

REPRESENTATIVE FOR PETITIONERS:

Robert Kumpfer, Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Robert W. Metz, Lake County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

600 W. Partners, LLC, JFB)	Petition No.:	45-030-10-1-4-00001
Merrillville, LLC, and Anthony)		
Miroballi,)		
)	Parcel No.:	45-12-21-251-009.000-030
Petitioners,)		
)		
v.)		
)		
Lake County Assessor,)	County:	Lake
)		
Respondent.)	Assessment Year:	2010

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

April 19, 2013

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioners' property was over-valued for the 2010 assessment year.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2010 assessment appeal by filing a request for preliminary conference on July 20, 2011. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination on October 28, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed a Form 131 Petition for Review of Assessment on December 6, 2011, petitioning the Board to conduct an administrative review of the property's 2010 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on March 4, 2013, in Crown Point, Indiana.
5. The following persons were sworn at the hearing:

For the Petitioner:

Robert Kumpfer, Tax representative,¹
Jeffrey R. Vale, MAI, appraiser,

For the Respondent:

Robert W. Metz, Lake County Hearing Officer,
Nicole Ooms, Deputy Assessor Ross Township.

¹ Mr. Kumpfer testified that he was retained on a contingent basis.

6. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 – Restricted Use Appraisal Report,
 - Petitioner Exhibit 2 – Valuation history and trending for the subject property.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Subject property and comparable property information,
 - Respondent Exhibit 2 – Sales disclosure form for the subject property,
 - Respondent Exhibit 3 – Property record card for the subject property,
 - Respondent Exhibit 4 – Sales disclosure form for 8333-8357 Indianapolis Boulevard,
 - Respondent Exhibit 5 – Property record card for 8333-57 Indianapolis Boulevard,
 - Respondent Exhibit 6 – Sales disclosure form for 1528-1532 Arbogast and 809-819 East Ridge Road,
 - Respondent Exhibit 7 – Property record card for 1528-1532 Arbogast and 809-819 East Ridge Road,
 - Respondent Exhibit 8 – Sales disclosure form for 4000 East Lincoln Highway,
 - Respondent Exhibit 9 – Property record card for 4000 East Lincoln Highway,
 - Respondent Exhibit 10 – Sales disclosure form for 1729 East Commercial Avenue,
 - Respondent Exhibit 11 – Property record card for 1729 East Commercial Avenue,
 - Respondent Exhibit 12 – Sales disclosure form for 13146 Wicker Avenue,
 - Respondent Exhibit 13 – Property record card for 13146 Wicker Avenue.

8. 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 – Notice of Hearing, dated January 11, 2013,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a commercial retail building located at 600 West 81st Avenue, in Merrillville, Indiana.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2010, the PTABOA determined the assessed value of the property to be \$559,000 for the land and \$1,103,800 for the improvements, for a total assessed value of \$1,662,800.
12. For 2010, the Petitioners contend the property's value should be \$262,000 for the land and \$863,000 for the improvements, for a total assessed value of \$1,125,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PARTIES' CONTENTIONS

14. The Petitioners contend that the assessed value of their property was over-stated in 2010 based on the property's appraised value. The Petitioners presented the following evidence in support of their contentions:
 - A. The Petitioners' representative contends that the subject property was over-valued for 2010 based on an appraisal. *Kumpfer testimony*. In support of this contention, the Petitioners presented an appraisal prepared by Jeffrey R. Vale, MAI, an Indiana certified general appraiser, and William L. Eenshuistra, an Indiana certified general appraiser, who attested that they prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Petitioner Exhibit 1*. The appraisers valued the property at \$1,125,000 as of January 1, 2009, using the income approach and the sales comparison approach to value. *Id.*

- B. Mr. Vale testified that, in his income approach, he used income based on the old Salvation Army lease and attempted to derive a market rental rate for the vacant space. *Vale testimony*. Mr. Vale also testified that he did not develop the cost approach because the building was built in 1974 and remodeled in 1998. *Id.* According to Mr. Vale, depreciation estimates are very subjective at that point. *Id.*
- C. In order to relate the appraisal's January 1, 2009, value to the March 1, 2010, valuation date, Mr. Vale testified that the property's value in 2010 would be the same or less than the 2009 value. *Vale testimony*. According to Mr. Kumpfer, the assessor's trending factor of -1.31% between 2009 and 2010 supports the appraiser's opinion. *Kumpfer testimony; Petitioner Exhibit 2*. Therefore, the Petitioner's representative argues, the value of the subject property for March 1, 2010, would be the same as the property's January 1, 2009, appraised value of \$1,125,000. *Id.*
- D. In response to the Respondent's case, the Petitioners' representative argues that the Respondent did not attempt to show the comparable properties it submitted were similar to the subject property or summarize the evidence to tie it to a value. *Kumpfer testimony*. Further, Mr. Kumpfer contends that the Respondent's information for 8333 Indianapolis was incorrect because the assessor failed to include a second building at that location. *Id.* According to Mr. Kumpfer, the property is approximately 30,000 square feet, rather than 16,929 square feet. *Id.* In addition, Mr. Kumpfer contends that the property is not comparable to the subject property because it is a multi-tenant, high-end retail property in a better location. *Id.*
15. The Respondent contends the property's assessed value was correct in 2010. The Respondent presented the following evidence in support of the assessment:
- A. The Respondent's witness contends sales of shopping centers and retail properties support the property's assessed value. *Ooms testimony*. In support of this contention, the Respondent presented sales disclosure forms and property record cards for two shopping centers and three retail properties in the area. *Respondent Exhibits 1, 4-13*.

- B. The Respondent's witness also argues that the Petitioner's appraisal should be given little weight. *Ooms argument*. According to Ms. Ooms, there is a large discrepancy between the sale of the subject property in October of 2006 for \$1.8 million and the value estimated by the appraisers of \$1,125,000 as of January 1, 2008 – just fourteen months after the Petitioners purchased the property. *Ooms testimony; Respondent Exhibits 1-3*.
- C. Moreover, Ms. Ooms argues, the appraisers' comparable properties are not comparable to the subject property. *Ooms testimony*. Ms. Ooms contends that 8201 Grand Boulevard is more of a warehouse. *Id.* Similarly, the appraisers made no adjustment for location to the property located at 1500 East 83rd Avenue, which she argues is somewhat hidden from traffic because there is building in front of it; whereas the subject property is located on U.S. 30. *Id.*

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should 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). Pursuant to Indiana Code § 6-1.1-15-17.2, however, the burden of proof shifts to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here, the parties agreed that the assessed value of the subject property decreased from \$1,685,000 in 2009 to \$1,662,800 in 2010. The Petitioners, therefore, have the burden of proof in this appeal.

ANALYSIS

17. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) will often be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

18. Here, the Petitioner submitted a market value appraisal prepared by Jeffrey R. Vale, MAI and Indiana certified appraiser, and William L Eenshuistra, an Indiana certified general appraiser, who attested they prepared the appraisal in accordance with USPAP using the income approach and sales comparison approach. The appraisers estimated the value of the property to be \$1,125,000 as of January 1, 2009. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is incorrect. *See Meridian Towers*, 805 N.E.2d at 479. The Petitioners' appraiser, Mr. Vale, testified that the market was fairly poor in 2010; "so values either stayed the same or potentially dropped a little bit." Mr. Vale's testimony was supported by the county's trending factor. Therefore, the Board finds that the Petitioners provided some evidence to relate their January 1, 2009, appraised value to the March 1, 2010, assessment date. Thus, the Board finds that the Petitioners raised a prima facie case that their property's assessed value should be reduced to \$1,125,000 for the March 1, 2010, assessment date.

19. Once the Petitioners established a prima facie case, the burden shifted to the Respondent. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present

probative evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct.2005).

20. Here, the Respondent's representative contends that the Petitioners' property was properly valued in 2010 based on the sales of comparable properties. *Respondent Exhibits 1, 4-13*. In making this argument, Ms. Ooms essentially relies on a sales comparison approach. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
21. In support of her argument, Ms. Ooms submitted sales information for two shopping centers and three retail properties. The Respondent's witness, however, made no attempt to show how the properties compared to the subject property and she presented nothing to explain how any differences may have affected the properties' values. Thus, the Respondent's evidence was too superficial to be probative of the subject property's market value-in-use. *See Long*, 821 N.E.2d at 471-72 (Ind. Tax Ct. 2005) (holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).

22. The Respondent also argued that the property sold in October of 2006 for \$1.8 million. But the sale occurred over three years prior to the March 1, 2010, valuation date. Because the Respondent failed to relate the property's 2006 purchase price to the property's market value-in-use as of March 1, 2010, the evidence is insufficient to rebut the property's appraised value.
23. Finally, the Respondent argued that the appraisers' comparable properties were not similar to the subject property. But it is not enough to simply point to flaws in the Petitioners' evidence or assert that the property was assessed correctly. The Respondent must bring forth evidence justifying its decision and make an authoritative explanation of its determination. *See Meridian Towers East & West*, 805 N.E.2d at 479; *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 948 (Ind. Tax 2001). Having failed to do so, the Respondent fell short of its burden and failed to rebut the Petitioners' prima facie case.

CONCLUSION

24. The Petitioners established a prima facie case that their property was over-valued in 2010. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of the Petitioners and holds that the property's assessed value for the March 1, 2010, assessment date is \$1,125,000.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should be reduced to \$1,125,000 for 2010.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.