

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

Petition: 47-004-12-1-1-00008
Petitioner: George Roger Davis
Respondent: Lawrence County Assessor
Parcel: 47-11-16-400-017.000-004
Assessment Year: 2012

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Procedural History

1. The property under appeal is a “log cabin” home located at 1070 Moto Cross Rd. in Mitchell. The Lawrence County Property Tax Assessment Board of Appeals (PTABOA) issued a determination valuing the property as follows:

Land: \$18,800 Improvements: \$121,200 Total: \$140,000

2. Mr. Davis timely filed a Form 131 Petition with the Board. On February 26, 2015, our designated Administrative Law Judge, Andrew Howell, held the hearing on the petition. Neither he nor the Board inspected the subject property.
3. Mr. Davis, the property owner, and April Stapp Collins, the Lawrence County Assessor, appeared *pro se*. April Stapp Collins, George Roger Davis, and Kirk Reller testified under oath.

Record

4. The official record for this matter is made up of the following:
 - a. Exhibits:¹

Petitioner’s Ex. 1: Photo of air conditioning unit from the subject property,

¹ Our ALJ admitted all exhibits without objection except Respondent’s Ex. 16. Mr. Davis objected to Respondent’s Ex. 16 for two reasons. First, he stated that he did not understand it. Second, he asserted that he did not agree with the conclusions contained in it as summarized by Ms. Stapp. We find these objections go toward the weight of the evidence rather than its admissibility. We therefore admit Respondent’s Ex. 16. Our ruling on this objection does not affect the outcome of our final determination.

- Respondent's Ex. 1: Form 130 for this appeal,
- Respondent's Ex. 2: Form 115 for this appeal,
- Respondent's Ex. 3: Form 131 for this appeal,
- Respondent's Ex. 4: 2012 property record card for subject property,
- Respondent's Ex. 5: Photos of subject property,
- Respondent's Ex. 6: Comparable sales spreadsheet,
- Respondent's Ex. 7: Property record card, sales disclosure form, and photos of 1070 Moto Cross Rd., Mitchell,
- Respondent's Ex. 8: Property record card, sales disclosure form, and photos of 20 Woodland Way, Mitchell,
- Respondent's Ex. 9: Property record card, sales disclosure form, and photos of 110 Sunset Ridge, Mitchell,
- Respondent's Ex. 10: Property record card, sales disclosure form, and photos of 2789 Rabbitsville Road, Mitchell,
- Respondent's Ex. 11: Property record card, sales disclosure form, and photos of 753 Mahan Road, Bedford,
- Respondent's Ex. 12: Property record card, sales disclosure form, and photos of 266 Clark Smith Road, Mitchell,
- Respondent's Ex. 13: Property record card, sales disclosure form, and photos of 843 Earl Road, Mitchell,
- Respondent's Ex. 14: Property record card, sales disclosure form, and photos of 39 North Helton Road, Springville,
- Respondent's Ex. 15: Property record card, sales disclosure form, and photos of 145 The Woods, Bedford,
- Respondent's Ex. 16: March 1, 2012, trending narrative for Lawrence County,
- Respondent's Ex. 17: 2011 property record card of 1070 Moto Cross Road, Mitchell.

- b. The record also includes the following: (1) all pleadings and documents filed in the appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) the digital recording of the hearing.

Burden of Proof

- 5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is incorrect and what the correct assessment should be unless an assessment increases by more than five percent. *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 the rule.
- 6. First, Ind. Code § 6-1.1-15-17.2(a) "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 year." Under Ind. Code § 6-1.1-15-17.2(b), "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 the Indiana tax court.”

7. Second, subsection (d) of the statute “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 I.C. § 6-1.1.15.” I.C. § 6-1.1-15-17.2(d). Under those circumstances, “if the gross assessed value of the 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.” *Id.*

8. Thus, two mechanisms may trigger a shift in the burden of proof: (1) an increase of more than 5% between years, and (2) a successful appeal that reduces the previous year’s assessment below the current year’s level, regardless of the amount. For the 2011 assessment, the property under the subject parcel number consisted of the “log cabin” home and 6.43 acres of land. Between the 2011 and 2012 assessments, that parcel was combined with a contiguous land parcel (“second parcel”), also owned by Mr. Davis, bringing the total acreage to 40.797. The Assessor argued that because of this combination, the burden shifting statute does not apply. We are not persuaded that a parcel combination prior to the assessment year necessarily precludes the application of the statute. However, before applying the statute, we must be able to determine the prior year’s assessment. No evidence was presented to establish the second parcel’s 2011 assessment. Therefore, we are unable to determine the total assessment for the prior year, and thus unable to apply the burden shifting statute.² The burden rests with the petitioner, Mr. Davis.

Summary of the Contentions

9. Davis case:
 - a. Mr. Davis stated that he agreed with assessment of the land. He did not agree with the assessment of the improvements. *Davis testimony.*

 - b. He testified that he had been told the increase in his assessment was due to the inclusion of an air conditioning unit. He offered a photograph of the unit, and testified that it had been installed for fifteen years. The initial cost of the unit was \$5000. *Davis testimony; Pet’r Ex. 1.*

²Mr. Davis made some argument regarding the increase in the assessed value of the improvements. I.C. 6-1.1-15-17.2 references the “gross assessed value” of a property. We do not interpret it as to shift the burden based on an increase in one component of the assessment.

- c. Regarding the second parcel, Mr. Davis testified that it should not have been added to his house because it was classified forest. *Davis testimony*.
 - d. In response to the comparable sales presented by the Assessor, Mr. Davis argued that those properties were “mansions” in comparison and much more valuable. In addition Mr. Davis disagreed with the assertion that in recent years log cabin homes had been selling for more than their assessed value. *Davis testimony; Resp’t Exs. 6-15*.
10. The Assessor’s case:
- a. Kirk Reller, a consultant for the Lawrence County Assessor’s office, testified for the Assessor. Mr. Reller offered a sales comparison analysis of “log cabin” homes near the subject property that had sold close to the assessment date. *Reller testimony. Resp’t Exs. 6-15*.
 - b. Reller testified that most of these homes were graded higher than the subject property, but that they also had a higher sale price and sale price/sq. ft. than the subject property’s assessment. *Reller testimony. Resp’t Exs. 6-15*.

Analysis

11. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property’s market value-in-use. 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). *See also* 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) will often be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. Ind. Code § 6-1.1-15-18.
12. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. *See* I.C. § 6-1.1-2-1.5; I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Id.*

13. As discussed above, Mr. Davis had the burden of proof in this appeal. He first argued that the air conditioning unit was not new. It is unclear from the evidence when the air conditioning unit was added to the assessment. There is some indication on the property record card that it was subsequent to the assessment date under appeal. However, this is not relevant to our determination. One cannot make a case based on whether the Guidelines were applied properly. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). To successfully make his case, Mr. Davis needed to show that the assessment does not accurately reflect the market value-in-use as of the valuation date. *Id.*; see also *P/A Builders & Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that proper focus is not on methodology, but rather, on what the correct value actually is). We also note that he failed to relate his testimony about the cost of the air conditioning unit to the total market value-in-use of the property.
14. Mr. Davis only additional argument was that the comparables presented by the Assessor were much nicer than his home. Even were we to accept his conclusions that these were not comparable properties, this would not warrant a reduction in the assessment. Mr. Davis needed to show, with market-based evidence, what the market value-in-use of his property should be. He failed to do that.³
15. Because Mr. Davis did not present evidence sufficient to raise a prima facie case for a reduction, the Assessor's duty to support the assessment was not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, the Board need not address the Assessor's arguments.

FINAL DETERMINATION

16. Mr. Davis failed to raise a prima facie case for a reduction in his assessment. Thus, we order no change.

ISSUED: October 22, 2015

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ Mr. Davis also made some reference to a portion of his property being designated as classified forest. He presented no evidence showing he was entitled to any relief on these grounds, and it is unclear from the record whether he was even seeking any change in this area.

- 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>>.