

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

Petition: 88-022-20-1-4-00673-20
Petitioner: Dollar Tree as Lessee¹
Respondent: Washington County Assessor
Parcel: 88-24-14-334-107.000-022
Assessment Year: 2020

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

Procedural History

1. The Petitioner initiated its 2020 assessment appeal with the Washington County Assessor on June 12, 2020.
2. On October 29, 2020, the Washington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On April 13, 2021, Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Tax representative Kelli Arnold appeared for the Petitioner via telephone. Assessor Greg Ball appeared for the Respondent via telephone. Aaron Shelhamer and Eric Wells of Tyler Technologies were witnesses for the Respondent. All participants were sworn.

Facts

6. The property under appeal is a single tenant detached retail building located at 308 South Main Street in Salem.
7. The PTABOA determined a 2020 assessment of \$619,200 (land \$81,100 and improvements \$538,100).
8. The Petitioner requested a total assessment of \$450,000.

¹ The property record card indicates that the subject property is owned by Dynisy Homes, LLC. According to the lease agreement, the "[T]enant will reimburse Landlord for real estate taxes..." The Respondent did not challenge the Petitioner's standing to bring this appeal.

Record

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

a) A digital recording of the hearing.

b) Exhibits:

- Petitioner Exhibit 1: Aerial photograph; subject property record card; Form 131; Notification of Final Assessment Determination (Form 115); Taxpayer's Notice to Initiate an Appeal (Form 130),
- Petitioner Exhibit 2: Power of Attorney,
- Petitioner Exhibit 3: Current lease agreement dated December 4, 2007, (MARKED CONFIDENTIAL),
- Petitioner Exhibit 4: First amendment to the lease agreement dated April 2, 2018, (MARKED CONFIDENTIAL),
- Petitioner Exhibit 5: Assignment and Assumption of Lease dated June 6, 2019,
- Petitioner Exhibit 6: Sales disclosure form dated June 20, 2019,
- Petitioner Exhibit 7: Purchase and sale agreement dated February of 2019 (MARKED CONFIDENTIAL),
- Petitioner Exhibit 8: Modification of Purchase and Sale Agreement dated June 5, 2019,
- Petitioner Exhibit 9: Resolution and Incumbency Certificate dated May 31, 2019; Resolution and Incumbency Certificate dated June 5, 2019.
- Respondent Exhibit 1: Property record card for 395 North Gardner Street,
- Respondent Exhibit 2: Property record card for 1102 West Mulberry Street; subject property record card,²
- Respondent Exhibit 3: Property record card for 360 East State Road 60.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Contentions

10. Summary of the Petitioner's case:

a) The subject property is over assessed. The property is an 8,900 square-foot, single-tenant detached retail building constructed in 2008. The Petitioner is the tenant, and according to the lease agreement, has the authority to appeal the assessment. *Arnold argument, Pet'r Ex. 3.*

² At the hearing, the Respondent referred to Exhibit 1 as the subject property record card.

- b) The property was purchased by Dynisy Homes, LLC, on June 20, 2019, for \$450,000. The new owner assumed the lease that was in place, and the lease would also carry over to future owners. There were no special or unusual circumstances regarding the sale and nothing to indicate it was not an arm's-length transaction. *Arnold testimony; Pet'r Ex. 3, 5, 6.*
- c) The parties to the sale originally agreed on a price of \$550,000. But the Petitioner and the previous owner subsequently signed an amendment to the lease agreement reducing the Petitioner's rent. As a result, the parties to the sale negotiated the final selling price of \$450,000. *Arnold testimony; Pet'r Ex. 4, 7, 8, 9.*
- d) The Petitioner did not submit any income or expense data because the Petitioner is the tenant; therefore, using the Petitioner's data would amount to valuing its business rather than valuing the property. *Arnold argument.*
- e) A sale price is generally the best indication of a property's value. Therefore, the assessment should be reduced to \$450,000. At a minimum, the assessment should be reduced to the 2019 level of \$546,000 because the Respondent failed to make a prima facie case that the current assessment is correct. *Arnold argument; Pet'r Ex. 8.*

11. Summary of the Respondent's case:

- a) The subject property is correctly assessed. All of the improvements on the parcel are included, and the use, grade, and condition are all accurate. Further, other similar properties are assessed with similar grades and conditions, and they have similar assessed values. Thus, the subject property is not treated differently than other similar properties. *Shelhamer testimony; Resp't Ex. 1, 2, 3.*
- b) The Petitioner failed to submit income and expense statements. The Respondent is left with "only a lease agreement with multiple property owners and a changing sale price." The Respondent is "limited" as to the ability to change the assessed value without an income and expense statement. *Shelhamer testimony.*

Burden of Proof

- 12. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute creates two exceptions to that rule.
- 13. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

14. 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 IC 6-1.1-15.” Under those circumstances, “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).
15. Here, the parties agree the burden of proof is on the Respondent. According to the subject property record card, the assessment increased from \$546,000 in 2019 to \$619,200 in 2020, an increase of 13.4%. Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the burden rests with the Respondent.

Analysis

16. The Respondent failed to make a prima facie case that the current assessment is correct. The Petitioner made a prima facie case that the assessment should be reduced to \$450,000.
 - a) Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. 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.
 - b) Regardless of the method used, a party must explain how the evidence relates to 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
 - c) As stated above, the burden rests with the Respondent. To meet that burden, the Respondent introduced property record cards for purportedly comparable properties and argued that the subject property was similarly assessed.
 - d) In essence, the Respondent attempted to use the assessment comparison approach to prove the current assessment was correct. The determination of whether properties

are comparable using this approach must be based on generally accepted appraisal and assessment practices. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- e) Other than a general comparison of use, grade, and condition, the Respondent’s evidence lacks the type of analysis and related adjustments required for a probative comparison. Further, the evidence failed to yield an indicated value. Accordingly, the Respondent failed to make a prima facie case that the current assessment is correct. Therefore, the Petitioner is at least entitled to have its assessment reduced to the 2019 level of \$546,000.
- f) The Board’ inquiry does not end here. The Petitioner requested an assessment of \$450,000 based on the June 2019 sale of the property. The testimony and documentary evidence on the record indicate the sale was a valid, arm’s-length transaction occurring less than six months prior to the relevant valuation date. The purchase price of a property can be the best evidence of its value. *Hubler Realty Co. v. Hendricks Cty. Ass’r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010).
- g) The Respondent argued the sale is apparently unreliable due to the “changing sale price.” Specifically, the parties to the sale originally agreed to a \$550,000 sale price, but ultimately negotiated the price down to \$450,000. However, the reason for the reduced sale price, a reduction in the Petitioner’s rent, was well explained and supported by evidence.
- h) Ultimately, we conclude the \$450,000 purchase price is the most probative evidence of market value-in-use. Therefore, we order the 2020 assessment be reduced to \$450,000.

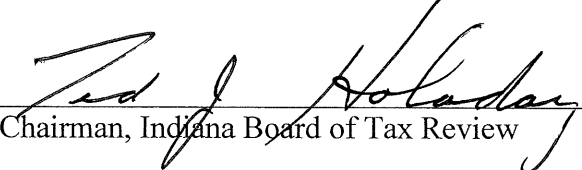
Conclusion

17. The Board finds for the Petitioner.

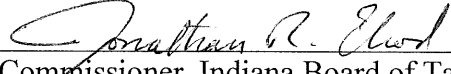
Final Determination

In accordance with the above findings and conclusions, the 2020 assessment must be reduced to \$450,000.

ISSUED: July 9, 2021


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>.