

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

Petition No.: 45-004-17-1-5-00004-21
Petitioner: Gary II LLC
Andy Young
Respondent: Lake County Assessor
Parcel: 45-08-15-309-001.000-004
Assessment Year: 2017

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

Procedural History

1. Gary II LLC (“Gary II”) appealed the 2017 assessment of its vacant land located at 2701-03 Massachusetts Street in Gary, Indiana.
2. On November 19, 2020, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) lowered the assessment of the vacant land to \$1,900.
3. Gary II timely appealed to the Board, electing to proceed under our small claims procedures.
4. On November 30, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a hearing on Gary II’s petition. Neither the Board nor the ALJ inspected the property.
5. Andy Young, Manager of Gary II appeared for the Petitioner. Lake County Hearing Officers Jessica Rios and Matthew Ingram appeared for the Assessor. They all testified under oath.

Record

6. The official record for this matter is made up of the following:
 - a) Exhibits:

Petitioner Exhibit 1: Subject property record card, parcel identification information, Treasurer’s tax record, and GIS map,

- Petitioner Exhibit 2: Appraisal report for 1109 Oklahoma Street in Gary prepared by Steven Kovachevich of Kovachevich & Co., Inc. with an effective date of January 1, 2017,
- Petitioner Exhibit 3: Appraisal report for 2517-2521 Washington Street in Gary prepared by Steven Kovachevich of Kovachevich & Co., with an effective date of January 1, 2017,
- Petitioner Exhibit 4: Appraisal report for 739-29 West 35th Avenue in Gary prepared by Steven Kovachevich of Kovachevich & Co., Inc. with an effective date of January 1, 2017,
- Petitioner Exhibit 5: Indiana University Northwest “Analysis of the Tax Sale Certificates not purchased at a Lake County Commissioners’ Tax Certificate Sale,”
- Petitioner Exhibit 6: Indiana University Northwest “Number of Times for Sale Without a Bid and The Property Types in This No-Bid Class within the set of the Lake County Commissioners’ Tax Sale Certificate Sales,”
- Petitioner Exhibit 7: Indiana University Northwest “Possible Ways to Solve The Problem Of Churner Parcels Remaining After The Commissioners’ Tax Certificate Sale,”
- Petitioner Exhibit 8: Indiana University Northwest “Churner Tax Sale Parcels In The Northeast Quadrant of Lake County,”
- Petitioner Exhibit 9: State of Indiana – Department of Local Government Finance – Petition for Review – 2022 Lake County Land Order Final Determination dated November 23, 2022,
- Petitioner Exhibit 10: Page 3 of the 2021 Real Property Assessment Manual (“Manual”),
- Petitioner Exhibit 11: Indiana Board of Tax Review Final Determination for Gold Coast Ran Development Corp. at 1357 Ellsworth Place (page 2 only),
- Petitioner Exhibit 12: Page 17 and 18 of the 2021 Real Property Assessment Manual.¹

- b) 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) a digital recording of the hearing.²

Findings of Fact

7. The subject property is comprised of vacant land of approximately .07 acres located in Gary, Indiana. *Young testimony; Pet’r Ex 1.*

¹ The Respondent did not submit any exhibits into the record.

² The hearings on petitions 45-004-17-1-5-00001-21, 45-004-17-1-5-00002-21 and 45-004-17-1-5-00003-21 were held earlier the same day. The ALJ agreed to Gary II’s request to incorporate statements from those hearings.

Contentions

8. Summary of the Petitioner's case:
- a) Gary II argued that the base rate used in the assessment is incorrect. In support of this, Young testified that the subject property has a base rate of \$169 per front foot, while other nearby properties have a base rate of \$74 per front foot. He stated that this was a violation of the Department of Local Government Finance ("DLGF") Manual for assessments. He also alleged several errors in how the base rate was developed. *Young testimony; Pet'r Ex. 1, 5, 9.*
 - b) Gary II also submitted several appraisal reports prepared by Steven Kovachevich, a Certified General Real Estate Appraiser. Young testified that the Assessor should have used the sales in those reports to develop the base rate. In addition, he testified that the sales within the appraisals demonstrated the base rate was incorrect. *Young testimony; Pet'r Ex. 3.*
 - c) Finally, Gary II claimed the subject property should have received a 2% tax cap, rather than 3%, because it is a platted lot zoned residential. *Young testimony; Pet'r Exs. 1 & 12.*
9. Summary of the Respondent's case:
- a) The Assessor argued that Gary II did not provide any evidence to support a different market value-in-use and failed to meet its burden of proof. *Rios testimony.*

Analysis

10. The Petitioner failed to make a prima facie case for reducing the property's 2017 assessment.
- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.³ The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
 - b) 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 property or comparable properties, appraisals,

³ The Department of Local Government Finance adopted a new assessment manual from 2021 forward. 52 IAC 2.4-1-2.

and any other information compiled in accordance with generally accepted appraisal principles.

- c) 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 (In. Tax Ct. 2005). For the 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5(a).
- d) Gary II argued that the base rate used in the assessment was incorrect. Even if the Assessor erred in applying the base rates, it has long been the law that simply attacking the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *see also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value is). To do so, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
- e) Gary II did present several appraisal reports, but none were for the subject property. Gary II stated the Assessor should have based the subject property's assessment on sales found in those reports. Gary II failed to offer market-based evidence showing how the subject property's value related to the value of those other properties. The appraisals did not compare the relative differences between them, nor did they offer market-based adjustments to explain the differences. Thus, we cannot rely on the appraisals or the sales reported within them as evidence of value for the subject property.
- f) We also note it appears Gary II may have been challenging the uniformity and equality of the assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana Constitution. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). Gary II did not demonstrate that it provided a statistically reliable sample of properties.

- g) Because Gary II offered no probative market-based evidence to demonstrate the subject property's market value-in-use for 2017, it failed to make a prima facie case for a lower assessment.
- h) Finally, Gary II also argued that the subject property should have received a 2% tax cap because it was zoned as a residential lot. Indiana Code § 6-1.1-20.6 provides taxpayers with a credit for property taxes above a certain percentage of assessed value. That credit is often called a "tax cap," and it varies in amount depending on how a property is classified:

A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:

- (1) homestead exceeds one percent (1%);
 - (2) residential property exceeds two percent (2%);
 - (3) long term care property exceeds two percent (2%);
 - (4) agricultural land exceeds two percent (2%);
 - (5) nonresidential real property exceeds three percent (3%); or
 - (6) personal property exceeds three percent (3%);
- of the gross assessed value of the property that is the basis for the determination of property taxes for that calendar year.

I.C. § 6-1.1-20.6-7.5(a).

- i) I.C. § 6-1.1-20.6 provides specific definitions for "residential property" and "nonresidential real property." These are:

I.C. § 6-1.1-20.6-4 "Residential property"

As used in this chapter, "residential property" refers to real property that consists of any of the following:

- (1) A single family dwelling that is not part of a homestead and the land, not exceeding one (1) acre, on which the dwelling is located.
- (2) Real property that consists of:
 - (A) a building that includes two (2) or more dwelling units;
 - (B) any common areas shared by the dwelling units (including any land that is a common area, as described in section 1.2(b)(2) of this chapter); and
 - (C) the land on which the building is located.
- (3) Land rented or leased for the placement of a manufactured home or mobile home, including any common areas shared by the manufactured homes or mobile homes.

The term includes a single family dwelling that is under construction and the land, not exceeding one (1) acre, on which the dwelling will be located. The term does not include real property that consists of a commercial hotel, motel, inn, tourist camp, or tourist cabin.

I.C. § 6-1.1-20.6-2.5 “Nonresidential real property”

- (a) As used in this chapter, “nonresidential real property” refers to either of the following:
 - (1) Real property that:
 - (A) is not:
 - (i) a homestead; or
 - (ii) residential property; and
 - (B) consists of:
 - (i) a building or other land improvement; and
 - (ii) the land, not exceeding the area of the building footprint, on which the building or improvement is located.
 - (2) Undeveloped land in the amount of the remainder of:
 - (A) the area of a parcel; minus
 - (B) the area of the parcel that is part of:
 - (i) a homestead; or
 - (ii) residential property.
 - (b) The term does not include agricultural land.
- j) The zoning of a parcel does not determine if it is residential property for purposes of the tax credit. Under the plain language of the statute, the subject property does not qualify as residential property because it has no dwelling units and is not leased for placement of a manufactured or mobile home. In contrast, it does meet the definition of nonresidential real property because it is undeveloped land that is not part of a homestead or other residential property as defined by Ind. Code § 6-1.1-20.6-4. For these reasons, Gary II has failed to show that the subject property is entitled to a 2% credit under I.C. § 6-1.1-20.6.
- k) Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the subject property’s 2017 assessment or property tax cap.

ISSUED: 2/28/2023



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>