

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

Petition #: 45-001-03-1-4-00001
Petitioner: Ford Leasing Development Company
Respondent: Calumet Township Assessor (Lake County)
Parcel #: 25-40-0073-0041
Assessment Year: 2003

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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document September 21, 2004.
2. The Petitioner received notice of the decision of the PTABOA on December 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on January 19, 2005. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated August 15, 2006.
5. On September 25, 2006, the Board received a letter from Margaret E. Mill, Senior Project Manager for Cushman & Wakefield stating that Nathaniel Cain is no longer associated with the property under appeal and that Cushman & Wakefield is the authorized agent for Ford Leasing Development Company. Ms. Mills' letter also included a copy of the purchase and sale agreement, a copy of the authorization of agent letter, and the Notice of Hearing on Petition. Ms. Mills' letter with attachments has been entered into the record as Petitioner Exhibit 3.
6. The Board held an administrative hearing on October 24, 2006, before the duly appointed Administrative Law Judge Dalene McMillen.
7. The following persons were present and sworn in at the hearing:

For the Respondent: Mary Shaw, Calumet Township Deputy Assessor

Carol-Ann Seaton, PTABOA Member¹

8. Ms. Margaret Mills of Cushman & Wakefield sent a letter by facsimile with an attached purchase and sale agreement on October 23, 2006, that indicated that the Petitioner would not be sending a representative to the hearing scheduled for October 24, 2006, and requesting that the purchase and sale agreement be presented as evidence at the hearing. The letter and purchase and sale agreement have been entered into the record as Petitioner Exhibits 1 & 2.

Facts

9. The subject property is a 49,616 square foot auto showroom and service center on 7.342 acres located at 3375 Grant Street, Gary, Calumet Township in Lake County.
10. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
11. The PTABOA determined the assessed value of the subject property to be \$565,600 for the land and \$459,600 for the improvements, for a total assessed value of \$1,025,200.²
12. The Petitioner requested a value of \$198,200 for the land and \$265,000 for the improvements, for a total value of \$463,200.

Issue

13. Summary of Petitioner's contentions in support of the alleged error in the assessment:³

The Petitioner contends that the subject property's assessment exceeds its market value. In support of this contention, the Petitioner submitted a purchase agreement showing that the Petitioner sold the property for \$740,000 to the Shree Jee Corporation on August 29, 2006. *Petitioner Exhibit 2.*

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

- a. The Respondent contends that the subject property is correctly assessed at \$565,600 for the land and \$459,600 for the improvements, for a total assessed value of \$1,025,200. *Respondent Exhibit 1; Shaw testimony.* The Respondent testified to each component being assessed on the property record card including grade, condition,

¹ At the request of the Township, Ms. Carol-Ann Seaton, a PTABOA Member did not appear at the hearing as a witness. Ms. Seaton also failed to establish the PTABOA is a "party" to appeal as required by 52 IAC 2-2-13 (4).

² Ms. Carol-Ann Seaton objected to the assessed value of the property under appeal but the parties present at the hearing did agree that \$1,025,200 was the assessed value of record issued on the Form 115, dated December 22, 2004.

³ On the Form 131 petition the Petitioner identified seven issues: grade and condition, improvement size, physical depreciation, economic obsolescence, land size, land classification, and whether the 2003 assessed value should be retroactive for 2001 and 2002. The Petitioner's evidence, however, addresses only the issue of whether the assessed value of the subject property is overstated. The Board, therefore, considers the seven issues raised on the Form 131 petition to be waived by the Petitioner.

economic obsolescence, land classification, size of land and structures. *Shaw testimony*. The Respondent argues that the current total assessed value of the subject property is fair and accurate. *Id.*

- b. The Respondent further contends that the Petitioner's purchase agreement should be given little weight. *Shaw testimony*. The Respondent argues that the Petitioner's purchase agreement is dated in 2006 and evidence of market value must be related back to January 1, 1999. *Id.*

Record

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

- a. The Petition,
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Letter from Margaret E. Mills, Cushman & Wakefield, to the Board, dated October 23, 2006,

Petitioner Exhibit 2 – Purchase Agreement between Ford Leasing Development Company and Shree Jee Corporation, dated August 29, 2006,

Petitioner Exhibit 3 – Letter from Margaret E. Mills, Cushman & Wakefield to the Board, dated September 25, 2006, Purchase Agreement between Ford Leasing Development Company and Shree Jee Corporation, Authorization Agent letter from Ford Motor Company to Cushman & Wakefield, dated June 12, 2002, and Notice of Hearing on Petition,

Respondent Exhibit 1 – Notification of Final Assessment Determination – Form 115, dated December 22, 2004,

Respondent Exhibit 2 – Interoffice Memo from Mary Shaw, Commercial Supervisor to Booker Blumenberg Jr., Township Assessor, dated November 4, 2004,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet,

Analysis

16. 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. Wash. 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.
17. The Petitioner failed to provide sufficient evidence to support its contentions. This conclusion was arrived at because:
 - a. The Petitioner contends that the assessment of the subject property is excessive based on the property’s sale price. In support of this contention, the Petitioner submitted a copy of the purchase agreement showing Ford Leasing Development Company entered into a purchase and sale agreement with Shree Jee Corporation for \$740,000 on August 29, 2006. *Petitioner Exhibit 2*.
 - b. The 2002 Real Property Assessment Manual (the MANUAL) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.” *Id.*

- c. Regardless of the approach used to prove the market value-in-use of a property, 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 Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4.
- d. Here the Petitioner submitted a purchase agreement showing that the property was sold on August 29, 2006, for \$740,000. The purchase agreement was dated more than seven years after the relevant valuation date of January 1, 1999. The Petitioner presented no explanation of how the 2006 purchase price indicates that the current assessment is incorrect or how the sale price relates to the value of the subject property as of January 1, 1999. The Petitioner therefore failed to raise a prima facie case that the subject property's March 1, 2003, assessment is incorrect.
- e. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 18. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the 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: December 29, 2006

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