

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

Petitions: 45-023-09-1-4-00005
45-023-10-1-4-00009
Petitioner: Randall Neely, LLC
Respondent: Lake County Assessor
Parcel: 45-07-09-251-009.000-023
Assessment Years: 2009 and 2010

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

Procedural History

1. The Petitioner initiated these assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on April 16, 2010, for the 2009 assessment and June 6, 2011, for the 2010 assessment.
2. The PTABOA issued notice of its determinations on May 9, 2012.
3. The Petitioner filed the Form 131 petitions with the Board on June 18, 2012. The Petitioner elected to have these appeals heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on November 21, 2013.
5. On January 13, 2014, Administrative Law Judge (ALJ) Ellen Yuhan held the administrative hearing. The ALJ did not inspect the subject property.
6. Randy A. Godshalk, owner and attorney appeared on behalf of the Petitioner. Robert Metz, Lake County Hearing Officer, appeared on behalf of the Assessor. Both were sworn and testified at the hearing. Due to legislation changing the burden-shifting statute, both parties were granted an opportunity to present supplemental materials or argument. The Petitioner submitted additional materials.

Facts

7. The subject property is a one-story commercial building/tavern located at 6729 Kennedy Avenue, Hammond, Indiana.

8. For 2009, the PTABOA determined the assessment is \$16,900 for land and \$125,200 for improvements for a total of \$142,100. For 2010, the PTABOA determined the assessment to be \$16,100 for land and \$116,700 for improvements for a total of \$132,800.
9. The Petitioner requested a total assessed value of \$75,000 for 2009 and 2010. The issue on appeal is whether the PTABOA valued the subject property too high. *Board Ex. A*

Record

10. The official record contains the following:
 - a. The Form 131 petitions,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Form 113 for March 1, 2007,
Petitioner Exhibit 2 – Memorandum of Understanding, dated October 3, 2003,
Petitioner Exhibit 3 – Appraisal Report as of January 1, 2009,
Petitioner Exhibit 4 – Appraisal Report as of January 1, 2005,
Petitioner April 17, 2014 correspondence and supplemental documentation
 - d. Respondent Exhibit A – Printout showing the 2008 assessed value,
 - e. Board Exhibit A – Form 131 petitions (2009 and 2010),
Board Exhibit B – Notice of Hearing (2009 and 2010),
Board Exhibit C – Hearing Sign-In Sheet (2009 and 2010),
 - f. These Findings and Conclusions.

Burden

11. 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. 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 in IC 6-1.1-15-17.2 as amended by P.L.97-2014.
12. First, IC 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.” IC 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.”
IC 6-1.1-15-17.2(b).

13. Second, IC 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.” These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach.
14. The property was originally assessed at \$79,800 for the 2008 assessment and reduced to \$73,670 by the PTABOA. *Petitioner April 17, 2014 correspondence and supplemental documentation; 10/14/2010 Form 17-T*. Because the Petitioner successfully appealed the 2008 assessment and the assessment for 2009 increased, Indiana Code section 6-1.1-15-17.2 applies and the Respondent has the burden of proof for the 2009 assessment.

Contentions

15. Summary of the Petitioner’s case:
 - a. For the March 1, 2007, assessment, the Petitioner appealed the assessment to the North Township Assessor who reduced the value from \$217,400 to \$79,800 based on an appraisal dated January 1, 2005, that valued the property at \$78,000. This is the value from which Lake County should have started when it took over the duties from the township assessor. Instead, the County went back to a previously listed, inaccurate assessment. *Godshalk testimony; Petitioner Exhibits 1 and 4, pg. 12*.
 - b. The Petitioner purchased the property in 2003 for \$178,000. At that time, he and the previous owner, Eli Kosier, agreed in a Memorandum of Understanding that the real estate was valued at \$78,000 and the remaining \$100,000 encompassed the fixtures, coolers, kitchen equipment and business good will. This agreement further supports the lower value. *Godshalk testimony; Petitioner Exhibit 2*.
 - c. The Petitioner presented an updated appraisal prepared by Thomas Bochnowski Appraisals valuing the property at \$75,000 as of January 1, 2009. *Godshalk testimony; Petitioner Exhibit 3*.
16. Summary of the Respondent’s case:

- a. The Bochnowski Appraisal did not make any adjustments to the properties he relied on in the 2009 appraisal. The appraisal included active listings that might be an indication of market value, but it also included retail properties that drastically reduced the price per square foot. The subject property is a tavern and taverns are the type of properties the Lake County Assessor used to determine the price per square foot. *Metz testimony*.
- b. The appraisal for January 1, 2005, is outside the time frame for these appeals. *Metz testimony*.

Analysis

17. The Respondent failed to meet its burden of proving that the subject property was correctly assessed for 2009. The Board reaches this decision for the following reasons:
 - a. 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). 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. “A taxpayer may present varying types of market-based evidence to rebut the presumption that an assessment is correct; nonetheless, one of the most effective methods to rebut this presumption is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *Kooshtard Prop. VIII, LLC v. Shelby County Assessor*, 987 N.E.2d 1178, 1181 n.3 (Ind. Tax Ct. 2013)
 - b. “To establish a prima facie case, a [party] must present evidence that is sufficient to establish a given fact and which if not contradicted will remain sufficient to establish that fact.” *Id.* (internal quotations omitted). However, conclusory statements “are insufficient to make a prima facie case because they are not probative evidence (i.e., evidence that tends to prove or disprove a point in issue).” *Id.* (internal quotations omitted). The parties are “required to make the Indiana Board (as the finder of fact) understand its evidence in order for the evidence to be considered probative -- in other words, [a party] must make its evidence work for it.” *French Lick Twp. Tr. Assessor v. Kimball Int'l*, 865 N.E.2d 732, 739 (Ind. Tax Ct. 2007).
 - c. The Respondent’s only evidence was a print-out of “screen card” for the subject property record card. *Respondent Exhibit A*. The Respondent presented testimony that merely disputed Petitioner’s appraisal. *Metz testimony*. The Respondent obliquely suggested that its “price per square foot” was arrived at by “ignoring the retail sales” from the Petitioner’s appraisal. *Id.* But Respondent failed to walk the Board through its calculations. The Respondent fails to establish a prima facie case that the assessment is correct. Where the party with the burden has not supported its claims with probative evidence, the opposing party’s duty to offer substantial

evidence of the correct assessment 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).

18. The Board finds the Respondent failed to establish that the subject property's assessment for 2009 was correct, and the value must be returned to the value for 2008 (as corrected by the PTABOA), which is \$73,670.
19. Because the Petitioner has successfully appealed the 2009 assessment, Indiana Code section 6-1.1-15-17.2 applies to the 2010 assessment, and the Respondent has the burden of proof. The Respondent's evidence and arguments for the 2010 assessment are the same as for the 2009 assessment. For the same reasons indicated above, the Board finds that the Respondent failed to establish that the subject property's assessment for 2010 is correct, and the value must be returned to the value of the 2009 assessment (as corrected by the Board), which is \$73,670.

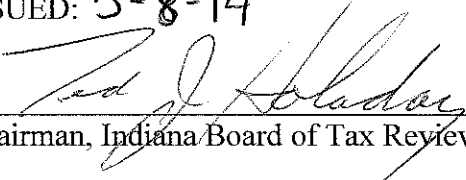
Conclusion

16. The Board finds the Respondent failed to establish a prima facie case for a reduction in the assessed values. The Board finds for the Petitioner.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the 2009 and 2010 assessed values of the subject property should be \$73,670.

ISSUED: 5-8-14



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>>.