

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

Petition No.: 64-004-07-1-4-00014
Petitioner: European Style Salon and Day Spa
Respondent: Porter County Assessor
Parcel No.: 64-09-24-313-008.000-004
Assessment Year: 2007¹

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 Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 5, 2009.
2. The Petitioner received notice of the decision of the PTABOA on November 3, 2009.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Board on December 15, 2009. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 15, 2010.
5. The Board held an administrative hearing on February 23, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Michelle Mangus, Owner

For Respondent: Sharon S. Meier, Hearing Officer, Porter County.

Facts

7. The subject property is a commercial property located at 70 West Lincolnway, Valparaiso, in Porter County.

¹ The Petitioner's Form 131 Petition purports to appeal the property's 2007 and 2008 property taxes. However, the Petitioner failed to file any PTABOA determination for 2008 or, in fact, prove that an appeal of the property's 2008 taxes was initiated at the local level. Thus, the Board only has jurisdiction to hear the Petitioner's appeal of its 2007 property taxes.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of subject property to be \$110,000 for the land and \$137,300 for the improvements, for a total assessed value of \$247,300.
10. The Petitioner requested an assessment of \$135,500.

Issues

11. Summary of the Petitioner's contentions in support of an error in its assessment:
 - a. The Petitioner contends that its property's assessment is too high compared to the assessed values and sale prices of neighboring properties. *Mangus testimony*. In support of its contention, the Petitioner's representative presented sales disclosure forms for nine properties in the same business district. *Petitioner Exhibits 1-10*. As an example, Ms. Mangus testified, the YMCA on Chicago Street is the size of a city block and is only assessed for \$262,800, while the Petitioner's property is less than 6,000 square feet and is assessed for \$247,300. *Mangus testimony; Petitioner Exhibits 10 and 11*.
 - b. The Petitioner further contends that the assessed value of its property unreasonably increased from 2006 to 2007. *Mangus testimony*. According to Ms. Mangus, the value of the land did not change between 2002 and 2006 but, in 2007, the land value increased by \$56,000. *Id.*; *Petitioner Exhibit 11*. Similarly, from 2002 to 2007, the value of the improvements increased \$78,600, even though no major renovations had been made to the property since 1996. *Id.*
 - c. The Petitioner's representative argues that when she attended the PTABOA hearing, the PTABOA members were only interested in the Petitioner's reasons for downsizing the business and its rental income. *Mangus testimony*. Ms. Mangus admits that the Petitioner listed the property with a realtor for \$600,000 in 2006. *Mangus testimony*. She contends, however, that only \$200,000 of that price was for the building. *Id.* The remaining amount included \$200,000 for the salon business and equipment and \$200,000 for the bridal boutique and inventory. *Id.*
 - d. Finally, in response to the Assessor's case, the Petitioner's representative claims that the Respondent's comparable sales occurred when the real estate bubble was at its highest. *Mangus argument*. According to Ms. Mangus, the real estate market has since declined. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the Petitioner's assessment is correct. *Meier testimony*. In support of this contention, the Respondent's representative presented sale and assessment information for four businesses located in downtown Valparaiso.

- Respondent Exhibits 4-11.* According to Ms. Meier, the comparable properties have approximately the same lot size as the Petitioner's property; they are all located on the same street as the Petitioner's property; and the properties all sold for prices ranging from \$242,000 to \$285,000 in 2005 and 2006. *Id.*; *Meier testimony.* Thus, Ms. Meier concludes, the comparable sales support the Respondent's assessment of the Petitioner's property. *Id.*
- b. The Respondent further argues that the Petitioner listed the property for \$600,000 in 2006. *Mangus testimony.* Although the Petitioner's witness contends that \$400,000 of the sale price was for the businesses, equipment, and inventory, Ms. Meier testified, the Petitioner only reported \$18,000 of personal property on its tax return. *Id.*
 - c. In response to the Petitioner's case, Ms. Meier argues that the property's assessed value did not change from 2002 to 2006 because trending did not occur until 2006. *Meier testimony.* Thus, the property's value increased from 2006 to 2007 because it was based on a new market factor and trending study. *Id.* Moreover, Ms. Meier argues, the 2007 assessment was based on sales from 2005 and 2006, when the market was at its peak. *Id.*
 - d. Finally, the Respondent's witness argues that the Petitioner's comparable sales should be given little weight because the sales were untimely. *Meier testimony.* According to Ms. Meier, the Petitioner's comparable sales were mostly from 2007. *Id.* Thus, the sales prices needed to have been time-adjusted to the January 1, 2006, valuation date to be relevant to the Petitioner's property's value for the March 1, 2007, assessment date. *Id.* Further, she contends, the Petitioner used sales where the properties were transferred with either no consideration or a discounted consideration. *Meier testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 64-004-07-1-4-00014 European Style Salon,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Sales disclosure form for 56 Lincolnway,
 - Petitioner Exhibit 2 – Sales disclosure form for 1555 Lincolnway,
 - Petitioner Exhibit 3 – Sales disclosure form for 10 West Washington,
 - Petitioner Exhibit 4 – Sales disclosure form for 10 West Washington,
 - Petitioner Exhibit 5 – Sales disclosure form for 120 Lincolnway,
 - Petitioner Exhibit 6 – Sales disclosure form for 151 West Lincolnway,

Petitioner Exhibit 7 – Sales disclosure form for 308 East Lincolnway,
Petitioner Exhibit 8 – Sales disclosure form for 306 East Lincolnway,
Petitioner Exhibit 9 – Sales disclosure form for 1608 Lincolnway,
Petitioner Exhibit 10 – Sales disclosure form for form 55 Chicago Street,
Petitioner Exhibit 11 – Property record card for the Petitioner’s
property,

Respondent Exhibit 1 – Property record card for the Petitioner’s property,
Respondent Exhibit 2 – Sketch of the property,
Respondent Exhibit 3 – Map of the Petitioner’s neighborhood,
Respondent Exhibit 4 – Property record card for 62 Lincolnway,
Respondent Exhibit 5 – Sales disclosure form for 62 Lincolnway,
Respondent Exhibit 6 – Property record card for 60 Lincolnway,
Respondent Exhibit 7 – Sales disclosure form for 60 Lincolnway,
Respondent Exhibit 8 – Property record card for 1 Lincolnway,
Respondent Exhibit 9 – Sales disclosure form for 1 Lincolnway,
Respondent Exhibit 10 – Property record card for 13 Lincolnway,
Respondent Exhibit 11 – Sales disclosure form for 13 Lincolnway,
Respondent Exhibit 12 – Listing information for the Petitioner’s property,
Respondent Exhibit 13 – Property record cards for eight of the Petitioner’s
comparable properties and four additional properties,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated January 15, 2010,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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.

15. The Petitioner failed to provide sufficient evidence to establish an error in its assessment. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property’s market value-in-use as determined using the Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property, VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.6. A taxpayer 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 practices. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, 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. Department of Local Government Finance*, 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
 - d. The Petitioner first contends that its property is over-assessed based on the sale prices of other properties in the neighborhood. *Mangus testimony*; *Petitioner Exhibits 1-10*. In making this argument, Ms. Mangus essentially relies on a sales comparison approach to establish the market value-in-use of the Petitioner’s property. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). 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 do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470.

Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent must also explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioner's representative made no effort to compare the neighboring properties. Ms. Mangus merely offered the sales disclosure forms for the sale of nine nearby properties. This falls far short of the showing required to prove comparability. In addition, although one sale occurred in December of 2006, the remaining sales occurred in 2003, 2007 and 2008. The Petitioner failed to show how these sales related to the subject property's value as of the relevant valuation date of January 1, 2006, for the property's March 1, 2007, assessment.

- e. Further, to the extent that Ms. Meier contends the assessed value of the Petitioner's property exceeds the assessed values of comparable properties, that argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, 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 Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- g. The Petitioner also claims that, while the assessed value of its property did not change from 2002 to 2006, its value increased \$112,000 from 2006 to 2007. The property's assessed value in 2002, 2003, 2004 and 2005, however, were all based on a January 1, 1999, valuation date. Starting in 2006, assessments were annually adjusted to reflect changes in value between general reassessment years. *See* Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Under the trending rules, the property's 2007 assessment was based on a January 1, 2006, valuation date, rather than the January 1, 1999, valuation date of the 2002 through 2005 assessments. *See* MANUAL at 2, 4, 8 (making January 1, 1999, the valuation date for 2002 through 2005 assessments); and 50 IAC 21-3-3(b) (making January 1 of the calendar year preceding the assessment date the valuation date for annually adjusted assessments beginning with March 1, 2006, assessments). The Petitioner presented no evidence to show that the increase in value was unreasonable for a seven year period. Moreover, the Petitioner failed to show that its 2007 assessment did not reflect the property's market value-in-use. *See also Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)(evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year).²

² The Petitioner's representative also contends she was dissatisfied with the Petitioner's PTABOA proceedings. Once a taxpayer has properly invoked the Board's jurisdiction, however, its proceedings are *de novo*. *See* Ind. Code § 6-1.1-15-4 (m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.) Further, the Board owes no deference to the PTABOA determination. Thus, while the Petitioner may feel its PTABOA hearing was somehow deficient, it did not hinder the Petitioner's ability to present its case to the Board.

- h. The Petitioner therefore failed to raise a prima facie case. 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. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to establish a prima facie case that the property is over-valued. The Board finds for the Respondent. The true tax value of the property should remain at \$247,300.

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

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>>