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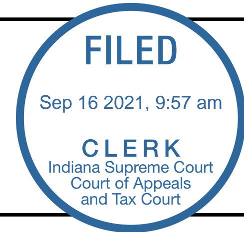
IN THE
INDIANA TAX COURT



PIOTROWSKI BK #5643, LLC,)
)
Petitioner,)
)
v.) Cause No. 21T-TA-00004
)
SHELBY COUNTY ASSESSOR,)
)
Respondent.)

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

FOR PUBLICATION
September 16, 2021

WENTWORTH, J.

Piotrowski BK #5643, LLC (Piotrowski) challenges the Indiana Board of Tax Review's final determination valuing its real property for the 2019 tax year. Upon review, the Court affirms the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

Piotrowski owns a fast-food restaurant in Shelbyville, Indiana. (See Cert. Admin. R. at 65.) The restaurant was constructed in 1987. (See Cert. Admin. R. at 66.)

In 2016, Piotrowski spent approximately $300,000 renovating the restaurant and constructing a detached masonry wall on its property. (See Cert. Admin. R. at 59, 65-66.) The Shelby County Assessor subsequently increased the assessment of Piotrowski's improvements, effective for the 2017 tax year, from $466,700 to $623,200.[1] (See Cert. Admin. R. at 65.) For the 2018 tax year, the Assessor again increased the assessed value of Piotrowski's improvements, from $623,200 to $652,800. (See Cert. Admin. R. at 65.) Piotrowski did not appeal either of those assessment increases. (See Cert. Admin. R. at 65.)

In 2019, however, Piotrowski initiated an appeal challenging the assessment of its restaurant building only.[2] (See Cert. Admin. R. at 6.) The Shelby County Property Tax Assessment Board of Appeals denied the appeal, and Piotrowski sought review with the Indiana Board. (See Cert. Admin. R. at 1-5.) The Indiana Board held a telephonic hearing on the matter on October 1, 2020. (Cert. Admin. R. at 13.)

During the Indiana Board hearing, Piotrowski argued that its building was over-assessed because the Assessor failed to properly apply the depreciation tables contained in Indiana's Assessment Guidelines. (See Cert. Admin. R. at 120-25.) More specifically, Piotrowski explained that under those Guidelines, its building – which was 32 years old

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[1] Piotrowski's improvements consisted of 1) the restaurant building, 2) the masonry wall, and 3) 22,000 square feet of asphalt and concrete paving. (See Cert. Admin. R. at 66.)

[2] Piotrowski has indicated that its appeal does not involve a challenge to the assessed value of its land, the masonry wall, or its paving. (See, e.g., Cert. Admin. R. at 124.)

and in average condition – would have received an 80% physical depreciation adjustment. (See Cert. Admin. R. at 122-24.) Instead, Piotrowski continued, the Assessor gave a mere 10% physical depreciation adjustment as the result of adjusting the building's actual age to an effective age of 3 years to account for the impact of the 2016 renovations. (See Cert. Admin. R. at 66, 120, 123-24.) Piotrowski argued that the Guidelines permit this effective age adjustment only when square footage is added to a building's original footprint. (But see Cert. Admin. R. at 122-24 (indicating that no square footage was added to the restaurant's footprint during the renovation).)

In response, the Assessor asserted that the application of the Guidelines' depreciation schedules advocated by Piotrowski would not have accurately reflected the restaurant building's market value-in-use. (See Cert. Admin. R. at 128-30.) The Assessor explained that Piotrowski's extensive renovation of the building effectively rendered it a brand-new building, thereby increasing the structure's life expectancy and decreasing the amount of physical depreciation that it actually suffered. (See Cert. Admin. R. at 129-30, 134.) Moreover, the Assessor maintained that the Guidelines afforded her the discretion to compute an effective age for the restaurant building, which impacted the amount of physical depreciation applied in determining the property's market value-in-use. (See Cert. Admin. R. at 129-30, 134.)

On December 30, 2020, the Indiana Board issued a final determination upholding the assessment. (See Cert. Admin. R. at 105-13.) In its final determination, the Indiana Board explained that because Piotrowski bore the burden of proof in its case, Tax Court precedent required it to do more than attack the methodology used to determine its assessment. (See Cert. Admin. R. at 111 ¶ 18(c) (citing Eckerling v. Wayne Twp.

Assessor, 841 N.E.2d 674 (Ind. Tax Ct. 2006); P/A Builders & Developers, LLC v. Jennings Cnty. Assessor, 842 N.E.2d 899 (Ind. Tax Ct. 2006)).) Rather, Piotrowski was required to present market-based evidence to demonstrate that the assessment did not accurately reflect its building's market value-in-use. (See Cert. Admin. R. at 111-12 ¶ 18(c).) Because it presented no market-based evidence, the Indiana Board found that Piotrowski failed to make a prima facie case that its property was over-assessed. (Cert. Admin. R. at 111-12 ¶¶ 18-19.)

Piotrowski initiated this original tax appeal on February 11, 2021. The Court conducted an oral argument on August 5, 2021. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. Osolo Twp. Assessor v. Elkhart Maple Lane Assocs., 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). Thus, to prevail in its appeal, Piotrowski must demonstrate to the Court that the Indiana Board's final determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2021).

LAW

Since 2002, Indiana has assessed real property on the basis of its market value-in-use. See generally IND. CODE § 6-1.1-31-6(c), (e)-(f) (2021); 2002 REAL PROPERTY

ASSESSMENT MANUAL (2004 Reprint) ("2002 Manual") at 2 (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.) (repealed 2010)); 2011 REAL PROPERTY ASSESSMENT MANUAL ("2011 Manual") at 2 (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2 (2011)); 2021 REAL PROPERTY ASSESSMENT MANUAL ("2021 Manual") at 2 (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2 (2020)). To determine a property's market value-in-use, Indiana assessors may use any of the three standard appraisal approaches for valuing property (i.e., the cost approach, the sales comparison approach, and the income approach). See 2002 Manual at 3-4; 2011 Manual at 2; 2021 Manual at 2. A property's market value-in-use is, in most instances, its market value. See, e.g., Howard Cnty. Assessor v. Kohl's Indiana LP, 57 N.E.3d 913, 917 (Ind. Tax Ct. 2016), review denied; Millennium Real Est. Inv., LLC v. Assessor, Benton Cnty., 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012), review denied.

Recognizing that the cost approach is the prevalent method for valuing property by assessing officials, the Department of Local Government Finance ("DLGF") promulgated Indiana's Assessment Guidelines. See generally IND. CODE § 6-1.1-4-26 (2021); REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – Version A, Books 1 and 2 (incorporated by reference at 50 I.A.C. 2.3-1-2); REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011 (incorporated by reference at 50 I.A.C. 2.4-1-2 (2011)); REAL PROPERTY ASSESSMENT GUIDELINES FOR 2021 (incorporated by reference at 50 I.A.C. 2.4-1-2 (2020)). Those Guidelines provide assessing officials with "[the] procedures and schedules that are acceptable in determining [market value-in-use] under the cost approach." 2011 Manual at 3. See also 2002 Manual at 3; 2021 Manual at 3.

While an assessment determined in accordance with the Guidelines is afforded a presumption of correctness, that presumption is rebuttable. 2002 Manual at 5; 2011 Manual at 3; 2021 Manual at 3. This Court has repeatedly explained that to successfully rebut that presumption, a taxpayer cannot merely allege that an assessor failed to properly apply the Guidelines' procedures and schedules, but must present objectively verifiable, market-based evidence to show that the property's assessed value does not reflect its market value-in-use. See, e.g., Eckerling, 841 N.E.2d at 677-78; P/A Builders, 842 N.E.2d at 900-01. This is so because

> Indiana's old system of property assessment (i.e., pre-2002) was concerned solely with the methodology used to arrive at a property's assessed value. Indeed, a property's assessed value bore no relation to any external, objectively verifiable standard of measure. Simply put, under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The [market value-in-use] system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is actually correct. This goal can now be accomplished because an external, objectively verifiable standard by which to measure assessment accuracy – market value-in-use – has been established. Consequently, when a taxpayer challenges its assessment under this new system, it cannot merely argue form over substance. Rather, the taxpayer must demonstrate that the assessed value as determined by the assessing official does not accurately reflect the property's market value-in-use.

P/A Builders, 842 N.E.2d at 900-01 (emphasis added).

ANALYSIS

On appeal, Piotrowski argues that the Indiana Board's final determination is erroneous and must be reversed. Piotrowski's entire argument can be distilled into one salient contention: the administrative regulation incorporating the DLGF's 2011 Manual and Guidelines "resurrected" the pre-2002 standard that an assessor's errors in applying the Guidelines invalidate a property's assessed value.

Piotrowski claims the Indiana Board erred in determining that it was required to present market-based evidence to support its assessment challenge, as it was "not appeal[ing] assessment methodology, but rather [that] the documented process for calculating effective year . . . was not followed." (Pet'r Br. at 3.) (But see Oral Arg. Tr. at 6-7 (admitting it was, in fact, challenging the Assessor's methodology).) Piotrowski explains that because the Assessor did not follow the Guidelines' documented process for determining its restaurant's effective age (thus not determining the proper amount of depreciation), it was not required to present market-based evidence. (See, e.g., Oral Arg. Tr. at 10-12; Pet'r Br. at 5 (asserting that because the Guidelines did not lay out a specific process for determining depreciation based on the effective age of a remodeled commercial building, the Assessor's use of an unspecified process removed the "presumption that the assessed value as determined by the Assessor is accurate").) Piotrowski therefore invites the Court to leave behind its precedent based on the 2002 Manual and Guidelines and return to the assessment standard of yesteryear resurrected by the 2011 Manual and Guidelines where an assessor's errors in applying the assessment methodology would invalidate an assessment.[3] (See, e.g., Pet'r Reply Br. at 3-4; Oral Arg. Tr. at 14, 24-26.)

Piotrowski's position is premised entirely on how it has interpreted the change to certain language in the administrative regulations that incorporate the DLGF's Manuals and Guidelines for both 2002 and 2011. Indeed, Piotrowski explains that:

> [50 I.A.C. 2.4-1-1, which was promulgated in 2011,] specifically state[s] that real property assessments must be assessed in

[3] Piotrowski argued that the Indiana Board's final determination erroneously relied upon the Court's decisions in Eckerling and P/A Builders, which were based on the 2002 Manual and Guidelines, because they were no longer precedent for disputes after the advent of the 2011 Manual and Guidelines. (See Pet'r Br. at 3.)

> accordance with the [Manual] and the [Guidelines]. This rule replaced [50 I.A.C.] 2.3-1-1, which only specified that real property must be assessed in accordance with the . . . Manual. [Thus, a]n assessment is [now] presumed to be correct [only when both] the Manual and Guidelines are followed, [whereas under 50 I.A.C. 2.3-1-1 an assessment] was presumed to be correct [as long as it was] a reasonable measure of [market value-in-use].

(Pet'r Reply Br. at 3.) (<u>See also</u> Oral Arg. Tr. at 14.) In its comparative reading of the two regulations, however, Piotrowski has ignored their language – as well as the language in each of the corresponding Manuals – that refutes its position.

Both of these regulations indicate that the purpose of the Guidelines is to assist assessing officials in "determin[ing market value-in-use under the cost approach] . . . [and] not to mandate that any specific assessment method be followed." 50 I.A.C. 2.3-1-1(d); 50 I.A.C. 2.4-1-1(c). Furthermore, both the 2002 and 2011 Manuals provide that applying the Guidelines' procedures and schedules is merely the "starting point" because an assessing official who believes the result of applying the Guidelines does not accurately reflect a property's market value-in-use is <u>expected</u> to adjust the assessment to more accurately do so. <u>Compare</u> 2002 Manual at 5 (stating that "[a]s important as the specific rules [in the Guidelines] may be, it is critical that assessors test and adjust their assessments to meet the standard [of market value-in-use]"), <u>with</u> 2011 Manual at 3 (indicating that when assessors apply the cost approach as set forth in the Guidelines, they may nonetheless consider, <u>and adjust on account of</u>, any other information that is relevant to a property's market value-in-use). Accordingly, an assessor's failure to apply the methodology exactly as set forth in the DLGF's Guidelines "does not in itself show that the assessment is not a reasonable measure of [market value-in-use]." 50 I.A.C. 2.3-1-1(d). <u>See also</u> 50 I.A.C. 2.4-1-1(c) (stating that "<u>[w]hether an assessment is correct</u>

shall be determined on the basis of whether, in light of the relevant evidence, it reflects the property's [market value-in-use]") (emphasis added).

All the language of these successive regulations and their associated guidance clearly instructs, despite certain word "changes," that Indiana's system of property assessment has remained steadfast in its goal since 2002: to declare the primacy of accurately representing a property's market value-in-use over the formalistic application of the Guidelines' procedures and schedules. Accordingly, the Indiana Board did not err when it determined that the Assessor's method of determining physical depreciation of Piotrowski's restaurant building did not relieve Piotrowski of the requirement to present objectively verifiable, market-based evidence to demonstrate it was over-assessed.

Piotrowski has also argued that the Court should not allow Indiana's 92 county assessors to continue to "intentionally manipulate" the methodology set forth in the Guidelines because otherwise there is no way to ensure assessments meet the state's constitutional requirement that they be "uniform and equal." (See, e.g., Oral Arg. Tr. at 3, 5-7, 14-17, 19-20, 26, 34.) Piotrowski's argument fails for two reasons.

First, the Property Taxation Clause of Indiana's Constitution states that "the General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and . . . prescribe regulations to secure a just valuation for taxation of all property[.]" IND. CONST. art. 10, § 1(a). The Indiana Supreme Court has explained that this constitutional provision establishes three basic and interlocking propositions: "(1) [u]niformity and equality in assessment; (2) uniformity and equality as to rate of taxation; and (3) a just value for taxation[.]" Fesler v. Bosson, 128 N.E. 145, 147 (Ind. 1920). The first of these propositions is met "when the same basis of

assessment [e.g., market value-in-use] is fixed for all property"; the second proposition is met when "the same rate of taxation is fixed within the district subject to taxation"; and the third proposition simply "leaves it to the [L]egislature to prescribe the mode by which the [just] valuation of all property shall be ascertained, enjoining upon them the one obligation to provide such regulations as shall secure a just valuation[.]" See Cleveland, C., C. & St. L. Ry. Co. v. Backus, 33 N.E. 421, 428 (Ind. 1893); Pittsburgh, C., C. & St. L. Ry. Co. v. Backus, 33 N.E. 432, 439 (Ind. 1893). The Property Taxation Clause does not, however, require a uniform method of valuation. Indiana State Bd. of Tax Comm'rs v. Lyon & Greenleaf Co., 359 N.E.2d 931, 934 (Ind. 1977). See also State Bd. of Tax Comm'rs v. Town of St. John, 702 N.E.2d 1034, 1039, 1040 (Ind. 1998); Boehm v. Town of St. John, 675 N.E.2d 318, 327 (Ind. 1996) (indicating instead that an assessment system is "uniform, equal, and just" when "each taxpayer's property wealth bear[s] its proportion of the overall property tax burden").

Second, it is insufficient to allege a constitutional infirmity, as Piotrowski has, without any evidence to back it up. (See, e.g., Oral Arg. Tr. at 26 (admitting that it has only "cursorily mentioned" its uniform and equal claim).) This Court has previously explained that one way to measure uniformity and equality in property assessment is through an assessment ratio study. Westfield Golf Practice Ctr., LLC v. Washington Twp. Assessor, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). An assessment ratio study "compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." Id. (citation omitted) (emphasis added). When such a study demonstrates that there is a lack of uniformity and equality in property assessments within a jurisdiction,

"the equalization process provides . . . a method to cure [the] assessment problems and bring all assessments into compliance with Article X, § 1." GTE N. Inc. v. State Bd. of Tax Comm'rs, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994) (citation omitted). Specifically, the property assessments of certain taxpayers will be adjusted so that they bear the same relationship of assessed value to market value-in-use as other properties within that jurisdiction. See id. But see also Town of St. John, 702 N.E.2d at 1040 (indicating that the Property Taxation Clause does not guarantee a taxpayer the personal right to "absolute and precise exactitude as to the uniformity and equality of each individual assessment"). Without any objectively verifiable, market-based evidence as support, Piotrowski's uniformity and equality claim remains nothing more than pure conjecture.

CONCLUSION

Piotrowski's appeal has wrongly focused on the method of assessment, rather than the market value-in-use of its building. More specifically, the Court finds that Piotrowski has provided no objectively verifiable, market-based evidence to show that its property was either over-assessed or that it did not bear the same relationship of its assessed value to its market value-in-use as other properties within its taxing jurisdiction. Consequently, Piotrowski has failed to demonstrate that the Indiana Board's final determination is erroneous. The Indiana Board's final determination is AFFIRMED.