

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

**Petitions:** 40-004-11-1-4-00001  
40-004-12-1-4-00001  
**Petitioner:** Home Federal Bank  
**Respondent:** Jennings County Assessor  
**Parcel:** 40-09-33-120-004.000-004  
**Assessment Years:** 2011 and 2012

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 the 2011 assessment appeal by filing a Petition for Review of Assessment (Form 130) to the Jennings County Property Tax Assessment Board of Appeals (PTABOA) on May 21, 2012. The Petitioner initiated the 2012 assessment appeal by filing a Form 130 on July 16, 2012.
2. The PTABOA mailed its Notification of Final Assessment Determination (Form 115) for both appeals on November 30, 2012.
3. The Petitioner appealed the 2011 and the 2012 assessments to the Board by filing Petitions for Review of Assessment (Form 131) on January 3, 2013. The Petitioner elected to have both appeals heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 31, 2013. He did not inspect the property. Neither the Board nor the ALJ inspected the property.
5. Certified tax representative Milo Smith represented the Petitioner. Jennings County Assessor Linda Kovacich appeared for the Respondent. Mr. Smith and Ms. Kovacich were sworn as witnesses.

**Facts**

6. The property is a bank located at 1420 North State Street in North Vernon. Prior to 2010, there was a building on this property that was demolished. The parcel was vacant for several years. The current building was built in 2010. The Assessor gave the building a B+ 2 grade.

7. For the 2011 assessment, the PTABOA determined the assessed value is \$135,000 for land and \$797,600 for improvements (total \$932,600). For the 2012 assessment, the PTABOA determined the assessed value is \$123,800 for land and \$884,800 for improvements (total \$1,008,600).

### **Record**

8. The official record for this matter is made up of the following:
  - a. The Form 131 Petitions,
  - b. Digital recording of the hearing,
  - c. Petitioner Exhibit 1 - 2011 Property Record Card (PRC),  
Petitioner Exhibit 2 - Appendix E: assigning intermediate quality grades,  
Petitioner Exhibit 3 - Commercial and industrial grade, Appendix E,  
Petitioner Exhibit 4 - Pages 1 and 3 from the Department of Local  
Government Finance (DLGF) West Central District  
Assessors meeting on September 16, 2009,  
Respondent Exhibit A - Board decision: *Hubley v. Bartholomew Co. Assessor*,  
Respondent Exhibit B - Board decision: *Nethery v. Perry Twp. Assessor* (Monroe  
Co.),  
Respondent Exhibit C - Construction application for building permit from the  
Area Planning and Zoning Office,  
Respondent Exhibit D - 2011 PRC,  
Respondent Exhibit E - 2012 PRC,  
Respondent Exhibit F - Two photographs of the bank,  
Board Exhibit A - Form 131 Petitions,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C - Hearing Sign-In Sheet,
  - d. Board's Findings and Conclusions (contained herein).

### **Contentions**

9. Summary of the Petitioner's case:
  - a. The bank building should have received a grade of B and not the B+2 grade the assessor assigned to the building. There are rules and procedures to follow when an assessor is assigning grade. *Smith testimony*.
  - b. When an assessor is assigning intermediate quality grades the assessor must weigh the components that deviate from the base quality grade selected. The assessor should avoid using intermediate quality grades. Most improvements will be designed and constructed using material, workmanship, and design that are

typical for the base quality grade assigned to the subject without the need to assign intermediate quality grades. The assessor must use careful judgment when assigning any quality grade that varies from the base quality grade. *Smith testimony; Pet'r Ex. 2.*

- c. The commercial and industrial grade grid found in the Real Property Assessment Guideline, Appendix E, compares the different types of grades.
    - i. Both A and B grades are architecturally attractive,
    - ii. B grade is constructed with good quality material and workmanship,
    - iii. A grade is custom built using superior materials and workmanship,
    - iv. The Petitioner's property has built-ins necessary only for a bank,
    - v. Grade A says best quality built-ins; Grade AA says built-ins are extensive and of the best quality,
    - vi. Grade AAA says built-ins are of the very finest quality,
    - vii. B grade properties has good quality lighting and plumbing, A grade has best quality lighting and plumbing,
    - viii. The Petitioner's property is of good quality, but the contractor was not able to determine grade based on table E-3,
    - ix. Grades A and B climate control systems have adequate capacity with some insulation and zoned,
    - x. Grades A and B have moderate architectural treatment. *Smith testimony; Pet'r Ex. 3.*
  - d. The assessor must verify and confirm property value. *Smith testimony; Pet'r Ex. 4.*
  - e. The Petitioner's exhibits should be considered for both 2011 and 2012. *Smith testimony.*
10. Summary of the Respondent's case:
- a. The Indiana Tax Court has stated that a taxpayer cannot rebut an assessment's presumed accuracy simply by arguing about the methodology the assessor used to compute the assessment. *Kovacich testimony; Resp't Ex. A.*
  - b. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. This evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisal, and any other information compiled in accordance with generally accepted appraisal principles. A mere technical failure to comply with the Guidelines does not prove that an assessment is not a reasonable measure of true tax value. The Indiana Tax Court repeatedly has warned taxpayers against contesting methodology used to assess a property instead of presenting probative evidence of the property's market value-in-use. *Kovacich testimony; Resp't Ex. B.*

- c. The application for a permit to construct the building stated the estimated building cost was \$1,000,200. The cost is for the structure only and does not include the cost of personal property. *Kovacich testimony; Resp't Ex. C.*
- d. The property record card for 2011 assessment has the correct improvement value on the back side. The property record card for 2012 is presented also. *Kovacich testimony; Resp't Exs. D, E.*
- e. Assessing officials used the 1999 [sic, 2002] assessing Guidelines through the 2011 assessment. The use of new cost tables is the only thing that increased the true tax value of the building for 2012 from the 2011 assessed value. The land value decreased from 2011 to 2012. *Kovacich testimony.*
- f. The Respondent's exhibits should be considered for both 2011 and 2012. *Kovacich testimony*

### **Burden of Proof**

11. 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 its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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.

Ind. Code § 6-1.1-15-17.2.

12. In this case, the Petitioner contended the 2011 assessment on this parcel increased from \$135,000 in 2010 to \$932,600 in 2011 and that the Respondent has the burden of proof for the 2011 assessment. *Smith argument; Pet'r Ex. 1.*
13. Nevertheless, the parties agreed the significant increase in the assessed value from 2010 to 2011 was due to the fact the parcel was vacant land on March 1, 2010. The new bank building was constructed after March 1, 2010. The parcel with the new bank building was assessed as of March 1, 2011. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to an assessor when the assessed value of the *same property*

increases by more than 5%. In this case, what was assessed was not the same property for purposes of the burden shifting statute because the parcel was vacant in 2010 and then a new bank building was constructed by March 1, 2011. Indiana Code § 6-1.1-15-17.2 does not shift the burden in the 2011 appeal and the Petitioner has the burden of proof.

14. The parties agree the 2012 assessed value increased more than 5% from the 2011 assessed value. And for those years it was the same property. As a result, the Respondent has the burden of proving the 2012 assessment is correct.

### **Objection**

15. The Respondent objected to Mr. Smith's testimony regarding the comments alleged to have been made by the building's contractor referring to the quality and construction of the building. The contractor was not present to testify and be cross-examined about the discussion. The contractor's purported statements are hearsay.<sup>1</sup>
16. Hearsay evidence has significant limitations.

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence. Ind. Admin. Code tit.52, r. 2-7-3 (2007).

17. The testimony referring to the discussion between Mr. Smith and the contractor is admitted into the record. But because the Respondent objected, it cannot serve as the sole basis for the Board's decision.

### **Analysis**

18. 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. The value established by use of the cost approach 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.

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<sup>1</sup> "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. The testimony concerning the discussion between Mr. Smith and the contractor is hearsay.

19. When taxpayers challenge the accuracy of their assessments, they must do more than complain that the method by which their assessment was computed was incorrect. Rather, they must present objectively verifiable evidence demonstrating what their property's market value-in-use actually is. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006).
20. For a 2011 assessment, the valuation date is March 1, 2011. For a 2012 assessment, the valuation date is March 1, 2012. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

### **2011 Assessment**

21. For the 2011 assessment, the Petitioner merely complained that the method used to determine the grade was improper. The Petitioner failed to offer any probative evidence that the bank building is not a B+2 grade. Instead, the Petitioner provided evidence that generally described the characteristics that help determine the grade to assign a building. But the Petitioner failed to actually compare these characteristics with the characteristics of this bank building to show what grade was more appropriate. Further, the Petitioner did not offer any evidence regarding the actual market value-in-use of the property. As a result, the Petitioner failed to make a *prima facie* case regarding the 2011 assessment.
22. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is 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); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Respondent's burden was not triggered because the Petitioner did not offer any probative evidence to support its case.

### **2012 Assessment**

23. The Assessor had the burden to prove the 2012 assessment is correct because it increased more than 5% from 2011 to 2012. Specifically, the property was assessed at \$932,000.00 in 2011, and \$1,008,600.00 in 2012. To the extent that the Petitioner seeks an assessment below the previous year's level, it has the burden of proving any lower value, which it did not do—the Petitioner did not offer any evidence of the property's actual market value-in-use.
24. The Respondent presented the building permit application for this building. The document reflects estimated costs from 2009 and 2010 in the amount of \$1,000,200.
25. Regardless of the method used to establish market value-in-use, a party must explain how its evidence relates to the required valuation date. *O'Donnell*, 854 N.E.2d at 95; *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Any evidence of value relating to a different date must have an explanation about how it demonstrates,

or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471. Here, the Respondent failed to relate the 2009 and 2010 construction costs to March 1, 2012, which is the required valuation date. Accordingly, the building permit data is of no probative value.

26. Without significant explanation or comment, the Respondent also submitted two exterior photographs of the building. But photographs without explanation have little or no probative value. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
27. The Respondent testified that the only difference between the 2011 assessment and the 2012 assessment is the cost tables in the Guidelines, which were changed because 2012 was a reassessment year. Even if the assessment correctly applied the new cost tables, this evidence does not establish the actual market value-in-use of the property.
28. The Respondent did not present a *prima facie* case to support the 2012 assessment. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the year before. In this case, doing so reduces the 2012 assessment to \$932,600.

### **Conclusion**

29. The Board finds in favor of the Respondent for the 2011 assessment. But the Respondent failed to make a *prima facie* case for the 2012 appeal. The Board finds in favor of the Petitioner for the 2012 assessment.

### **Final Determination**

In accordance with the above findings and conclusions, the 2011 assessment will not be changed and the 2012 assessment will be changed to \$932,600.

ISSUED: October 7, 2013

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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**- 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>>.