

# INDIANA BOARD OF TAX REVIEW

## Small Claims

### Final Determination

### Findings and Conclusions

**Petitions #:** 22-008-02-1-4-00043; 22-008-02-1-4-00044  
**Petitioner:** Akin Properties  
**Respondent:** New Albany Township Assessor  
**Parcel #** 3430030; 3430029  
**Assessment Year:** 2002

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

#### Procedural History

1. Petitioner initiated an assessment appeal with the Floyd County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition dated August 1, 2003.
2. Petitioner received notice of the decision of the PTABOA by Form 115 dated December 17, 2003.
3. Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on February 16, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 4, 2004.
5. The Board held an administrative hearing on June 8, 2004, before the duly appointed Administrative Law Judge Paul Stultz.
6. Persons present and sworn in at hearing:
  - a. For Petitioner: Gregory Poore, Ducharme, McMillen & Assoc.
  - b. For Respondent: Barbara Sillings – New Albany Township Assessor  
Terry Watson – PTABOA member  
Harry Anson – PTABOA member  
Greg McCarten – PTABOA member

## Facts

7. Both properties are classified as commercial medical offices, as is shown on the property record card for each parcel.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Floyd County PTABOA:  
Land: \$50,000, Improvements: \$74,800 (119 Captain Frank Rd.),  
Land: \$50,000, Improvements: \$72,800 (117 Captain Frank Rd.).
10. Assessed Value requested by Petitioner:  
Land: \$50,000, Improvements: \$12,500 for both properties.

## Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a. Petitioner's argument is identical for both properties under appeal. The property located at 117 Captain Frank is currently rented for \$625 per month. *Petitioner Ex. 2.* The property located at 119 Captain Frank is not rented. The two properties are located next door to each other. *Poore testimony.*
  - b. Petitioner contends subject property has a total obsolescence of 83 %. Petitioner states the market value should be \$62,500 total. *Poore testimony.*
  - c. Petitioner contends the rent for the vacant property would be identical to the rented property as well as all expenses. The Petitioner used the rented properties rents and expenses in determining the value. *Poore testimony; Petitioner's Ex. 1.*
  - d. Petitioner determined values by using the income and sales comparison approaches to value. *Poore testimony; Petitioner's Ex. 1.*
  - e. Petitioner capitalized the net operating income of \$5,525 by an overall capitalization rate of 9%. The net income was determined by Petitioner's rental income of \$625 per month less taxes and insurance for 117 Captain Frank. *Poore testimony.* The lease agreement is for the dates of October 10, 2002 to the present time. The overall capitalization rate was based on Petitioner's experience in appraising rental property. *Poore testimony; Petitioner's Ex. 1, 2.*
  - f. Petitioner, also using the sales comparison approach, took the monthly rent of \$625 times a gross rent multiplier of 100. Petitioner took the annual rent of \$7,500 times the gross income multiplier of 8.3. Petitioner determined the gross income multiplier of 8.3 by dividing 100 (the gross rent multiplier) by 12 months. *Poore testimony; Petitioner's Ex. 1.*
  - g. Petitioner claims the \$625 per month rent is the maximum amount of rent the subject property can obtain. *Poore testimony.* Petitioner testified that the lease between

Petitioner and the lessee of 117 Captain Frank is an arm's length transaction and that there is no relationship between the Petitioner and the lessee. *Poore testimony.*

12. Summary of Respondent's contentions in support of the assessment:
  - a. Respondent stated that the local market capitalization rate is different than said rate for other areas as in larger cities. *Watson testimony.*
  - b. Respondent stated medical office space in the subject neighborhood is renting for an amount substantially greater than \$625 per month. Respondent opined \$625 per month is not market rent in the subject area and that market rent should be considered instead of the Petitioner's rent. *Watson testimony; McCarten testimony.*
  - c. The Respondent testified that the Petitioner's rent of \$625 per month is below market rent for single-family residences. The Respondent further stated the amount of rent is definitely low for commercial use. Commercial rent would be double the \$625 per month rent according to Respondent. *McCarten testimony.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
  - b. The tape recording of the hearing labeled IBTR #3610.
  - c. Exhibits:
    - Petitioner Exhibit 1: Calculation of Obsolescence
    - Petitioner Exhibit 2: Property Lease Agreement (117 Captain Frank Rd.)Respondent did not present any exhibits.
    - IBTR Exhibit A- Form 131 Petition
    - IBTR Exhibit B- Notice of Hearing
  - d. These Findings and Conclusions.

### **Analysis**

14. The most applicable governing cases and regulations are:
  - a. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
  - b. The Board will not change the determination of the County Property Tax Assessment Board of Appeals (PTABOA) unless the petitioner has established a prima facie case and, by a preponderance of the evidence proven, both the alleged errors in the

assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).

15. The Petitioner provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. Petitioner claims to be using two market approaches to value. Namely the income approach and the sales comparison approach. The Petitioner used the actual rent (\$625 per month) of 117 Captain Frank to determine the value of both parcels. *Poore testimony; Petitioner Ex. 1.*
  - b. The Respondent questioned the amounts used for the monthly rent. The Respondent suggested that the local market rent would be a better indication of value than the Petitioner's actual rent of 117 Captain Frank and that the market rents for subject area would be double amount used in Petitioner's calculations. *Watson testimony; McCarten testimony.* However, the Respondent did not present any evidence indicating the rent used by the Petitioner was not in line with the market rent of similar properties. In order to prove that a market rent is more appropriate for the calculation, the Assessor and PTABOA needed to offer that evidence and explain why it is more probative than actual rent. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003); *see also Canal Square Ltd. Pshp. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806 (Ind. Tax Ct. 1998). The Board will not reject evidence of actual rent solely on an assertion that "market rent is probably higher."
  - c. The Petitioner stated the 9% capitalization rate came from his experience in appraising rental property. *Poore testimony.* The Respondent disputed the 9% capitalization rate used by Petitioner and claimed the local market capitalization rate is different than said rate for other areas as in larger cities. *Watson testimony.* However, the Respondent did not present any evidence to show what the correct capitalization rate should be. The Board finds the mere assertion that a capitalization rate may be wrong is insufficient to rebut Petitioner's case. Respondent needed to present evidence showing a more appropriate capitalization rate and explaining why it should be used rather than 9%. *See, e.g., Meridian Towers*, 805 N.E.2d at 479.
  - d. The Board finds no evidence in the record to support the Respondent's contention that the \$625 per month rent does not represent the market rent in the subject area for similar properties. The Petitioner's statement that the \$625 per month rent was as much as he could obtain from the property is probative. The Petitioner also presented a signed lease agreement showing the actual rent was \$625 per month. *Petitioner Ex. 2.* The Respondent's statement regarding office space leasing for twice the amount received by the Petitioner is a conclusory statement, absent any evidence of other comparable properties rent per month. No such evidence was offered.
  - e. Due to the facts stated above, the Board finds the Petitioner's calculation of income capitalization and the sales comparison by use of the gross rent and gross income multipliers to be probative of an error in the Assessed Value. The Respondent did not

offer any evidence to rebut the Petitioner's prima facie case. Accordingly, the Board finds in favor of the Petitioner.

### **Conclusion**

16. The Petitioner presented a prima facie case that obsolescence existed and quantified that obsolescence. The Respondent failed to rebut the Petitioner's calculations. 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:** September 29, 2004

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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.**