

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

Petition #: 53-009-02-1-4-00403
Petitioners: Harold and Alta Marie Nethery
Respondent: Perry Township Assessor (Monroe County)
Parcel #: 015-39480-00
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 Petitioners initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 9, 2003.
2. The PTABOA mailed notice of its decision on November 26, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition with the Monroe County Assessor on December 22, 2003. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated July 10, 2006.
5. The Board held an administrative hearing on September 13, 2006, before the duly appointed Administrative Law Judge (the ALJ), Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioners: Milo Smith, Tax Representative

For Respondent: Judy Sharp, Monroe County Assessor
Ken Surface, Nexus Group

Marilyn Meighen appeared as counsel for Perry Township and the Monroe County PTABOA

Facts

7. The subject property consists of a convenience store located on a parcel measuring .422 acres. The property is located at 1115 S. Walnut Street in Bloomington, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$91,800 for the land and \$157,800 for the improvements, for a total assessed value of \$249,600.
10. The Petitioners requested a change in the pricing of a 30' x 80' canopy, but they did not set forth the actual amount for which they believe the subject property should be assessed.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners entered into a stipulation agreement with Judy Sharp, the Monroe County Assessor, following their initiation of the appeal process. *Smith testimony; Petitioners Exhibit 1*. Ms. Sharp signed the agreement on September 19, 2003, and Mr. Smith signed the agreement on behalf of the Petitioners on October 7, 2003. *Id.* The stipulation agreement provides for the grade of a canopy on the subject property to be changed from "C+2" to "C." *Id.*
 - b. The subject property contains two (2) canopies – an attached canopy and a detached canopy measuring 30' x 80'. *Smith testimony; Petitioners Exhibits 3-4*. Following execution of the stipulation agreement, the grade of the attached canopy was changed from "C+2" to "C." *Id.* The pricing for the detached canopy was also changed from \$16.40 per square foot, which represents the price under the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) for a detached canopy of average quality installation, to \$20.75 per square foot, which represents the price under the Guidelines for a detached canopy of good quality installation. *Id.*; *Petitioners Exhibit 2*. There is no explanation for the change. *Smith testimony*. The Petitioners contend that the detached canopy should be valued at \$16.40 per square foot. *Smith argument*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent cites to Ind. Admin. Code tit. 52, r. 2.3-1-1(d) for the proposition that a failure to comply with the Guidelines does not in itself show that an assessment is not a reasonable measure of true tax value. *Meighen argument; Petitioners Exhibit 1*. The Respondent further points to the Indiana Tax Court's decision in *Eckerling v. Wayne Township Assessor* for the proposition that a taxpayer must show the bottom

line value of its property, rather than pointing to perceived errors in the assessor's methodology. *Meighen argument; Respondent Exhibit 2.*

- b. The Respondent contends the subject property is actually under-assessed and submitted information concerning the sales of four (4) properties to support its position. *Meighen argument; Respondent Exhibits 4-7.* The first property is a convenience store located at 527 3rd Street that sold for \$1,016,116 on June 22, 2001. The second property is a convenience store located at 3940 W. 3rd Street that sold for \$856,471 on June 22, 2001. The third property is a convenience store located at 901 N. Indiana Avenue that sold for \$325,000 on December 31, 2001. The fourth property is a convenience store located at 1320 E. 3rd Street that sold for \$450,000. *Respondent Exhibits 4-7.* All of the properties are located within three (3) miles of the subject property, and they provide the same types of services as the subject property. *Surface testimony.* The Respondent therefore contends that the four (4) properties in question are comparable to the subject property, and that their sale prices illustrate that the subject property's assessment of \$249,600 is not excessive. *Surface testimony; Meighen argument.*
- c. The Respondent contends that it made the changes to which it agreed under the stipulation agreement. *Meighen argument.* The canopy that is the subject of the Petitioners' appeal is not the canopy referenced in the stipulation agreement. *Surface testimony.*

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 # 6159,
 - c. Exhibits:

Petitioners Exhibit 1 - PTABOA Stipulation agreement for the subject property,
Petitioners Exhibit 2 - Page 43 – Version A, Real Property Assessment Guideline,
Petitioners Exhibit 3 - Property record card for subject property (4-9-03),
Petitioners Exhibit 4 - Property record card for subject property (9-19-03),

Respondent Exhibit 1 – 50 IAC 2.3,
Respondent Exhibit 2 – *Eckerling v. Wayne Township Assessor*, Indiana Tax
Court, February 2, 2006,
Respondent Exhibit 3 – Photograph and property record of subject property,
Respondent Exhibit 4 – Photograph and sales disclosure form for 527 3rd Street,
Respondent Exhibit 5 – Photograph and sales disclosure form for 3940 West
Third Street,

Respondent Exhibit 6 – Photograph and sales disclosure form for 901 N. Indiana Avenue,

Respondent Exhibit 7 – Photograph and sales disclosure form for 1320 E. 3rd Street,

Board Exhibit A - Form 131 petition,

Board Exhibit B - Notice of Hearing,

Board Exhibit C – Notice of Appearance for Marilyn Meighen,

Board Exhibit D – Notice of County Assessor Appearance for Township,

Board Exhibit E – Hearing Sign-in Sheet,

d. These Findings and Conclusions.

Analysis

14. 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.

15. The Petitioners failed to provide sufficient evidence to support a change in assessment. The Board reaches this decision 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 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 52 IAC 2.3-1-3). 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 the Real Property Assessment Guidelines for 2002 – Version A

- (Guidelines) explaining the application of the cost approach. The value established by use of 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 of comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b. The Petitioners did not present any market-based evidence of the type recognized by the Manual to demonstrate that subject property is assessed in excess of its true tax value. Instead, the Petitioners contend that the Respondent erred by changing the price per square foot used to value a detached canopy without providing any explanation for that change. According to the Petitioners, the original rate of \$16.40 per square foot is the proper rate under the Guidelines for assessing a detached canopy of average quality installation.
- c. Thus, the Petitioners rely solely upon the methodology used to assess the canopy rather than upon evidence probative of the subject property's true tax value. A mere technical failure to comply with the Guidelines, however, does not prove that an assessment is not a reasonable measure of true tax value. 50 IAC 2.3-1-1(d). Moreover, the Indiana Tax Court repeatedly has warned taxpayers against contesting the methodology used to assess a property instead of presenting probative evidence of the property's market value-in-use. *See, e.g., O'Donnell v. Dep't of Local Gov't Fin.* No. 49T10-0510-TA-79 2006 Ind. Tax LEXIS 51 at * 9-11 (September 21, 2006) (finding that taxpayers failed to establish prima facie case based on various alleged errors by assessing officials, because the taxpayers focused solely on methodology and failed to demonstrate that the assessment did not accurately reflect their property's market value-in-use); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. White River Twp. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (“[W]hen 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.”).
- d. While the Petitioners introduced a copy of the stipulation agreement, the Board is at a loss concerning the relevance of that agreement to the Petitioners' claims. Nothing in the agreement purports to address the detached canopy that is the focus of the Petitioners' claims. Moreover, the Petitioners do not claim that the parties agreed to the overall amount of the assessment pursuant to the stipulation agreement. The agreement does contain a handwritten notation concerning what appears to be a total value of \$249,600 for the subject property; however, neither Mr. Smith nor Ms. Sharp could recall whether that notation appeared on the document when they executed it. *Smith testimony; Sharp testimony.* In fact, if the Board was to view that notation as expressing the parties' agreement as to the total assessed value for the subject property, the Petitioners' claims would be foreclosed, because the notation matches the amount of the assessment from which the Petitioners are appealing.

- e. Based on the foregoing, the Petitioners failed to establish a prima facie case that the assessment is in error.

- e. Where the Petitioners have not supported their 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

16. The Petitioners 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 5, 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>.