

REPRESENTATIVE FOR PETITIONER:

Thomas J. Galligan, Attorney, GALLIGAN BARRETT, LLC

REPRESENTATIVE FOR RESPONDENT:

F. John Rogers, Attorney, THOMPSON & ROGERS

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Rogers Markets, Inc.,	)	Petition No.:	02-038-02-1-4-03630
	)	Parcel:	021110126005000038
Petitioner,	)		
	)		
v.	)		
	)	County:	Allen
Aboite Township Assessor,	)	Township:	Aboite
	)	Assessment Year:	2002
Respondent.	)		

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Appeal from the Final Determination of  
Allen County Property Tax Assessment Board of Appeals

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**August 21, 2007**

**FINAL DETERMINATION**

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

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUES AND SHORT ANSWERS**

1. A taxpayer may offer a building's actual construction costs to rebut the presumption that it is correctly assessed, provided those costs include all direct and indirect expenses associated with constructing the building and the Petitioner relates those costs to January 1, 1999 values. In this case, the Board must decide whether a document summarizing the Petitioner's payments to various contractors suffices to rebut the subject building's assessment.
2. It does not. With a few exceptions, the Petitioner's summary does little to identify what materials or services any of the payments cover. And the Petitioner offered no other evidence to supplement its summary. The Petitioner therefore failed to show that its payment summary covers all direct and indirect costs of constructing the subject building. Also, the Petitioner's summary lists costs as of 2004. The Petitioner, however, did not explain how those costs related the to the building's market value-in-use as of January 1, 1999.
3. The Petitioner further contends that the Respondent assessed the subject building as being larger than it actually is. As with its first claim, however, the Petitioner failed to offer evidence that was sufficiently detailed and specific to overcome the presumption of correctness afforded to the Respondent's assessment.

### **PROCEDURAL HISTORY AND OTHER MATTERS OF RECORD**

4. The Allen County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination on March 18, 2005. On April 15, 2005, the Petitioner, Rogers Markets, Inc., filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. The Board has jurisdiction over the Petitioner's appeal under Ind. Code §§ 6-1.5-4-1 and 6-1.1-15-4.

5. On March 13, 2007, Alyson Kunack, the Board's duly authorized administrative law judge ("ALJ"), held an administrative hearing in this matter.

6. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Thomas J. Galligan, Attorney

For the Respondent:

Carolyn Berghorn, Aboite Township Assessor

David E. Meyers, Aboite Township Assessor's office

7. The Petitioner offered the following exhibits:

Petitioner Exhibit A – Building Costs

Petitioner Exhibit B – Rent Roll

Petitioner Exhibit C – Value Determined by I & E

Petitioner Exhibit D – Valuation Determination, Cost Method

8. The Respondent offered the following exhibits:

Respondent Exhibit 1 – Original Appeal

Respondent Exhibit 2 – Form 115 – PTABOA Determination

Respondent Exhibit 3 – Photographs of Subject Property

Respondent Exhibit 4 – Building Permits for Subject Property

Respondent Exhibit 5 – 2002 Property Record Card (PRC)

Respondent Exhibit 6 – Loopnet Listing dated May 18, 2001

Respondent Exhibit 7 – Loopnet Listing dated February 14, 2002

Respondent Exhibit 8 – Loopnet Summary

Respondent Exhibit 9 – Commercial Industrial Land Values Map

Respondent Exhibit 10 – Letter from PTABOA for Construction Records and  
Response

Respondent Exhibit 11 – IAAO Page on Units of Comparison

Respondent Exhibit 12 – 2005 PRC

Respondent Exhibit 13 – Square Footage Breakdown

Respondent Exhibit 14 – Relevant Decisions by the IBTR of Case Issues and  
Documents Necessary for Rebuttal

Respondent Exhibit 15 – Township Summary

9. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition  
Board Exhibit B – Notices of hearing  
Board Exhibit C – Hearing Sign-in sheet  
Board Exhibit D – Notice of appearance of counsel for Respondent

10. The subject property is a neighborhood shopping center located at 10301 Illinois Road, Fort Wayne.
11. The ALJ did not inspect the subject property.
12. For 2002, the PTABOA determined the subject property's assessment as follows:  
Land: \$1,559,400                      Improvements: \$2,094,100                      Total: \$3,653,500.
13. The Petitioner requested the following assessment on its Form 131 petition:  
Land: \$1,559,400                      Improvements: \$1,500,000                      Total: \$3,059,400.

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

14. A petitioner seeking review of an assessing official's determination has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would 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).
15. In making its case, the petitioner must explain how each piece of evidence is relevant to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co.*

v. *Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); see also *Meridian Towers*, 805 N.E.2d at 479.

## ANALYSIS

### Parties' Contentions

17. The Petitioner offered the following evidence and argument:
  - A. The Petitioner bought vacant land in 1997 and constructed the subject building. *Galligan testimony; Pet'r Ex. A.* As of 2004, when the building's construction was mostly complete, the Petitioner had spent a total of \$3,865,802 on the subject property. *Galligan testimony; Pet'r Ex. A.* From that \$3,865,802, the Petitioner subtracted \$600,000 it spent to purchase the land and \$975,031 it spent on "landwork" and landscaping, to arrive at the total cost for constructing the building. *Galligan testimony; Pet'r Ex. D.* The Petitioner multiplied the building's construction cost by 70%, which is the "percentage complete" shown on the subject property's record card.<sup>1</sup> *Id.* That left total construction costs of \$1,621,454 as of 2002, or \$422,646 less than the building's assessed value. *Id.*
  - B. The Petitioner also contends that the Respondent assessed the subject building as being larger than it is. *Galligan argument.* The Petitioner submitted rent rolls listing a total of 42,400 square feet, although Mr. Galligan could not testify whether that represented gross leasable area or net leasable area. *Pet'r Ex. B; Galligan testimony.* The property record card, by contrast, lists the subject building as having 44,919 square feet, or 2,519 square feet more than what the Petitioner's rent rolls show. *Galligan testimony; Pet'r Ex. D.*
  - C. The Petitioner made three claims on its Form 131 petition that it did not pursue at the administrative hearing—that the Respondent erred in assessing the subject building as

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<sup>1</sup> On its Form 131 petition, the Petitioner contended that the subject building was only 50% complete on the assessment date. *Board Ex. A.* Mr. Galligan, however, did not contest that issue at the hearing. *Galligan statement.*  
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being 70% complete rather than 50% complete, that the building's quality grade should be C rather than C+2, and that the property's capitalized net income is less than its assessment. Although the Petitioner cross-examined Mr. Meyers about the Respondent's grade choice, the Petitioner did not address that issue in its case-in-chief or argument.<sup>2</sup> And, while the Petitioner offered an exhibit with its calculations capitalizing the subject property's net income, it did not discuss that exhibit. In fact, the Petitioner's counsel stated that he had "no problem" with the Respondent's choice not to use the income approach in assessing the subject property because the subject building was only partially complete on the assessment date. *See Galligan statement.*

18. The Respondent presented the following evidence and argument:

- A. The Respondent contends that the Petitioner failed to rebut the assessment's presumption of correctness. The Petitioner failed to trend its construction costs to a value as of January 1, 1999, as required by the Tax Court in *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax. Ct. 2006). *Rogers argument; Resp't Ex. 14.* Also, the Petitioner submitted a summary of its construction costs rather than the underlying records, such as its agreements with contractors and subcontractors. The PTABOA requested those underlying records, but did not receive them. *Berghorn testimony; Resp't Ex. 10.*
- B. While the Petitioner submitted rent rolls listing a total of 42,400 square feet, that total may reflect the building's net rentable area rather than its gross area. *Meyers testimony.* The Petitioner did not provide a drawing to clarify what the rent rolls measured. *Id.* The Respondent, however, provided the subject property's record card with a sketch showing how it computed the building's area. *Berghorn testimony; Resp't Ex.5.*

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<sup>2</sup> Any claim based on the subject building's quality grade would have failed. A taxpayer cannot rebut the presumption that an assessment is correct simply by contesting the assessor's methodology in computing the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect its property's market value-in-use. *Id.*

- C. The Respondent found leasing information for the subject property on the internet. *Berghorn testimony*. On June 22, 2001, the subject building was 66% occupied *Rogers statement; Resp't Ex. 8*. On February 13, 2002, the subject building was 73.86% occupied. *Id.*
- D. The Respondent also defended its assessment by arguing that it properly applied the Real Property Assessment Guidelines for 2002 – Version A. *Myers testimony; Resp't Ex. 15*. The building is architecturally attractive, has three different levels, is made of quality materials, and has more partitioning than is typical for buildings of its type. *Id.* In the Respondent's view, the building's features were somewhere between a C and B grade, so it assigned the building a grade of C+2. *Id.*

### Discussion

19. The 2002 Real Property Assessment Manual defines the “true tax value” of real property as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). As related in the Manual, the appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
20. A property's market value-in-use, as determined under the Guidelines' cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the

Manual's definition of true tax value. MANUAL at 5. Thus, a taxpayer may rely on the actual construction costs for its improvements and any other evidence compiled according to generally accepted appraisal principles. *Id.*

21. Where a party relies upon actual construction costs, however, it must include all direct and indirect costs required to construct its improvements. *See* GUIDELINES, Intro. at 1. That is consistent with the premise underlying the cost approach—that potential buyers would pay no more for a property than it would cost them to purchase an equally desirable substitute parcel of vacant land and construct an equally desirable substitute improvement. MANUAL at 13. Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. *Id.* Indirect costs include things such as building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants, and attorneys. *Id.*
22. Although the Petitioner identified certain construction expenses, it did not show that those expenses included all direct and indirect costs for constructing the subject building. The Petitioner presented a summary document titled “Combined Contracts for Shops at Scott Road.” *Pet’r Ex. A*. The summary includes what appear to be contractors’ names, and columns designated “Paid to date,” “Amount to finish,” and “Total.” *Id.* Mr. Galligan testified that the summary represented the Petitioner’s costs as of 2004 when the subject building was mostly complete. *Galligan testimony*. But with a few exceptions, such as entries for “landscaping,” and “architectural,” the summary does not identify the specific materials, services or fees to which its entries correspond. And Mr. Galligan, who did not claim any personal knowledge of the Petitioner’s construction outlays, shed no additional light on that question.
23. The Petitioner’s construction-cost evidence lacks probative value for an additional reason. Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *See* MANUAL at 4, 8; *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Thus,



parties must explain how their valuation evidence relates to an appealed property's value as of January 1, 1999. *Id.*; see also *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax. Ct. 2006)(rejecting taxpayers' 1997 construction costs and 2003 appraisal because they did not trend those values to January 1, 1999). Here, Mr. Galligan identified certain construction costs from 2004, but he did not explain how those costs related to the subject property's market value-in-use as of January 1, 1999. It is possible, if not likely, that the Petitioner incurred many of its costs before 2004. It may even have incurred some of those costs on or around the January 1, 1999 valuation date. Because the Petitioner did not break-down its costs beyond the general summary from 2004, however, the Board cannot infer that the bulk of the Petitioner's costs are related to January 1, 1999 values.

24. Finally, the Petitioner contends that the Respondent assessed the subject building as being larger than it actually is. Once again, however, the Board finds that the Petitioner failed to establish a prima facie case of error. The Petitioner submitted its rent rolls showing a total of 42,400 leasable square feet. But the Petitioner did not submit any evidence to show whether the leasable square footage included common areas. The rent rolls similarly do not indicate who measured the leasable areas or how that measurement was performed. And once again, Mr. Galligan lacked personal knowledge to fill-in the gaps. Even if the Board were to find that the rent rolls constituted some evidence of the building's total area, the sketch on the subject property's record card is more persuasive. While the Respondent, like the Petitioner, did not offer any evidence about who measured the building or how the measurements were made, the Respondent's sketch at least shows the building's dimensions. *See Resp't Ex. 12.*

## SUMMARY OF FINAL DETERMINATION

25. The Petitioner failed to establish a prima facie case of error in the subject property's assessment. The Board finds for the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

## IMPORTANT NOTICE

### - Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>