

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

**Petition #:** 35-013-02-1-4-00008  
**Petitioner:** Clifford K. Runion  
**Respondent:** Dallas Township Assessor (Huntington County)  
**Parcel #:** 013-00662-00  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated December 29, 2003.
2. The PTABOA mailed notice of its decision on September 13, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the county assessor on October 8, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 25, 2005.
5. The Board held an administrative hearing on July 7, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Clifford K. Runion, property owner, and Terri Boone, Huntington County Assessor, appeared at the hearing and were sworn as witnesses.

**Facts**

7. The subject property is classified as commercial small retail, as is shown on the property record card for parcel 013-0066-20. The subject property is located at 22 South Main Street, Andrews, Dallas Township, Huntington County.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the subject property.

9. The PTABOA determined that the assessed value of the subject property is \$1,700 for the land and \$58,600 for the improvements for a total assessed value of \$60,300.

10. At hearing, the Petitioner requested a total assessed value of \$40,000.

### **Issue**

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The subject property should be assessed at \$40,000, as this is the price the Petitioner paid for the property on April 23, 2001. *Runion testimony and argument; See also, Resp't Ex. 1.*
- b) The town of Andrews is depressed. *Runion testimony.* The only remaining businesses in town are three taverns, a carry-out store, a convenience store, and a beauty shop. *Id.* A realtor told the Petitioner that she does not want to list the property, because the Petitioner would not get the selling price he wants. *Id.* The Petitioner will list the property at \$49,500 in an attempt to get \$40,000-\$45,000. *Id.*
- c) The beauty shop in the front of the subject building is the only part of the building being used. *Id.* The building was designed to be a lodge. *Id.* There is a big open room upstairs measuring forty (40) feet by sixty-five (65) feet. *Id.* The subject building also contains a dining room, reception room, and a very small kitchen. *Id.* There would have to be a special use for the subject building. *Id.* The Petitioner was going to turn building into dance studio, but the planning commission's rules were too demanding. *Id.*
- d) The subject building is insured for \$79,000; the Petitioner's insurer would not insure it for any less. *Id.*
- e) The second comparable property identified by the Respondent, located at 21 South Main Street, is a tavern, and it is not comparable to the subject property. *Runion argument.*

12. Summary of Respondent's contentions in support of the assessment:

- a) There are two properties comparable to the subject property located in downtown Andrews. *Boone testimony.* A property at 48 South Main Street is assessed at \$70,700, and a property located at 21 South Main Street is assessed at \$61,300. *Id; Resp't Exs. 4-5.*
- b) There have been no sales in the subject's neighborhood. *Boone testimony.* The commercial properties in Andrews range in assessed value from \$50,000 to \$75,000. *Id.*

## Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR 6078.
- c) Exhibits:<sup>1</sup>

Respondent Exhibit 1: Copy of Form 130 Petition to PTABOA with tax bills, July 3, 2002 letter from County Assessor, Settlement Statement, PRC, Disclosure Form from Sale.

Respondent Exhibit 2: Copy of Form 115 with PRC.

Respondent Exhibit 3: Copy of 1995 PRC.

Respondent Exhibit 4: Comparable A.

Respondent Exhibit 5: Comparable B.

Respondent Exhibit 6: Tax bill from 2002 pay 2003 for subject property.

Respondent Exhibit 7: Tax bill from 2001 pay 2002 for subject property.

Respondent Exhibit 8: Copy of Form 131 with attachments.

- d) These Findings and Conclusions.

## Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of the county property tax assessment board of appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 276 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board... through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life*

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<sup>1</sup> The Petitioner did not offer any exhibits.

*Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner did provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property is assessed for an amount in excess of its market value. The Petitioner testified that he purchased the subject property in April 2001, for \$40,000 – less than half of the amount for which it is currently assessed. *Runion testimony*.
- b) The 2002 Real Property Assessment Manual (“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). Three generally accepted appraisal techniques may be used to calculate a property’s market value-in-use: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess property.
- c) A property’s market value-in-use, as ascertained through application of 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*, 2006 Ind. Tax LEXIS 4 (Ind. Tax Ct. 2006). A taxpayer, however, may rebut that presumption with evidence relevant to the market value-in-use of the subject property, including information regarding the sale price of that property. MANUAL at 5.
- d) Thus, the \$40,000 price for which the Petitioner bought the subject property is highly probative of its market value-in-use. The Manual, however, also provides that, for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Id.* The Petitioner bought the subject property on April 23, 2001, more than two years after the relevant valuation date. *See Resp’t Ex. 1*. Nonetheless, the Petitioner bought the subject property for less than one-half the amount for which it is currently assessed. Absent evidence to the contrary, the Board will not assume that the subject property depreciated substantially between January 1, 1999, and the date that the Petitioner bought the property. In any event, the subject property would have had to depreciate at an astronomical rate in order for the current assessment to be a more accurate measurement of its true tax value than the purchase price.

- e) Based on the foregoing, the Petitioner established a prima facie case that the assessment is in error and that the correct assessment should be no more than \$40,000. The burden therefore shifted to the Respondent to impeach or rebut the Petitioner's evidence concerning the sale price of the subject property.
- f) The Respondent submitted information concerning the assessed values of two properties it alleged to be comparable to the subject property. As an initial matter, the actual sale price of a subject property is significantly more probative of that property's market value than are the assessments of comparable properties. Moreover, the Respondent did not explain how the properties upon which it relies are comparable to the subject property. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005)(holding that the taxpayers failed to explain how the characteristics of their property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). The Respondent therefore failed to rebut or impeach the Petitioner's evidence.

### **Conclusion**

16. The Petitioner established by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment should be no more than \$40,000.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: \_\_\_\_\_

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

### - Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.