exhibit 2009-3 – Form 115, PTABOA Final Determination,
 Petitioner Exhibit 2009-4 – Letter from Berry Wood to assessing officials dated February 1, 2010,
 Petitioner Exhibit 2009-5 – Notice from Board,
 Petitioner Exhibit 2010-6 – Statement of contentions,
 Petitioner Exhibit 2009-7 – History of base rates,

 Board Exhibit A –Form 131 Petition,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing Sign-in Sheet,
- d. These Findings and Conclusions.

Analysis

14. Ordinarily, a Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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). In 2011, however, the General Assembly enacted Public Law 172. It added Ind. Code § 6-1.1-15-17, which contains burden-shifting provisions for certain increased assessments in proceedings before the PTABOA, the Board, and the Indiana Tax Court. Effective as of July 1, 2011, Ind. Code § 6-1.1-15-17 states:

“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.”

15. Even though Ind. Code § 6-1.1-15-17 was enacted after the PTABOA hearing took place, based on the correspondence from Barry Wood about the “5% burden shifting rule” and the Petitioner’s testimony, the Board believes that the Petitioner raised this issue at the PTABOA hearing.

16. There is no dispute that the Respondent's assessment of the subject property increased more than 5% from 2008 to 2009, and that fact is the prerequisite specified in section 17. Therefore, the Respondent has the burden of proof to show that the assessment is correct.
17. The Respondent did not make a prima facie case that the assessment is correct.
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana has 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).
 - b. 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.
 - c. An assessor could use any of those same methods to establish that the existing assessed value is correct. But in this case the Respondent offered no substantial market-based evidence of the subject property's actual market value-in-use.
 - d. The Respondent established that ratio studies are conducted each year. In accordance with Indiana guidelines, the ratio studies compare actual sales to assessments in each neighborhood. From those studies, trending adjustments are determined and applied to assessments as needed. The Respondent's cursory explanation of trending procedures, however, does not establish a prima facie case for the existing assessed value.
 - e. Therefore, the Petitioner's obligation to prove the existing assessed value is wrong and to prove a more accurate assessed value was not triggered.

Conclusion

18. The Respondent had the burden of proving that the assessment of \$32,000 was correct, but he failed to make a prima facie case in support of that valuation. Therefore, the Board finds for the Petitioner.

Final Determination

In accordance with the above findings and conclusions the 2009 assessed value must be changed back to \$27,800.

ISSUED: _____

Commissioner, 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, 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>>