

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

Petition: 10-005-09-1-4-10004
Petitioner: Clark Rehab
Respondent: Clark County Assessor
Parcel: 10-14-01-801-553.000-012
Assessment Year: 2009

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Clark County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 12, 2010.
2. The PTABOA mailed notice of its decision, Form 115, on November 24, 2010.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131, on January 3, 2011. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on May 17, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 11, 2012. He did not inspect the property.
6. Paul Kropp, a certified tax representative, represented the Petitioner and was sworn as a witness. Attorney Marilyn Meighen represented Clark County Assessor Vicky Kent Haire. Charles Mills, Jr., a real estate appraiser and certified tax representative, was sworn as a witness for the Respondent.

Facts

7. The subject property is a nursing home located at 517 Hallmark Boulevard, Clarksville.
8. The PTABOA determined the assessed value is \$420,100 for the land and \$2,803,200 for improvements (total \$3,223,300).
9. On its Form 131 petition the Petitioner claimed the total assessed value should be \$2,063,100.

Record

10. The official record for this matter contains the following:
- a. The Form 131 Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Reasons for appeal,
Petitioner Exhibit 2 – Department of Local Government Finance sales disclosure form for the subject property,
Petitioner Exhibit 3 – Comparable sales data,
Petitioner Exhibit 4 – Several emails,
Petitioner Exhibit 5 – Photograph of the subject property and adjacent property,
Petitioner Exhibit 6 – Subject property record card,
Petitioner Exhibit 7 – Property record card for adjacent property,
Petitioner Exhibit 8 – Google earth photograph of the subject area,
Petitioner Exhibit 9 – Summary of assessed values of American Senior Communities' nursing homes, Chicago Title Insurance estimated buyer's /borrower's settlement statement and assessment data sheet, Vigo County assessment data sheet for a Terre Haute nursing home,
Respondent Exhibit A – Property record card for the subject property,
Respondent Exhibit B – December 16, 2010, email to the Clark County Assessor from Paul Kropp,
Respondent Exhibit C – Sales disclosure form for the subject property,
Respondent Exhibit D – Comparable sales data grid with supporting documents,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:
- a. The Petitioner purchased the subject property on December 30, 2008. The Petitioner paid \$3,575,000. This amount included \$655,000 worth of personal property. *Kropp testimony; Pet'r Ex. 2.*
 - b. As a result of an informal conference between the parties, the Respondent changed the land rate from \$500,000 per acre to \$100,000 per acre. To keep the total assessment approximately the same, however, the Respondent increased the improvement value by a similar amount as the land value reduction. *Kropp testimony; Pet'r Ex. 4.*

- c. To be relevant, sales need to be from the period January 2008 to February 2009. Of the sales of nursing homes identified by the Respondent, only the Petitioner's purchase in December 2008 falls within the correct time period. *Kropp testimony; Pet'r Ex. 3.*
- d. American Senior Communities operates twenty facilities outside of Indianapolis that have an average assessment of \$17,583 per bed. *Kropp testimony; Pet'r Ex. 9.*
- e. The New Albany sale of \$13,227 per bed is the property located closest to the Petitioner's facility and is a good comparable. *Kropp testimony; Pet'r Ex. 3.*
- f. Spring Mill, a facility in Terre Haute with 99 beds, sold for \$2,250,400. The Rensselaer Care Center was appraised for less than \$25,000 per bed. *Kropp testimony.*
- g. A good figure to use for the Petitioner's property would be in the range of \$20,000 per bed. *Kropp testimony.*
- h. By using the actual sales price of the Petitioner's parcel, the assessing officials engaged in sales chasing. *Kropp testimony.*

12. Summary of the Respondent's case:

- a. Based on prior State Tax Court decisions, the sale price of a property is the best indication of its value. *Meighen argument, citing Hubler Realty Co. v. Hendricks Co. Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). The Petitioner purchased the subject property for \$3,575,000 on December 31, 2008. *Resp't Ex. C.*
- b. Eleven sales of comparable properties occurred in Indiana from July 2000 to December 2009. The sales were confirmed by appraisers and each sale is supported by data sheets located behind the sale grid. The sale price per bed ranges from \$13,227 to \$56,634. The mean price per bed for these properties is \$35,986 and the median price per bed is \$38,949. *Mills testimony; Resp't Ex. D.*
- c. In these sales approximately ten percent of the total sale price was attributable to the personal property items of furniture, fixtures, and equipment (FF & E). The purchase price of the Petitioner's property (\$3,575,000) reduced by ten percent would be an adjusted sale price of \$3,217,500. Using this amount results in a per bed value of \$32,175 for the Petitioner's 100-bed facility, an amount slightly below the mean and median sale price per bed for the eleven comparable sales. *Mills testimony; Resp't Ex. D.*
- d. The elderly housing market and apartments are two types of properties that have been very stable from 2006 to the present time. Sales that are two to three years

old represent current sales based on generally accepted appraisal practice. *Mills testimony*.

- e. Potential buyers will look at the income potential of property when making purchase decisions. To do so, the subject property's income and expenses are compared to the market's income and expenses. *Mills testimony*.

Burden

- 13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if 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. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

I.C. § 6-1.1-15-17.2.

- 14. In this appeal, both parties agreed that the Respondent has the burden to prove the assessment is correct.

Analysis

- 15. Real property is assessed based on its "true tax value," which means "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." 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. Indiana assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Other evidence relevant to market value-in-use can rebut that presumption. That evidence may include actual construction costs, sales information regarding the subject or

comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

16. To be relevant, the record must somehow establish how the evidence relates to 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 Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2009 assessment, the valuation date is January 1, 2008. 50 IAC 21-3-3 (2009).
17. The subject property is assessed at \$3,223,300. The Respondent, however, presented no evidence or substantial argument to support that figure. Most of the Respondent's case attempted to support a valuation of \$3,217,500.
18. The Respondent correctly pointed out that many cases have recognized an arm's-length sale of the subject property as the best evidence of its market value-in-use. *Hubler Realty Co. v. Hendricks Co. Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Most of those cases have been situations where nothing but the real estate itself was involved in the transaction. In situations where more than the value of the real property is represented in the selling price, it is necessary to determine the part of the selling price that actually is for the real property. *See Grant Co. Assessor v. Kerasotes Showplace Theatres*, 955 N.E.2d 876, 881-2 (Ind. Tax Ct. 2011) (recognizing that Indiana's assessment system "does not 'allow [] assessors to assess things other than real property rights for ad valorem taxation.'") This case analysis requires recognition and application of that same limitation. Therefore, relying on the sale price of the subject property to prove an accurate assessed value is not always as simple as it might first appear.
19. In this case there is no dispute that that in December 2008 the Petitioner paid \$3,575,000 in a transaction where it acquired the subject property. But there is also no dispute about the fact that that total included some amount for value other than the real property itself. The sales disclosure form says that amount was \$655,000.¹ If that amount were deducted, the purchase price of the real estate would be \$2,920,000.
20. According to the Respondent, however, the amount of that deduction should be much less than the figure reported on the sales disclosure form. The Respondent relied on Mr. Mills' testimony and the data he gathered about other nursing home sales in attempting to prove that an appropriate deduction would only be 10% (\$357,500) of the total transaction.² Although Mr. Mills testified about his credentials as an appraiser, he explained that he had not done an appraisal of the subject property and was not testifying as an appraiser: "All I am doing is presenting data. I did not do an appraisal on the property and it would be wrong for me to indicate that I am testifying here ... as an appraiser." Mr. Mills compared data from the sales of eleven other nursing homes with

¹ The form lists \$655,000 as the estimated value of personal property, but also states that personal property includes \$392,000 of "goodwill." Respondent Exhibit C, the actual sales disclosure form, shows the buyer certified "under penalties of perjury" that the form is true, correct and complete as required by law.

² With that deduction, the adjusted sale price of the subject property would be \$3,217,500—the assessment figure now proposed by the Respondent.

data from the purchase of the subject property. Respondent Exhibit D contains a summary of his comparison data as well as several pages of supporting data. For the Respondent's position, the most important part of this evidence is Mr. Mills' conclusion that the eleven other sales indicate the deduction from the total purchase price should be only 10% for furniture, fixtures, and equipment (FF&E). Even though Mr. Mills testified that things such as age and type of equipment are a "very major factor" in determining FF&E value, there is no evidence that his 10% conclusion is based on a substantial, meaningful, detailed comparative analysis of the FF&E in those comparables and the subject property. In fact, it appears that Mr. Mills simply accepted the FF&E amounts most of those other buyers estimated. Furthermore, his supporting data shows a tremendous range on the percentage of FF&E. For example, in one sale the total price was \$4,160,000 while the FF&E amount was \$1,074,564 and in another sale the total price was \$9,000,000 while the FF&E was \$108,435. It might be true that the average reported FF&E figure for those sales is somewhere around 10%, but the Respondent failed to establish that such methodology conforms to generally accepted appraisal principles for valuing the real property. Ultimately, determining a proposed valuation by simply deducting 10% for FF&E from the Petitioner's purchase price is not credible or probative evidence. It does not help to prove what an accurate valuation of the subject property is.

21. Furthermore, the attempt to compare the per bed value derived from that calculation to per bed values derived from similar calculations for other facilities without providing a meaningful comparison of the similarities and differences of the facilities does not provide probative information. *Long*, 821 N.E.2d at 471. Even if it is true that other facilities have sale prices that range from \$13,227 to \$56,634 per bed and the purported mean and median values claimed by Mr. Mills are accurate and the Respondent's proposed valuation falls slightly below both the mean and the median values, that point does not help to prove that a value of \$32,175 per bed for the subject property is actually accurate.
22. The Respondent failed to make a prima facie case to support the current assessed value. The Respondent failed to make a prima facie case to support a value of \$3,217,500.
23. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden the Board has ordered that the assessment be returned to the assessed value of the year before. In this case doing so would reduce the assessment to \$1,746,800. But that amount is less than the Petitioner claimed on its Form 131, which claimed the total assessment should be \$2,063,100, or at the hearing, where the Petitioner claimed the total assessment should be in the \$20,000 per bed range. In other cases the Board has determined that it will not reduce the assessment to less than a petitioner requested. *See Castleman v. Steuben Co. Assessor*, Petition No. 76-006-08-1-5-00001 (IBTR decision issued Feb. 6, 2012). A similar conclusion is appropriate for the case now before us.

Conclusion

24. The Respondent had the burden to prove the market value-in-use of the subject property, but failed to do so. Therefore, the total 2009 assessment will be reduced to the value requested in the Petitioner's Form 131.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to \$2,063,100.

ISSUED: Oct 9, 2012

Blust B. Swank
Commissioner, Indiana Board of Tax Review

[Signature]
Commissioner, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

- 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>