

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

Petition Nos.: 53-008-06-1-4-00033
53-008-07-1-4-00058
Petitioner: Bloomington Country Club
Respondent: Perry Township Assessor
Parcel No.: 014-02420-00
Assessment Year: 2006 and 2007

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's representative initiated assessment appeals with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated December 21, 2006, for tax year 2006, and January 14, 2008, for tax year 2007.
2. The Petitioner received notice of the decisions of the PTABOA via Form 115s Notification of Final Assessment Determinations dated June 14, 2007, for tax year 2006 and June 13, 2008, for tax year 2007.
3. The Petitioner's representative initiated an appeal to the Board by filing a Form 131 dated July 23, 2007, for tax year 2006, and June 27, 2008, for tax year 2007. The Petitioner elected to have these cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated November 19, 2008.
5. The Board held an administrative hearing on January 14, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Michael Caron, Attorney
 - b. For Respondent: Marilyn Meighen, Attorney for Monroe County
Judith Sharp, Monroe County Assessor

FACTS

7. The property under appeal is an improved commercial parcel located at 3000 South Rogers Street, Perry Township, in Monroe County, 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 \$574,300 for the land and \$2,472,400 for the improvements, for a total assessed value of \$3,046,700 for 2006; and \$574,300 for the land and \$2,323,300 for the improvements, for a total assessed value of \$2,897,600 for 2007.
10. The Petitioner requested a total assessed value of \$2,567,500 for 2006 and \$2,661,000 for 2007.

PETITIONER'S CONTENTIONS

11. The Petitioner contends the Respondent assessed the appealed property for more than its market value-in-use. *Caron argument*. According to the Petitioner, the real property appraised for \$2,700,000 as of May 22, 2006.¹ *Id.* In support of its position, the Petitioner submitted an appraisal report prepared by John C. Snell, MAI, of Snell Real Estate Evaluation Co., Inc. *Petitioner Exhibit 7*. Mr. Snell is an Indiana Certified General Appraiser. *Id.* In his May 30, 2006, report, Mr. Snell certified that the appraisal conforms to the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.*
12. In order to relate the property's May 22, 2006, appraised value to the January 1, 2005, and January 1, 2006, valuation dates for the March 1, 2006, and March 1, 2007, tax years respectively, the Petitioner's representative applied the United States Department of Labor (USDOL) Consumer Price Index Value Trending Calculator. *Caron argument*. The resulting calculation valued the property for \$2,567,500 for 2006, \$2,661,000 for 2007. *Petitioner Exhibits 4, 5 & 6*.

RESPONDENT'S CONTENTIONS

13. The Respondent argues that the Petitioner's appraisal is merely an estimate of value based on the appraiser's opinions and judgments. *Meighen argument*. In support of this contention, Ms. Meighen notes that the appraiser estimated the value of the property under the sales comparison approach to be \$3,000,000 and estimated the value of the property under the income approach to be \$2,650,000. *Id.* Thus, the Respondent concludes, the property's 2006 and 2007 assessed values are correct because they fall into the same range of values found by the appraiser. *Meighen argument*.

¹ The appraisal valued the property for \$2,900,000 but included \$200,000 in personal property in that valuation. *Caron argument; Petitioner Exhibit 7*.

14. The Respondent further contends that some costs taken as expenses in the appraisal, specifically a \$249,000 extra fire expense, might be a capital expense and not applicable here. *Meighen argument.*
15. Finally, the Respondent contends that the Petitioner's appraisal values verify the county's values, which are based on the cost of construction of the property. *Sharp argument.* According to Ms. Sharp, the cost approach is another acceptable value approach that should have been considered here because improvements on the parcel were reconstructed in 2006 following a fire. *Id.*

RECORD

16. The official record for this matter is made up of the following:
 - a. The Petition and related attachments,
 - b. The digital recording of the hearing labeled 53-008-06-1-4-000033 & 00058 Bloomington County Club,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Copy of subject property's property record cards,
 - Petitioner Exhibit 2 – Copy of Form 115 for tax year 2006,
 - Petitioner Exhibit 3 – Copy of Form 115 for tax year 2007,
 - Petitioner Exhibit 4 – Calculations for trending for 2006 based on CPI,
 - Petitioner Exhibit 5 – Calculations for trending for 2007 based on CPI,
 - Petitioner Exhibit 6 – Copy of USDL's CPI data,
 - Petitioner Exhibit 7 – Appraisal of subject property prepared by John C. Snell,
 - Respondent Exhibits – None,
 - Board Exhibit A – Form 131 petition and related attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
 - d. These Findings and Conclusions.

ANALYSIS

17. 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.
18. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its “true tax value.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). True tax value is “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, for the property.” *Id.* A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property IV*, 836 N.E.2d at 505, 506 n.1.
 - b. In addition, the 2006 assessment is to reflect the value of the property as of January 1, 2005, and the 2007 assessment is to reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. Here the Petitioner presented an appraisal that estimated the value of the real property to be \$2,700,000 as of May 22, 2006. *Petitioner Exhibit 7; Caron testimony*. The appraiser estimated the value of the property using the sales comparison and income approaches to value and the appraiser attested that the appraisal was prepared in accordance with USPAP standards. *Id.* The Petitioner related the May 22, 2006, appraised value to the January 1, 2005, and January 1, 2006, valuation dates by applying the change in the consumer price index during those periods. *Caron argument; Petitioner Exhibits 4, 5 & 6*. The resulting calculation valued the property for \$2,567,500 as of January 1, 2005, for the 2006 tax year, and \$2,661,000 as of

January 1, 2006, for the 2007 tax year. *Petitioner Exhibits 4, 5 & 6*. Thus, the Petitioner raised a prima facie case that its property was over-valued for 2006 and 2007.

- d. 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 inc. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise their prima facie case.
- e. Here the Respondent defended the county's assessments by merely contending the assessments fall within the range of the appraiser's values and that the assessments are based on the cost approach-to-value, which is another acceptable valuation method. Such testimony is not compelling evidence. Further, while the Respondent's contentions aimed at the Petitioner's appraisal raise some questions about acceptable expenses, they fail to substantially impeach the credibility of that appraisal. Just as the Petitioner has a two-pronged obligation to disprove an assessment and to prove a correct assessment if he is to succeed in his appeal, once the Petitioner raises a prima facie case its property is over-valued, the Respondent must do more than raise questions about that evidence.

CONCLUSION

- 19. The Petitioner raised a prima facie case that the appealed property was over-valued. The Respondent failed to rebut or impeach the Petitioner's evidence. Thus, the Board finds in favor of the Petitioner and holds that the market value-in-use of the subject property is \$2,567,500 for 2006, and \$2,661,000 for 2007.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessments should be changed.

ISSUED: April 7, 2009

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>.