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

Petition No.: 41-009-09-1-4-01392
Petitioner(s): Coutar Remainder VI LLC
Respondent: Johnson County Assessor
Parcel No.: 41-08-14-032-016.999-009
Assessment Year: 2009

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 Johnson County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated June 7, 2010.

2. The PTABOA mailed notice of its decision, Form 115, on April 29, 2011.

3. The Petitioner appealed to the Board by filing a Form 131 Petition for Review of Assessment and elected to have this case heard according to small claims procedures.

4. The Board issued its notice of hearing on July 20, 2012.

5. Administrative Law Judge Jaime S. Harris held the Board's administrative hearing on August 30, 2011. There was no inspection of the property in connection with this appeal.

6. Certified tax representative Milo Smith represented the Petitioner and was sworn as a witness. Michael Watkins, a full time employee for the Johnson County Assessor's Office, represented the assessor and was sworn as a witness. Certified tax representative Dean Layman was sworn but did not testify.

Facts

7. The subject property is a gas station/convenience store situated on leased land and located at 349 North Morton Street in Franklin.

8. The PTABOA determined the assessed value for the subject property is $340,700 (improvements only).

9. The Petitioner did not specify an assessed value for 2009.

Record

10. The official record contains the following:

    a. Form 131 Petition,

    b. Digital recording of the hearing,

    c. Petitioner Exhibit 1 – Property Record Card (PRC) for the subject property,
    Petitioner Exhibit 2 – Summary sheet of comparables with attached "Parcel Reports" and GIS map,
    Petitioner Exhibit 3 – Stipulation Agreement regarding the subject property for 2008,[1]
    Petitioner Exhibit 4 – Notice of Hearing,
    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 parties signed a stipulation agreement on the subject property for the previous year that shows an agreed upon assessed value of $234,900 for 2008. *Smith testimony; Pet'r Ex. 3.*

    b. Comparable properties were not assessed in the same manner as the subject property. Based upon §6-1.1-4-4.5 ("the annual adjustment rule"), the assessed value of the subject property should have been adjusted in the same manner using the same mathematical calculations as the 13 comparable properties in the same neighborhood. A GIS map shows the subject property and 13 neighboring parcels located in the surrounding area. The attached parcel reports illustrate the following percentage changes for each of the comparables from 2008 to 2009:

        (1) Parcel 1 assessed value increased 6.7%;
        (2) Parcel 2 assessed value decreased by 11%;
        (3) Parcel 3 assessed value increased 13.8%;

[1] Respondent objected to the stipulation agreement for 2007 being entered into the record and to Mr. Smith's testimony regarding the same. Watkins quoted from a prior final determination of the Indiana Board of Tax Review to keep the agreement out of evidence. In *Mac's Convenient Stores, LLC*, the Board stated, "Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). *Mac's Convenient Stores, LLC* Petition No's. 41-025-08-1-4-00959 and 41-025- 09-1-4-01386 (IBTR decision issued July 25, 2012). Mr. Smith represented the petitioner in *Mac's Convenient Stores, LLC*. He should be fully aware that he cannot use the stipulation agreement as evidence in the case at hand. Respondent's objection is sustained. Petitioner Exhibit 2 will not be considered any further in determining the outcome of this case.

(4) Parcel 4 assessed value increased 4.6%;
(5) Parcel 5 assessed value did not change;
(6) Parcel 6 assessed value did not change;
(7) Parcel 7 assessed value did not change;
(8) Parcel 8 assessed value increased 16.7%;
(9) Parcel 9 assessed value did not change;
(10) Parcel 10 assessed value did not change;
(11) Parcel 11 assessed value did not change;
(12) Parcel 12 assessed value decreased 25%;
(13) Parcel 13 assessed value did not change.

The assessed value of the subject property increased 23% from 2008 to 2009. That change is more than all of the above listed neighboring properties. *Smith testimony; Pet'r Ex. 1; Pet'r Ex. 2.*

c. 2009 was an annual adjustment year. Annual adjustments should be reflective of the market and should look at the percent assessed values have increased or decreased based on the market. This process did not occur for the subject property's assessment in 2009. The property's assessment increased from the original value of $234,900 in 2007 to $340,700 in 2009. There is nothing in the record to show that factors were applied uniformly and equally to any of the above mentioned properties or in the same manner. *Smith testimony; Pet'r Ex. 1; Pet'r Ex. 2.*

d. Gas stations/convenience stores should not be assessed differently than other neighboring commercial properties. Improvements are assessed based on what it would cost to rebuild that structure minus depreciation. The properties in the neighborhood are also adjusted based upon sales. The subject property should be assessed the same as the 13 comparables, because they are all in the same neighborhood and are all commercial properties. One should not adjust only the gas station/convenience stores in the neighborhood, but instead should adjust all commercial properties in the same manner with the same mathematical calculations. *Smith testimony.*

12. Summary of the Respondent's case:

a. The assessed value of $340,700 is excessive for the 2009 assessment. The 2009 assessed value should be reduced to the certified value of the year prior, which was $274,900. *Watkins testimony.*

b. A tax representative does not have the proper certification or license to argue uniform application or to reliably determine the value of property. On cross-examination, Mr. Smith admitted that he is not licensed to practice law in Indiana. Tax representatives are forbidden from bringing up uniform application unless they are attorneys. Mr. Smith is a level 2 assessor/appraiser and has not taken the Uniform Standards of Professional Appraisal Practice (USPAP) class or test. The only certification Mr. Smith has relative to determining the value of property is a real estate brokers' license. *Watkins argument; Smith testimony.*

c. On cross-examination, Mr. Smith admitted that he has a financial interest in the outcome of this case as he only earns a fee from Petitioner if he is successful in reducing the assessed value of the property. *Watkins argument; Smith testimony.*

d. Declaring a property as a comparable does not make it a comparable. The 13 properties Petitioner used in his analysis of assessed values are not comparable to the subject property. The subject property is a gas station/convenience store, while the comparables used by Petitioner include a yogurt stand, florist, fast food restaurants, and a bowling alley. These are not comparable to a gas station as far as market value in use to the current owner for the current purpose. Petitioner did not have any information relating to properties that had improvement values of only gas station/convenience stores. *Watkins testimony; Pet'r Ex. 2.*

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. Both parties agreed the Respondent has the burden of proof in this case.

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. The primary method for assessing officials to determine market value-in-use is 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. Additional relevant 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. Initially it was Respondent's burden to prove the 2009 assessment was correct given that the assessment increased by more than 5%. Respondent, however, agreed that the 2009 assessment was excessive and should be reduced to the prior year's assessed value. Then, because Petitioner requested a lesser value than the prior year's assessment, it became Petitioner's burden to establish a lesser amount by making a prima facie case.

17. Comparing assessments without relating those amounts to actual market value-in-use is not probative. The Petitioner argued that the subject property was assessed in excess of the assessed values of neighboring properties. This argument, however, is insufficient to show an error in an assessment. *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In *Westfield Golf*, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the property's market value-in-use. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioner here only argued that the method of the Petitioner's assessment was not uniform or equal.

18. Petitioner failed in his attempt to make a case based on lack of uniformity and equality.[2] According to the Tax Court, "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf*, 859 N.E.2d at 399 n.3. Such studies, however, must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Such studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632

[2] As a tax representative, Mr. Smith may be engaging in the unauthorized practice of law. The Board's procedural rules for small claims allow parties to appear by "any representative expressly authorized by the party…." 52 IAC 3-1-4(a). The Board's rules concerning tax representatives, however, also apply to small claims procedures. 52 IAC 3-1-4(b). Therefore, Petitioner and Mr. Smith were required to comply with the limitations concerning the scope of representation by tax representatives set forth in 52 IAC 1. A tax representative cannot practice before the board regarding claims of the constitutionality of an assessment or any other representation involving the practice of law. 52 IAC 1-2-1(b)(3) and (4). While he did not specifically say the assessment was unconstitutional, Mr. Smith's argument regarding lack of uniformity and equality appears to be in reference to the Indiana Constitution. "Article X, Section 1 of the Indiana Constitution requires "…a uniform and equal rate of property assessment and taxation and … regulations to secure a just valuation for taxation of all property….." IND. CONST. ART. 10, § 1(a). This provision has long been held to require: (1) uniformity and equality in assessment, (2) uniformity and equality as to the rate of taxation, and (3) a just valuation for taxation of all property. *See Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224, 1228 (Ind. Tax Ct. 1998) (citation omitted)." *Westfield Golf*, 859 N.E.2d at 397. The Board is not saying whether Mr. Smith's argument does or does not cross the line of the illegal practice of law, but it is clearly getting close. Regardless, whether Mr. Smith was or was not authorized to make such an argument does not make a difference, because he ultimately loses the argument of lack of uniformity and equality.

So.2d 272, 276 (Fla. Dist. Co. App. 1994). The Petitioner failed to establish that the 13 other assessments it relied on satisfy this requirement.

19. Petitioner failed to show the comparability of the neighboring properties. By comparing the assessed value of the subject property to the assessed values of comparable properties, the Petitioner essentially relied on a "comparison" method of establishing the market value of its property. In order to effectively use a comparison as evidence in property assessment appeals, however, a party must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioner merely offered a summary sheet and property data cards for each of the properties and testified regarding each assessed value. This falls far short of the showing required to prove the properties are comparable.

20. Unfortunately, both parties failed to provide the kind of detailed analysis that would assist the Board in reaching a conclusion in this case. The Petitioner did not prove that the value should be any lower.

21. The assessor admitted the assessment should be reduced to the assessed value of the year before. In this case, doing so will reduce the assessment to $274,900.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to the assessed value of the year before, which is $274,900.

ISSUED: October 30, 2012

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.