

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

Petition: 63-011-12-1-5-00143
Petitioners: Jeffrey and Brian Davis
Respondent: Pike County Assessor
Parcel: 63-02-33-500-002.001-011
Assessment Year: 2012

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

Procedural History

1. Jeffrey Davis¹ (“Petitioner”) initiated his 2012 appeal with the Pike County Property Tax Assessment Board of Appeals (“PTABOA”) on December 27, 2012. He asserted in the petition that the assessed value of the improvements situated on the subject property should be lowered from \$318,300 to \$228,400.
2. On August 2, 2013, the PTABOA issued its Notification of Final Assessment Determination (“Form 115”) changing the assessed value of the improvements to \$265,300 and the grade of the structure to “C.”
3. Petitioner filed his Petition for Review of Assessment (“Form 131”) with the Board on September 13, 2013. He asserted that the assessed value of the improvements should be reduced from \$265,300 to \$228,400. He elected the Board’s small claims procedures.
4. The Board’s administrative law judge, Gary Ricks (“ALJ”), held a hearing on November 18, 2015. Neither the Board nor the ALJ inspected the subject property.
5. Petitioner represented himself at the hearing. The following witnesses were sworn and testified on behalf of Petitioner:
 - Nancy Davis, Petitioner’s spouse
 - Michael Whaley, former offsite production manager for Weisheit Hog Farms
 - Jim Shoultz, PTABOA member.
6. Pike County Assessor Mike Goodpaster (“Respondent”) represented himself at the hearing. Pike County Technical Advisor Kirk Reller was sworn and testified on behalf of

¹ Jeffery and Brian Davis are listed as the property owners on the various forms filed by Petitioner, but only Jeffery Davis appeared at the hearing.

Respondent.

7. The subject property is located at 1618 W. County Road 350 N. in Petersburg.

8. The official record of this hearing consists of the following:

Petitioner Exhibit 1: Property record card (“PRC”) of subject property and photos

Petitioner Exhibit 2: PRC of Winger property and photo

Petitioner Exhibit 3: Newspaper article.

Respondent Exhibit 1: PRC of subject property

Respondent Exhibit 2: Form 115

Respondent Exhibit 3: Subject aerial photo

Respondent Exhibit 4: Subject photo

Respondent Exhibit 5: Subject history

Respondent Exhibit 6: Form 131

Respondent Exhibit 7: Cost schedule (Appendix C)

Respondent Exhibit 8: Cost schedule (Appendix B)

Respondent Exhibit 9: Cost schedule (Appendix C).

Board Exhibit A: Form 131 petition with attachments

Board Exhibit B: Notice of hearing

Board Exhibit C: Hearing sign-in sheet.

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). Furthermore, the burden-shifting statute does not apply to challenges based on a lack of uniformity and equality in assessments. *See Thorsness v. Porter County Ass’r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014).
13. The parties agreed at the hearing that Petitioner has the burden of proof in this appeal.

Petitioner’s Contentions

14. Petitioner’s building was built in 2007. He contends that two similar buildings in Pike County, one owned by the Winingers and one owned by the Schmidts, were assessed at lesser values for the year at issue. *Davis testimony; Pet’r Exs. 1 and 2.*
15. Petitioner contends that all three buildings were built within a three year period of each other, are similar in size, have similar features, and were all built for the purpose of feeding hogs. The building situated on the subject property was assigned a grade of “B,” while the Winger building was assigned a grade of “D.” *Davis testimony; Whaley testimony; Pet’r Exs. 1 and 2.*
16. Petitioner contends that the discrepancy in the grade of the buildings has resulted in the subject property being assessed too high in comparison to the other properties. *Davis testimony.*

Respondent’s Contentions

17. Pursuant to the PTABOA’s determination, the subject property was assessed at \$268,700 (including land at \$3,400) which represents its market value-in-use. The Winger property was assessed at \$228,400, and the Schmidt property, was assessed at \$271,800. *Reller testimony; Resp. Ex. 1.*
18. The county has valued the subject property using Indiana property guidelines which are incorporated into the state-approved mass-appraisal software, ProVal. That software takes into account depreciation tables, cost tables, and county multiplier information. *Reller testimony; Resp. Exs. 7, 8, and 9.*
19. Indiana’s “benchmark” for the value of a property is its market value-in-use and that

value is presumed to be accurate. Contesting the government's methodology (in this case, the assignment of grade) in assessing the value of a property is not acceptable. Probative evidence to show market value-in-use is required. *Reller testimony*.

20. Probative evidence requires showing properties are truly comparable. In this case, with regard to the Wininger and Schmidt properties, Petitioner must show how the market values-in-use of those properties relate to the subject. *Reller testimony*.
21. Respondent does not disagree with the substance of Petitioner's testimony. However, that testimony revolves around Petitioner's questioning of Respondent's methodology. Without probative evidence as to why the assessment is not correct as of the March 1, 2012 valuation date, Petitioner has not made its prima facie case and the burden has not shifted to Respondent to show the assessed value is correct. Consequently, the 2012 assessed value should not be changed. *Reller testimony*.

Analysis

22. 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.
23. 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). For the 2012 assessment year, the valuation date was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
24. In making its case, the taxpayer must 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").
25. Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*,

803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

26. Petitioner contends that the grade factor assigned to the subject property is too high. In support of that contention, Petitioner described two other properties which he claims are similar to the subject property but are assessed differently. Petitioner is essentially challenging the uniformity and equality of the assessment.
27. The Property taxation Clause of the Indiana Constitution requires “[t]he General Assembly [to] provide, by law, for a uniform and equal rate of property assessment and taxation and [to] prescribe regulations to secure a just valuation for taxation of all property...” IND. CONST. ART. 10 § 1; *see also*, I.C. § 6-1.1-2-2(a) (“All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner.”). Indiana courts have long held that the provision requires: “(1) uniformity and equality in assessment, (2) uniformity and equality as to the rate of taxation, and (3) a just valuation of all property.” *Westfield Golf Practice Center, LLC v. Washington Twp. Ass’r*, 859 N.E.2d 396, 397 (Ind. Tax Ct. 2007).
28. In *Westfield Golf*, the Indiana Tax Court held that under the prior assessment system, “true tax value” was determined by Indiana’s assessment regulations and “bore no relation to any external, objectively verifiable standard of measure.” *Id.* at 398. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id.* Therefore, “the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties.” *Id.*
29. That changed under the new system. Presently, “Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use.” *Id.* at 399. As a result, the “system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.” *Id.* Thus, “the end result – a uniform and equal *rate* of assessment – is required, but there is no requirement of uniform procedures to arrive at that rate.” *Id.* (*quoting State ex. Re. Att’y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original)).
30. Thus, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property’s market value-in-use. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value

is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines).

31. Under Indiana's true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 190 (Ind. Tax Ct. 2003). "Construction quality and the resultant quality grade assigned is a composite characteristic." 2011 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A, App. A, at 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. To establish a prima facie case on grade, the petitioner must present probative evidence that the assessed grade was incorrect and probative evidence establishing the correct grade. *Sollers*, at 191.
32. Here, Petitioner presented no evidence that the grade of the subject property was incorrect. Petitioner merely argued that other similar properties were assessed with different grades. This is the same argument that was rejected in *Westfield Golf*. In that case, the landing area for the petitioner's driving range was assessed as "usable undeveloped" land and assigned a value of \$35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of \$1,050 per acre. *Id.* at 397.
33. Similarly, Petitioner here only argued that the method of its assessment was not uniform and equal. He failed to offer any evidence to show that the assessment exceeded the property's market value-in-use. Thus, Petitioner failed to raise a prima facie case that the assessment is incorrect.
34. Where Petitioner has not supported its claim with probative evidence, 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).

Conclusion

Petitioner failed to make a prima facie case that the assessment is incorrect. Respondent's burden to prove the assessment is correct was not triggered. The Board finds in favor of Respondent and orders no change to the assessment.

Issued: February 16, 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 of 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>>.