

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

Petition No.: 53-009-06-1-4-00041
Petitioners: Crosley South Rogers Street Corp.
Respondent: Monroe County Assessor¹
Parcel No.: 015-13025-00
Assessment Year: 2006

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

PROCEDURAL HISTORY

1. The Petitioner challenged the subject property’s assessment by filing a Form 130 petition with the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”).
2. On June 14, 2007, the PTABOA issued its determination denying the Petitioner relief.
3. On July 19, 2007, the Petitioner appealed to the Board by filing a Form 131 petition. The Petitioner elected to have this case heard according to the Board’s small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 19, 2008.
5. On January 13, 2009, the Board’s duly appointed Administrative Law Judge, Rick Barter (“ALJ”), held a hearing.
6. Marilyn Meighen appeared as counsel for the Respondent. The following people were sworn in at hearing:
 - a. For Petitioners: Gregory A. Poore, Tax Representative
 - b. For Respondent: Ken Surface, Contractor for Monroe County
Judith Sharp, Monroe County Assessor

¹The Perry Township Assessor made the original assessment determination under appeal. Thus, under Ind. Code 6-1.1-15-3(b), as it existed at the time of the PTABOA decision, the Perry Township Assessor was the statutorily designated respondent. *See* I.C. 6-1.1-15-3(b)(2006); P.L. 219-2007 § 156(c). But on January 1, 2009, the Perry Township Assessor’s duties under Ind. Code § 6-1.1, were transferred to the Monroe County Assessor. *See* I.C. § 36-2-15-11. The Monroe County Assessor is therefore the Respondent.

FACTS

7. The subject property is a commercial property improved with an industrial warehouse. It is located at 1525 S. Rogers Street in Bloomington.
8. The ALJ did not inspect the property.
9. The PTABOA determined the following values for the subject property:
Land: \$570,000 Improvements: \$263,300 Total: \$833,300.
10. The Petitioner requested the following values:
Land: \$346,200 Improvements: \$0 Total: \$346,000.

PETITIONER'S CONTENTIONS

11. The Petitioner bought the subject property hoping that RCA and other large manufacturers in Bloomington would use it as a warehouse. RCA has since torn down its factory. And the property's location near Bloomington's central business district no longer lends itself to warehouse operations. The property has generated no income since 2003. Although the Petitioner would be better served by demolishing the warehouse, it cannot afford the estimated \$3-per-square-foot demolition cost. As things stand, the improvements are worthless and actually detract from the land's value. *Poore testimony.*
12. Also, the subject property's land assessment is too high. The Multiple Listing Service ("MLS") listed six tracts of industrial land that sold from 2004 – 2005. *Poore testimony; Pet'r Ex. 3.* Their sale prices ranged from \$8,594 per acre to \$83,333 per acre. *Id.* Of those sales, the tract located at 2100 Industrial Drive was close to the subject property's size and was the most similar to the subject property. That tract sold for \$62,121 per acre. When applied to the subject property's 5.7 acres, that rate translates to an overall value of \$346,200. *Poore testimony.*
13. From 1998 forward, the Petitioner has continually tried to lease out the subject property. Through MLS, the Petitioner listed the space at \$2 per square foot, although it recently lowered that rate to \$1.50 per square foot. *Poore testimony; Pet'r Ex. 3.* Those listings, however, generated few tenants, and the property has been vacant since 2003. *Poore testimony.* Also through MLS, the Petitioner actively listed the property for sale from 1998 forward. The Petitioner originally asked for \$3 million, although it lowered that asking price to \$2 million in November 2004. *Poore testimony; Pet'r Ex. 3.* Those sale listings generated no interest. *Poore testimony.*
14. While the Respondent pointed to the Petitioner's \$2 million asking price the property's dismal leasing history is better evidence of its value. *Poore argument.* Similarly, while the Respondent cited to a contiguous property that the Petitioner sold for \$1.35 million, that property was not comparable to the subject property. The contiguous property's building had far more office space and was in much better condition than the subject

building. The contiguous property also had several leases in place. Those differences made the contiguous property more valuable than the subject property. *Id.*

RESPONDENT'S CONTENTIONS

15. The subject property is properly assessed. The 2002 Real Property Assessment Manual says that a property's asking price best indicates its true tax value. *Meighen argument.* And the subject property is assessed for only 60% of the Petitioner's \$2 million asking price. *Id.*; *Resp't Ex. 2.* Also, on November 24, 2004, the Petitioner sold a contiguous property for \$1,350,000. Like the subject property, that property had a warehouse. *Surface testimony; Resp't Ex. 4.*
16. While the Petitioner compared the subject property to several other MLS-listed properties, none of those other properties was located in the subject property's immediate area. *Surface testimony.* The contiguous property's sale price therefore offers better evidence of the subject property's value. *Meighen argument.*

RECORD

17. The official record for this matter is made up of the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Copy of Form 131 petition,
 - Petitioner Exhibit 2 – Copy of Form 130 petition to the PTABOA,
 - Petitioner Exhibit 3 – Six listings from MLS,

 - Respondent Exhibit 1 – Property record card for the subject property,
 - Respondent Exhibit 2 – Seven listings from MLS,
 - Respondent Exhibit 3A – Aerial photograph titled "Map 1,"
 - Respondent Exhibit 3B – Photograph of warehouse on contiguous property,
 - Respondent Exhibit 3C – Photograph of subject warehouse,
 - Respondent Exhibit 4 – Sales disclosure form for warehouse at 301 W. Grimes Lane,²

 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of hearing,
 - Board Exhibit C – Hearing sign-in sheet.
 - d. These Findings and Conclusions.

² The Respondent withdrew its Exhibit 5.

ANALYSIS

18. The most applicable governing cases are:
- a. A petitioner seeking review of an assessing official's determination 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.
19. The Petitioner failed to make a prima facie case for reducing the subject property's assessment. The Board reaches this decision for the following reasons:
- a. 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). In conducting mass appraisals, assessors normally use the Real Property Assessment Guidelines for 2002-Version A. And a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). To rebut that presumption, a taxpayer may use relevant evidence that is consistent with the Manual's definition of true tax value, such as actual construction costs, market-value-in-use appraisals, sales information regarding the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.* at 678; *see also* MANUAL at 5.
 - b. Here, the Petitioner offered little market-value-in-use evidence to rebut the presumption that the subject property was accurately assessed. The Petitioner relied largely on Mr. Poore's testimony about changes in the market for warehouses and the Petitioner's inability to rent the property since 2003. In Mr. Poore's view, those things made the subject building a detriment to the property's overall value.
 - c. The Petitioner's lack of success in renting the subject property likely did affect its value. But, to quantify that effect, the Petitioner needed to offer probative evidence

beyond Mr. Poore's conclusory assertion that the building is worthless. And it did not offer any.

- d. Even if the building was worthless, the Petitioner offered no probative evidence to show that the property's overall assessment was inaccurate. Mr. Poore did point to six parcels of vacant industrial land that sold from 2004 – 2005, focusing on 2100 Industrial Drive, which sold for the equivalent of \$62,121 per acre. Mr. Poore, however, did nothing to compare any of those vacant properties to the subject property, other than to note their respective sizes and their similar industrial uses. And he did not adjust any of the sale prices to reflect relevant ways in which the sold properties differed from the subject property. Those sale prices therefore lacked probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax. Ct. 2005) (rejecting taxpayers' sales-comparison evidence where taxpayers failed to explain how properties were comparable or how any relevant differences affected their relative market values-in-use).
- e. Finally, the Board notes that, since November 2004, the Petitioner has listed the subject property for sale with an asking price of at \$2 million. While that asking price arguably set the upper limit of the property's value as of the relevant January 1, 2005, valuation date, it did little to show what, specifically, the property was worth. That asking price, however, does cast serious doubt on the Petitioner's claim that the property was worth less than its \$833,300 assessment. And it is completely at odds with the Petitioner's claim that the property should have been assessed for only \$346,000.

CONCLUSION

20. Because the Petitioner offered no probative market-value-in-use evidence to rebut the presumption that the subject property was accurately assessed, it failed to make a prima facie case. The Board therefore finds for the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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>.