

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

Petition: 41-004-02-1-3-00008A
Petitioner: Susan Barker
Respondent: Blue River Township Assessor (Johnson County)
Parcel: 9300-21-01-003/05
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (the PTABOA) by filing Form 130 dated July 8, 2005.
2. The PTABOA mailed notice of its decision on August 2, 2006.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on August 25, 2006. Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 5, 2007.
5. Administrative Law Judge Paul Stultz (the ALJ) held the administrative hearing in Columbus on July 18, 2007. He did not conduct an inspection of the property.
6. The persons present and sworn as witnesses at the hearing were:
For Petitioner — Milo Smith,
Jay Johnson,
For Respondent — Mark Alexander.

Facts

7. The subject property is an industrial warehouse facility with 4 warehouse buildings located on 18.082 acres along US Highway 31 in Edinburg, Indiana. The Petitioner's dispute centers on 1 building of the 4 industrial warehouses located on the subject parcel. That building has 144,000 square feet of industrial warehouse (a pre-engineered structure) and 896 square feet of industrial office.

8. The assessed value of the parcel as determined by the PTABOA is:
Land \$227,300 Improvements \$2,132,300 Total \$2,359,600.

9. The assessed value requested by Petitioner is:
Land \$227,300 Improvements \$1,589,600 Total \$1,816,900.

Contentions

10. Summary of the Petitioner's contentions:

- a. The subject building should be graded D-1 not C. This position is supported by the estimated cost of \$1,325,750 to replace the subject building. *Smith testimony; Pet'r Exs. 6, 7.*
- b. The cost estimate demonstrates the cost to construct a 144,000 square foot pre-engineered steel building. The specifications used to develop the cost estimate are standard for pre-engineered steel buildings and include the common factors required to meet building code. Based on these specifications, the estimated cost to construct a 144,000 square foot pre-engineered steel building is \$1,325,750 as of July 21, 1999. *Johnson testimony; Pet'r Ex. 1.*
- c. The cost estimate was developed in a telephone conversation with an estimator from Burkholder Buildings. It is for a building that is 240 feet by 600 feet in size with
 - eave height 24 feet,
 - post and beam endwalls,
 - bay spacing of 30 feet for sidewalls and 20 feet for endwalls,
 - live roof load of 20 pounds per square foot and 80 mile per hour wind load,
 - a 1:12 pitch, 26 gauge roof,
 - 26 gauge painted metal exterior walls,
 - bracing throughout,
 - 16 gauge steel girts and purlins,
 - 6 overhead doors,
 - 5 service doors,
 - interior liner,
 - a 6 inch concrete floor,
 - 120 bay lighting fixtures, service, exit, and emergency lights.The estimate includes the cost for engineering, permits, and trash removal. *Johnson testimony; Pet'r Ex. 1.*
- d. The cost estimate is based on building fundamentals. It includes items that are common factors required to meet building codes. They are comparable to the specifications of the subject building, but the specifications used for the cost estimate are not identical to the specifications of the subject building. *Johnson testimony.*

- e. A structure valued from the General Commercial Kit (GCK) cost schedules with a D-1 grade is depreciated on a 25 year life expectancy table. The subject building is valued as a GCK structure and was 14 years old as of 1999. The subject building should receive 48 percent depreciation rather than 37 percent depreciation. *Smith testimony; Pet'r Exs. 4, 5, 7.*
 - f. After changing the grade to D-1 and applying 48 percent depreciation, the true tax value (TTV) of the subject building would be \$742,600. The total assessed value for the subject property, land and improvements, should be \$1,816,900. *Smith testimony; Pet'r Exs. 6, 7.*
11. Summary of Respondent's contentions:
- a. There is no evidence regarding the cost schedules used to value the subject building. *Alexander testimony.*
 - b. The weight of the Petitioner's evidence should be viewed in light of the fact that Mr. Smith is paid on a contingency basis. *Alexander testimony.*

Record

12. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit A – Witness list,
Petitioner Exhibit B – Petitioner's exhibit coversheet,
Petitioner Exhibit 1 – Estimate,
Petitioner Exhibit 2 – 2002 Final Determination for Susan Barker,
Petitioner Exhibit 3 – Indiana Tax Court Order to Dismiss,
Petitioner Exhibit 4 – Page 28, Appendix F from the 2002 Real Property Assessment Guideline-Version A,
Petitioner Exhibit 5 – Page 31, Appendix F from the 2002 Real Property Assessment Guideline-Version A,
Petitioner Exhibit 6 – Property record card with notations indicating the Petitioner's proposed assessed value,
Petitioner Exhibit 7 – Summary of the Petitioner's contentions,
Respondent Exhibit 1 – Authorization for representation,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign in sheet,
Board Exhibit D – Agreement to withdraw issues,
 - d. These Findings and Conclusions.

Objection

13. The Respondent objected to the evidence offered by the Petitioner. According to the Respondent, the Petitioner failed to exchange evidence 5 days prior to the hearing. *Alexander objection.*
14. One of the Board's procedural rules, 52 IAC 2-7-1, requires that parties must provide copies of evidence at least 5 business days prior to the hearings. The procedural rules for small claims, however, are more relaxed. In a small claims proceeding, the "parties *shall make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5(f) (emphasis added). The rule for small claims only requires that a party provide such evidence if requested. It was admitted that the Respondent did not request the evidence. Therefore, the Respondent's objection is overruled.

Analysis

15. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official 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).
 - 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 1018, 1022 (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 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.
16. The Petitioner did not provide sufficient evidence to support her contentions. The Board arrived at this conclusion for the following reasons:
 - a. Real property is assessed based on its "true tax value", which does not mean fair market value. It 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); 2002 REAL PROPERTY ASSESSMENT

MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3). An assessed value based on the Guidelines, while presumed to be accurate, 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. MANUAL at 5.

- b. The Petitioner presented a cost estimate for another industrial warehouse. The Petitioner provided a thorough description of the components for that estimate, but failed to provide a detailed comparison and analysis relating the estimated building to the subject building. The Petitioner claims the cost estimate reflects the cost to replace the subject building. The cost estimate reflects the cost to construct a 144,000 square foot steel structure, but it fails to reflect any cost for constructing an 896 square foot industrial office. It is not sufficient to say something is similar or comparable. The Petitioner must present a detailed explanation showing how the characteristics of the subject building compare to those found in the purported comparable. Without evidence of true comparability, the Petitioner's evidence is conclusory. Such evidence is not probative. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).
- c. Even if such evidence were probative, the Petitioner's argument separates the assessment into components of land and improvements. While the Guidelines use that approach as a starting point, the Petitioner's approach is contrary to the fundamental goal of arriving at the overall market value-in-use as of the assessment date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- d. The Petitioner failed to establish that the current assessed value for the parcel does not accurately reflect its value-in-use. In addition, the Petitioner failed to establish what any more accurate value for the entire parcel might be.
- e. When a taxpayer fails to provide probative evidence to support any change of an assessment, the Respondent's duty to support the current 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).

Conclusion

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.