

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

Petition #: 64-016-02-1-4-00189
Petitioner: HFS Bank
Respondent: Portage Township Assessor (Porter County)
Parcel #: 0515100032000
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 Porter County Property Tax Assessment Board of Appeals ("PTABOA") by written document dated December 30, 2003.
2. The PTABOA mailed notice of its decision on December 22, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 with the Porter County Assessor on December 29, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 26, 2006.
5. The Board held an administrative hearing on March 14, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. The following persons appeared at the hearing and were sworn as witnesses:

For Petitioner: Paul Kropp, Tax Representative

For Respondent: Shirley LaFever, Porter County Assessor
Lindy Wilson, Chief Deputy Assessor
Janine Chrisman, PTABOA President
John R. Scott, Portage Township Assessor

Facts

7. The property is classified as a commercial bank, as is shown on the property record card for parcel 05-15-100-032.000. The property is located at 5200 Central Avenue, Portage, Portage Township, Porter County.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of subject property is \$69,500 for the land and \$392,400, for the improvements for a total assessed value of \$461,900.
10. The Petitioner requests a value of \$69,500 for the land and \$165,500 for the improvements, for a total value of \$235,000.

Issues

11. Summary of the Petitioner’s contentions in support of alleged error in assessment:
 - a) The Petitioner bought the subject property for \$235,000 on June 23, 1998. *Kropp testimony; Pet’r Ex. 1*. The sale date is within the time window (1/1/98 – 12/31/99) used by local assessing officials to compile data for the 2002 general reassessment. *Kropp argument*.
 - b) A letter written by Paul Kropp and signed by Steven A. Bohn, Chief Financial Officer of HFS Bank, states that the sale was an “arm’s-length transaction.” *Kropp testimony; Pet’r Ex. 2*. The property was exposed to other potential owners. *Id*. The parties to the sale were unrelated, and no other considerations were involved. *Id*.
 - c) Previously, the subject property was known as Chesterton State Bank, Indiana National Bank, NBD, and Bank One. *Id*. Bank One decided to vacate the subject property because another nearby branch was in a more desirable location. *Id*. The property was vacant for one year. *Id*. A local realtor contacted the area financial institutions attempting to sell the property. *Id*.
 - d) According to a previous Board determination, “[a] sale of the subject property at or near the valuation date is usually the best evidence of a properties [sic] fair market value.” *Kropp argument; Pet’r Ex. 4 at 6*.
12. Summary of the Respondent’s contentions in support of the assessment:
 - a) Sales prices do not always equal true tax value. *Scott argument*. An independent appraisal would give provide a better estimate of what the subject property is really worth. *Id*. The Respondent previously asked the Petitioner to provide an independent appraisal of the subject property. *Scott testimony*.

- b) The Respondent doubts that the \$235,000 sale was an arm's-length transaction, given that the Petitioner bought the property from another bank. *Id.* The Petitioner presented no evidence that the property was placed on the open market. *Id.*
- c) The Petitioner did not present evidence regarding assessments or sale prices of similar buildings. *Id.* It would cost more than \$235,000 to construct the subject improvements. *Id.* The grade would have to be lowered to "D," and the condition rating lowered to "poor," to bring the assessment down to the sale price. *Id.* The assessment would be much lower than comparable buildings, and even lower than some homes. *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 IBTR - 6227.
- c) Exhibits:

Petitioner Exhibit 1: Purchase settlement statement dated 6/23/98

Petitioner Exhibit 2: HFS Bank letter dated 1/11/05

Petitioner Exhibit 3: E-mail between Paul Kropp and Steven Bohn (HFS)

Petitioner Exhibit 4: IBTR Fairview Corners Ruling dated 7/20/04

Petitioner Exhibit 5: Two (2) photographs of HFS Bank, Portage

Respondent Exhibit 1: Property Record Card (PRC) of HFS Bank before adjustments

Respondent Exhibit 2: Form 11

Respondent Exhibit 3: PRC of HFS Bank after adjustments

Respondent Exhibit 4: Form 115 with PTABOA decision concurring with Township Assessor

Respondent Exhibit 5: Form 131

Respondent Exhibit 6: Page 18 from "Real Property Assessment Manual" with grades for banks

Board Exhibit 1: The Form 131 Petition with attachments

Board Exhibit 2: Notice of Hearing

Board Exhibit 3: 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. 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.
15. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) 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 at 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.
 - b) 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*, 842 N.E.2d 899 (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. The data must reflect the property’s market value-in-use

as of January 1, 1999. *Id* at 4, 8; *See also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) In this case, the subject property sold for \$235,000, on June 23, 1998. The sale took place less than six months from the valuation date of January 1, 1999. Consequently, the Petitioner established a prima facie case that the current assessment is incorrect and that the correct assessment should be \$235,000.
- d) The burden therefore shifted to the Respondent to impeach or rebut the petitioner's evidence. *See, Meridian Towers*, 805 N.E.2d at 479. The Respondent has the same burden to present probative evidence that the Petitioner bears in establishing its prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) ("Time and time again, this Court has reminded taxpayers that as part of making a prima facie case, 'it is the taxpayer's duty to walk the [Board] through every element of [its] analysis' . . . These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.").
- e) The Respondent attempts to impeach the Petitioner's evidence concerning the sale price of the subject property by asserting that the sale was not an arms length transaction. The Respondent bases its claim on the fact that both parties to the sale were banks. The Respondent, however, does not allege that the two banks had common ownership or that they were otherwise related. Thus, the Board assigns no weight to the Respondent's contentions that the July 23, 1998, sale of the subject property was not an arms length transaction.
- f) The Respondent also contends that the July 23, 1998, sale was not indicative of the subject property's market value because there is no evidence that a realtor offered the subject property on the open market and because the subject property remained vacant for approximately one year prior to the sale. *See Scott testimony; Chrisman testimony*.
- g) With regard to the former contention, the Petitioner presented an e-mail from Steven A. Bohn, the Petitioner's President, indicating: "This was back in 1997 and 1998 so the memory is not exact. HFS and a number of other financial institutions were contacted by the realtor . . ." *Pet'r Ex. 3*. Mr. Bohn's statement is not very specific, and Mr. Bohn himself acknowledged that his memory of the events was not exact. Nonetheless, the e-mail supports an inference that the seller, through its realtor, exposed the subject property to the market in a commercially reasonable manner, contacting likely purchasers to solicit offers. The Respondent did not present any evidence to the contrary. As to the latter contention, the Respondent failed to present any evidence showing that the subject property's vacancy caused it to diminish in value. *See Damon Corp. v. Indiana State Bd. of Tax Comm'rs*, 738 N.E.2d 1102, 1109 (Ind. Tax Ct. 2000) (holding that taxpayer failed to submit probative evidence to support its claim for obsolescence based upon vacancy of property prior to taxpayer's purchase).

- h) The Respondent also contends that the sale price is not indicative of market value because the Respondent would have to reduce the subject building's quality grade to "D" and its condition to "poor" in order to make its assessment under the Guidelines equal the sale price. *Scott testimony*. In support of its position, the Respondent submitted portions of the Guidelines with photographs of banks illustrating design and construction features corresponding to various quality grades. *Resp't Ex. 6*. At most, the Respondent argues that the mass appraisal cost approach set forth in the Guidelines is more reflective of the subject property's market value-in-use than is the sale of that property. The Respondent, however, cannot simply rest upon the presumption that the assessment under the Guidelines is correct in response to a Petitioner's evidence of the subject property's market value. The Respondent must either impeach the probative value of the Petitioner's evidence or submit its own evidence of the market value-in-use of the subject property.
- i) Finally, the Respondent contends that an independent appraisal of the subject property would be more indicative of the property's market value than is its sale price. Even if the Respondent's contention were true, the Petitioner does not bear the burden to submit the *most* probative evidence of the subject property's market value in use. The Petitioner is simply required to present probative evidence to support a finding that the assessment is incorrect and to demonstrate what the correct assessment should be. If the Respondent believes that better evidence exists, it is the Respondent's duty to present that evidence to rebut the Petitioner's *prima facie* case. The Respondent did not do so in this case.
- j) The Petitioner established by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment is \$235,000.

Conclusion

- 16. The Petitioner made a *prima facie* case. The Respondent did not rebut Petitioner's evidence. The Board finds in favor of Petitioner.

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: _____

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>>.