

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

Petition No.: 48-003-08-1-4-00003
Petitioner: Basic American Convalescent Center
Respondent: Madison County Assessor
Parcel No.: 48-11-02-101-009.000-003
Assessment Year: 2008

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, Basic American Convalescent Center, through its tax representative, Paul Kropp of Kropp & Associates, appealed the assessed value of its property for the 2008 tax year with the Madison County Property Tax Assessment Board of Appeals (the “PTABOA”) by letter dated October 30, 2009.
2. The PTABOA failed to hold a hearing on the Petitioner’s appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1 (k) (“the county board shall hold a hearing on a review under this subsection not later than one hundred eight (180) days after the date of that notice.”)¹
3. The Petitioner’s representative therefore filed an appeal with the Board by filing a Form 131 on February 21, 2012. *See* Ind. Code § 6-1.1-15-1(o)(1) (“If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.”) The Petitioner’s representative elected to have the Petitioner’s case heard pursuant to the Board’s small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 9, 2012.
5. The Board held an administrative hearing on July 12, 2012, before the duly appointed Administrative Law Judge (the “ALJ”) Dalene McMillen.

¹ The PTABOA issued a Form 115 on September 12, 2011, on the Petitioner’s 2009 appeal, Petition No. 48-003-09-0-4-00051. *Petitioner Exhibit 6*. The Form 115 states in Section V “No change per County PTABOA for 08 or 09.” *Id.* However, the Form 115 does not make clear that it applies to Petition No. 48-003-08-0-4-00003 and, more importantly, there was no argument that the Petitioner’s 2008 appeal was untimely.

6. The following were present and sworn in at hearing:
 - a. For Petitioner: Paul Kropp, Kropp & Associates
 - b. For Respondent: Larry Davis, Madison County Assessor
Charles W. Ward, County Representative

Facts

7. The property at issue in this appeal is a nursing home located at 1809 North Madison Avenue, Anderson, in Madison County.
8. For 2008, the assessor determined the assessed value of the Petitioner's property to be \$10,700 for the land and \$2,772,600 for the improvements, for a total assessed value of \$2,783,300.
9. For 2008, the Petitioner's representative requested an assessed value of \$8,300 for the land and \$767,000 for the improvements, for a total assessed value of \$775,300.
10. The ALJ did not conduct an on-site inspection of the property under appeal.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:
 - a. The Petitioner's representative contends that the Petitioner's nursing home was assessed in error because another nursing home in the same neighborhood did not experience the same increase in its assessed value. *Kropp testimony; Petitioner Exhibit 5.* According to Mr. Kropp, the assessed value of a neighboring nursing home, Manor Care Health Services, increased less than \$100,000 between 2006 and 2009; whereas the Petitioner's property increased almost \$2,000,000 in that time period. *Kropp testimony; Petitioner Exhibit 8.* Mr. Kropp admitted that the subject property had been remodeled, but he argues that the increase was much more than just the value of the permits and the remodeling. *Kropp testimony.*
 - b. The Petitioner's representative also contends that the property's 2008 assessment should be lowered due to an error in the effective age of the building. *Kropp testimony; Petitioner Exhibits 3 and 4.* Mr. Kropp contends that the effective age of the Petitioner's property should not have changed from 32 years in 2007 to 11 years in 2008 after it was remodeled in 2007 because the number was arbitrary. *Id.; Petitioner Exhibits 3, 4 and 12.* According to Mr. Kropp, the county could have chosen an effective age of fifteen years or eighteen years or even nine years. *Kropp testimony.* Mr. Kropp testified that the Petitioner simply replaced the roof on the nursing home, replaced the windows in the building, installed new drywall and

- updated the electrical systems. *Id.* Mr. Kropp argues that the Petitioner’s building permit shows that the total cost of the remodeling was just under \$600,000. *Id.* Thus, while Mr. Kropp admits that the remodeling work increased the useful life of the property, he contends, the county had no basis for choosing an effective age of eleven years for the property. *Id.*
- c. In addition, the Petitioner’s representative contends that the assessor erred when he removed the 20% obsolescence depreciation from the Petitioner’s building. *Kropp testimony.* According to Mr. Kropp, the Petitioner’s nursing home is licensed for 125 beds. *Kropp testimony; Petitioner Exhibit 5.* However, Mr. Kropp contends, “C hall” is currently licensed but unoccupied. *Kropp testimony; Petitioner Exhibit 11.* In order to fill the beds, Mr. Kropp argues, the Petitioner would have to bring the quality of the “C hall” rooms to the quality of the rooms currently available to be occupied. *Kropp testimony.* In addition, Mr. Kropp argues, the “D hall” rooms were removed from service and converted to other uses for the nursing home, such as storage for old medical records. *Id.* Therefore, Mr. Kropp argues, the building should still be entitled to the 20% obsolescence depreciation. *Kropp testimony.*
 - d. Finally, the Petitioner’s representative argues that the Petitioner should not have the burden of proof in this proceeding. *Kropp testimony.* According to Mr. Kropp, the size of the building did not change. *Id.* The building was simply updated – as many buildings built in 1968 would require. *Id.* Therefore, Mr. Kropp argues, he “strongly believes” the assessor should have the burden to prove why the property’s assessment increased from \$775,300 to \$2,783,300. *Id.*
12. Summary of the Respondent’s contentions in support of the property’s assessment:
- a. The Respondent’s representative contends that the property under appeal is correctly assessed for the March 1, 2008, assessment. *Ward testimony.* According to Mr. Ward, the Petitioner applied for two building permits in 2007, representing improvements made to the property at an estimated cost of \$683,000. *Id.;* *Respondent Exhibits 3 and 4.* As a result of the building permits and a subsequent site visit to the property, Mr. Ward testified, the assessor removed the obsolescence depreciation and increased the economic life by twenty years. *Ward testimony;* *Respondent Exhibit 1.* Mr. Ward argues that he chose an effective age of eleven years based on his “professional opinion.” *Ward testimony.*
 - b. Similarly, the assessor contends the Petitioner’s property was valued using the cost approach outlined in the Real Property Assessment Guidelines. *Davis testimony.* According to Mr. Davis, as a result of the building permits and the site visit to the property the county concluded that the Petitioner’s property did not qualify for any

functional or external obsolescence. *Id.* The changes resulted in a value of \$2,783,300, or approximately \$66.11 per square foot for the building.² *Id.*

- c. In response to the Petitioner's representative's arguments, Mr. Ward contends that there is no utility storage pricing for a nursing home. *Ward testimony.* Mr. Ward testified that "a reasonable thing to use would be the GCM utility storage schedule" which would result in a cost of \$17.35 per square foot for wall type one and \$18.10 per square foot for wall type two. *Id.*
- d. Mr. Ward also argues Mr. Kropp's analysis comparing the subject property to the neighboring nursing home is flawed. *Ward testimony.* According to Mr. Ward, the neighboring nursing home has seven buildings with a total of 64,284 square feet. *Ward testimony; Petitioner Exhibit 7.* Mr. Ward contends based on the property's 2008 assessed value, the "main building" is assessed at \$69.45 per square foot and all the buildings together are assessed at \$39.73 per square foot. *Id.* The Petitioner's representative, on the other hand, is requesting that the Petitioner's nursing home and land be assessed at \$16.30 per square foot. *Ward testimony.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – 2007 income and expense statement for the Petitioner's property,

Petitioner Exhibit 2 – 2008 income and expense statement for the Petitioner's property,

Petitioner Exhibit 3 – Petitioner's property's 2008 property record card,

Petitioner Exhibit 4 – Petitioner's property's 2009 property record card,

Petitioner Exhibit 5 – "Nursing Home QuickCheck Report" from UCompare Health Care website,

Petitioner Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated September 12, 2011,

Petitioner Exhibit 7 – 2008 property record card for 1345 North Madison Avenue,

² The Respondent's witness testified to some analysis regarding adding the former depreciated assessed value per square foot ($\$52.47 \times .74 = \13.64) with the non-depreciated value per square foot because of the remodel ($\$52.47 \times .00 = \52.47) resulting in the new assessed value per square foot ($\$13.64 + \$52.47 = \$66.11$) as a "ballpark number" to provide a "rational and reasonable way of coming to an increase of twenty years' life expectancy." However, the Board had difficulty following the argument.

- Petitioner Exhibit 8 – 2009 property record card for 1345 North Madison Avenue,
- Petitioner Exhibit 9 – Notice of Hearing on Petition (By County Property Tax Assessment Board of Appeals) – Form 114, dated August 11, 2011,
- Petitioner Exhibit 10 – Letter from Paul Kropp, Kropp & Associates to Larry Davis, Madison County Assessor, dated March 15, 2012,
- Petitioner Exhibit 11 – Map of the facility layout in 2008 for the subject property,
- Petitioner Exhibit 12 – City of Anderson structural building permit application for the subject property, dated June 4, 2007,
- Petitioner Exhibit 13 – Appendix F, page 31 of REAL PROPERTY ASSESSMENT GUIDELINES – Version A,

- Respondent Exhibit 1 – Respondent’s “Actual Age calculation” on the subject property,
- Respondent Exhibit 2 – Petitioner’s property’s 2008 property record card,
- Respondent Exhibit 3 – Building permit application for the subject property, dated June 13, 2007,
- Respondent Exhibit 4 – Building permit application for the subject property, dated September 14, 2007,
- Respondent Exhibit 5 – Appendix F, page 28 of REAL PROPERTY ASSESSMENT GUIDELINES – Version A,

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his property’s assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment. *Id.*

³ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

15. Here, the Petitioner and the Respondent agreed that the property's value increased from \$775,300 in 2007 to \$2,783,300 in 2008. However, the evidence shows that the Petitioner's nursing home was significantly remodeled in 2007. According to the building permits, the Petitioner re-roofed the building, replaced the windows, updated the interior drywall and ceiling and floor finishes, updated the wiring in the building, and installed a central ventilation unit. While the Petitioner's representative admitted that updates were made to the property, he argued that the Petitioner was only performing normal maintenance and did not add to the size of the building. That the Petitioner was only performing normal maintenance on the building, however, does not rebut the evidence that there were significant improvements to the property.
16. Indiana Code § 6-1.1-15-17.2 applies where "the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property." Ind. Code § 6-1.1-15-17.2. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Therefore, because the property's 2008 assessment accounted for the improvements made to the property; whereas the property was not assessed for those updates in 2007, the assessor was not assessing the "same property" in 2008 as he did in 2007. Thus, Indiana Code § 6-1.1-15-17.2 does not apply in this case.
17. The Petitioner's representative failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of the Petitioner's property for 2008. The Board reached this decision for the following reasons:
 - a. 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 practices often will suffice. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (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.
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment date, the valuation date was January 1, 2007. 50 IAC 21-3-3.

- c. Here, the Petitioner's representative contends that the assessor erred when he changed the effective age of the building and removed the 20% obsolescence adjustment from the Petitioner's property in 2008. *Kropp testimony*. However, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*."). Thus, because the Petitioner's representative failed to sufficiently prove the market value-in-use of the subject property, Mr. Kropp's contentions that the assessor erred in his method of assessing the property fails to raise a prima facie case that the Petitioner's property's assessed value should be reduced for the 2008 assessment year.
- d. The Petitioner's representative also contends that Petitioner's property is over-valued based on the assessed value of a neighboring nursing home. *Kropp testimony*. In support of this contention, Mr. Kropp submitted a "Nursing Home QuickCheck Report" from UCompare Health Care website and property record cards. *Petitioner Exhibits 4, 5 and 8*. 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 are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner's representative made no attempt to show that the properties were comparable. He merely testified that both properties are nursing homes located in the same neighborhood. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See e.g. Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Thus, the Petitioner failed to raise a prima facie case that its property was over-valued.
- e. To the extent that the Petitioner's representative can be seen as arguing that the neighboring nursing home was assessed differently than the property under appeal, this argument also fails to show an error in the Petitioner's property's assessment. Under Indiana Code § 6-1.1-15-18, a party may introduce evidence of the assessments of any relevant, comparable property. Ind. Code § 6-1.1-15-18. The determination of whether properties are comparable, however "shall be made using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18. Because the Petitioner's representative did not use generally accepted appraisal or

assessment practices when comparing the Petitioner's property with the neighboring nursing home, the Petitioner's representative failed to show any error in the Petitioner's property's assessment.

- f. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Petitioner failed to establish a prima facie case that its property was over-valued for the March 1, 2008, assessment year. The Board finds in favor of the Respondent.

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 Petitioner's property should not be changed.

ISSUED: September 24, 2012

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 pursuant to 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 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/bills/2007/SE0287.1.html>.