

PETITIONER REPRESENTATIVE:

Duane Zishka, Uzelac & Associates, Inc.

RESPONDENT REPRESENTATIVE:

Charles Simons, Vanderburgh County Contractor

INDIANA BOARD OF TAX REVIEW

General Auto Outlet of Evansville,)	Petition Nos.:	82-027-07-1-4-01150
LLC,)		82-027-08-1-4-03643
)		
Petitioner,)	Parcel No.:	82-07-30-017-162.012-027
)		
v.)	County:	Vanderburgh
)		
Vanderburgh County Assessor,)	Township:	Center
)		
Respondent.)	Assessment Years:	2007 and 2008

Appeal from the Final Determination of
Vanderburgh County Property Tax Assessment Board of Appeals

September 16, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated for the 2007 and 2008 tax years based on the appraised values of the property for those years.

PROCEDURAL HISTORY

2. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner's manager, Bruce A. Goodman, filed a letter with the Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) seeking review of the Petitioner's property's 2007 assessment on May 19, 2008. On April 16, 2009, the Petitioner's representative Duane R. Zishka, Uzelac & Associates, Inc., filed a letter seeking review of the property's 2008 assessment. The PTABOA issued notice of its decision for 2007 and 2008 on June 18, 2009. The Petitioner's representative subsequently filed Form 131 Petitions with the Board on July 28, 2009, requesting that the Board conduct a review of the PTABOA's 2007 and 2008 determinations.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on the Petitioner's 2007 and 2008 Petitions on June 22, 2010, in Evansville, Indiana.
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Duane Zishka, Uzelac & Associates, Inc.,
 - David Matthews, appraiser, David Matthews Associates,
 - For the Respondent:
 - Jonathan Weaver, Vanderburgh County Assessor,
 - Charles Simons, Contractor for Vanderburgh County Assessor,
 - Candy Wells, Hearing Officer, Vanderburgh County Assessor,
 - John Gerard, Real Estate Deputy, Vanderburgh County Assessor.
5. The Petitioner presented the following evidence:
 - Petitioner Exhibit 1 – 2007 Appraisal report for the subject property,
 - Petitioner Exhibit 2 – 2008 Appraisal report for the subject property,

6. The Respondent presented the following evidence:¹
 - Respondent Exhibit 1 – Rent, expense, and income documents for the Petitioner’s property,
 - Respondent Exhibit 2 – Excerpt of the transcript from the Vanderburgh County PTABOA meeting on June 16, 2009.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 petitions with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.

8. The property under appeal is a 279,570-square-foot shopping center on a 28.119-acre commercial parcel located at 6401 East Lloyd Expressway, Knight Township, Vanderburgh County, Evansville, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2007, the PTABOA determined the assessed value of the property to be \$18,904,400 for the land and \$27,396,100 for the improvements, for a total assessed value of \$46,300,500. For 2008, the PTABOA determined the assessed value of the property to be \$18,904,400 for the land and \$21,395,600 for the improvements, for a total assessed value of \$40,300,000.

¹ The Petitioner’s representative objected to the Respondent’s evidence arguing that the Respondent failed to provide witness lists and evidence to the Petitioner prior to the hearing as required by the Board’s procedural rules. *See* 52 IAC 2-7-1. The Respondent’s witness admitted that the Respondent did not provide the Petitioner with copies of documentary evidence prior to the hearing, but argued that the exhibits were documents provided by the Petitioner at the PTABOA hearing and a transcript of that hearing. Because the Respondent’s documents consisted of the transcript of a hearing in which the Petitioner appeared and argued and a document the Petitioner itself provided, the Board finds that the Petitioner cannot be prejudiced by the admission of the Respondent’s exhibits. The Board therefore over-rules the Petitioner’s objection but cautions the Respondent that it is expected to comply with all of the Board’s rules in future hearings.

11. The Petitioner requested an assessed value of \$40,000,000 for 2007 and \$36,000,000 for 2008.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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).
14. 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. Wash. 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”).
15. 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 case. *Id.; Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

16. The Petitioner contends that the 2007 and 2008 assessed values of its commercial property are over-stated based on the property's appraised values for those years. *Zishka testimony*. In support of its contention, the Petitioner presented an appraisal report for 2007 prepared by C. David Matthews, MAI, SRA, CRE, an Indiana Certified General Real Estate Appraiser (ICGREA), and William R. Bartlett, II, ICGREA, MAI, SRA, of Bartlett & Associates, Inc., and an appraisal report for 2008 prepared by Mr. Matthews. *Petitioner Exhibits 1 and 2*. The appraisers certified that their reports were prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Standards of Professional Practice and Code of Professional Ethics of the Appraisal Institute and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989's Title XI. *Id.*

17. The Petitioner's appraiser admits that the property was purchased in 2005 for \$56 million, but Mr. Matthews argues, the Petitioner's purchase price does not reflect the property's market value for several reasons. *Matthews testimony*. First, Mr. Matthews testified, the Petitioner purchased below market financing which increased the cost of the property. *Id., Petitioner Exhibits 1 and 2*. The Petitioner was also under duress to close the sale quickly because it was purchasing the property with 1031 exchange credits that were expiring and therefore the Petitioner paid a premium for the property. *Id.* Moreover, Mr. Matthews argues, the Petitioner purchased the property at the height of the real estate market. *Matthews testimony*.

18. Instead, Mr. Matthews argues, the subject property is worth less than its 2005 purchase price. *Matthews testimony*. The 2007 appraisal calculates a market value-in-use for the land and improvements of \$40,000,000 as of January 1, 2006. *Petitioner Exhibit 1*. The 2008 appraisal calculates a market value-in-use for the land and improvements of \$36,500,000 as of January 1, 2007. *Petitioner Exhibit 2*. Each appraisal calculated the value of the property using all three generally accepted appraisal approaches – the cost

approach, the sales comparison approach and the income approach. *Matthews testimony; Petitioner Exhibits 1 and 2.*

19. The Petitioner's appraiser testified that the appraisers first valued the Petitioner's land using the sales comparison approach. *Matthews testimony.* According to Mr. Matthews, the appraisers based the value of the land for both 2007 and 2008 on six sales of commercial property in Evansville that occurred between January of 2001 and June of 2008. *Id.* Mr. Matthews testified that the appraisers considered all six sales in the appraisals, but gave the most weight to the sale of the Petitioner's property, which sold for an adjusted price of \$368,440 per acre in January of 2001, and the sale of a commercial property located across from the subject property, which sold for an adjusted price of \$348,000 per acre in July of 2004. *Id.* For 2007, the appraisal estimated the value of the Petitioner's land to be \$10,000,000 or \$360,000 per acre and, for 2008, the appraisal estimated the value of the land to be \$9,840,000, or \$350,000 per acre. *Id.; Petitioner Exhibit 1 and 2.*

20. In calculating the property's value using the cost approach, Mr. Matthews testified that both appraisals used Marshall Valuation Service's Cost Manual data for community shopping centers. *Matthews testimony.* For 2007, the appraisers estimated a value of \$29,250,000 for the improvements. *Matthews testimony; Petitioner Exhibit 1.* For 2008, the appraisal calculated a value of \$26,068,860 for the improvements. *Matthews testimony; Petitioner Exhibit 2.* When the cost of the improvements is added to the value of the land, the appraisers estimated the value of the Petitioner's property to be \$39,250,000 for 2007 and \$35,900,000 for 2008. *Matthews testimony; Petitioner Exhibits 1 and 2.*

21. The appraisers next estimated the value of the property using the sales comparison approach. *Matthews testimony.* In calculating the subject property's 2007 value, Mr. Matthews testified that he and Mr. Bartlett considered twelve Indiana sales, including five in Evansville. *Matthews testimony; Petitioner Exhibit 1.* The five Evansville sales occurred between February of 2005 and August of 2007, and ranged in price from a high

of \$185.06 per square foot to a low of \$65.96, with a mean sale price of \$124.13 per square foot. *Id.* The seven additional sales occurred between April of 1996 and February of 2008, at prices between \$163.51 and \$87.69 per square foot, with a mean of \$123.52. *Id.* Based on those sales, the appraisers estimated the value of the subject property to be \$150 per square foot, or \$41,900,000. *Id.*

22. In calculating the subject property's 2008 value, Mr. Matthews testified that he considered three sales in Evansville and the June 2005 sale of the subject property. *Matthews testimony; Petitioner Exhibit 2.* According to Mr. Matthews, the sales all occurred between February of 2005 and April of 2007, and ranged in price from a high of \$200.31 for the subject property to a low of \$65.96 per square foot. *Id.* Based on those sales, the appraiser estimated the value of the subject property to be \$135 per square foot, or \$37,750,000. *Id.*
23. Next, the appraisers developed an income approach value for the property. *Matthews testimony.* According to Mr. Matthews, the appraisers calculated a direct capitalization value using an effective gross income of \$3,546,000; a net income of \$3,226,860 based on 2006, 2007, and 2008 expenses; and a band of investments capitalization rate of 8 percent, resulting in an estimated value of \$40,300,000 for the property for 2007. *Matthews testimony; Petitioner Exhibit 1.* The appraisers also developed a discounted cash flow model based on 2006 rents and vacancy rates, and an effective discount rate of 12.50 percent, resulting in a value of \$38,500,000 for 2007. *Id.*
24. For 2008, the appraiser calculated a direct capitalization value using an effective gross income of \$3,349,000; a net income of \$3,047,590 based on 2006, 2007 and 2008 expenses; and a band of investments capitalization rate of 8.5 percent, resulting in an estimated value of \$35,900,000. *Matthews testimony Petitioner Exhibit 2.* The appraiser also developed a discounted cash flow model based on 2007 rents and vacancy rates, and an effective discount rate of 13 percent, resulting in a value of \$36,750,000. *Id.* According to Mr. Matthews, the property's income decreased dramatically in 2008 as

vacancy rates soared, which accounts for the changes in value that occurred between 2007 and 2008. *Matthews testimony.*

25. Finally, the appraisers reconciled the values determined by the cost approach, the sales comparison approach, and the income approach and estimated the market value of the appraised property to be \$40,000,000 for the March 1, 2007, assessment year, of which the appraisers allocated \$30,000,000 to the improvements and \$10,000,000 to land. *Matthews testimony; Petitioner Exhibit 1.* The appraiser reconciled the values determined by the cost approach, the sales comparison approach, and the income approach and estimated the market value of the appraised property to be \$36,500,000 for the March 1, 2008, assessment year, of which the appraisers allocated \$26,660,000 to the improvements and \$9,840,000 to land. *Matthews testimony; Petitioner Exhibit 2.*

RESPONDENT'S CONTENTION

26. The Respondent contends that the subject property's 2007 and 2008 assessments are correct. *Simons argument.* In support of this contention, the Respondent's representative argues that the Petitioner's purchase of the property and the sale of the nearby East Lloyd Commons show that the market was strong in 2006. *Id.* According to Mr. Simons, this supports the assessed values of \$46,300,500 for 2007 and \$40,300,000 for 2008, as determined by the PTABOA. *Id.*
27. The Respondent further argues that the Petitioner's income approach is flawed and should be given little weight. *Simons argument.* According to the Respondent's representative, the appraisals should have used income data from 2004, 2005 and 2006 for the 2007 tax year, and 2005, 2006 and 2007 for the 2008 tax year. *Id.* However, Mr. Simons argues, the 2007 appraisal used income data from 2007, 2008, and 2009, which he contends "distorted" the property's value by using a "depressed income." *Id.* In addition, Mr. Simons argues, the income capitalization rate of 8% used for 2007 and the 8.5% used for 2008 should have been between 7% and 7.5% instead. *Id.* According to

Mr. Simons, a local appraiser told him that the declining economy did not result in a change in capitalization rates until August or September of 2007, which is well beyond the valuation dates for the 2007 and 2008 assessments. *Id.*

ANALYSIS

28. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has 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 use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).
29. 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, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
30. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his or her evidence relates to the property’s 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 the March 1, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3. Similarly, for the March 1, 2008, assessment, that valuation date is January 1, 2007. *Id.*

31. Here the Petitioner presented appraisal reports for 2007 and 2008. *Petitioner Exhibit 1 and 2*. The appraisers certified that their reports were prepared in conformance with USPAP and FIRREA. *Id.* The 2007 appraisal calculates a market value-in-use for the land and improvements of \$40,000,000 as of January 1, 2006. *Petitioner Exhibit 1*. The 2008 appraisal calculates a 2008 market value-in-use for the land and improvements of \$36,500,000 as of January 1, 2007. *Petitioner Exhibit 2*. Each appraisal calculated the value of the property using all three generally accepted appraisal approaches – the cost approach, the sales comparison approach and the income approach. *Matthews testimony; Petitioner Exhibits 1 and 2*. And both appraisals conform to the correct valuation dates. Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Therefore the Board finds that the Petitioner raised a prima facie case that the property is over-assessed for 2007 and 2008.
32. Once the Petitioner has established a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Insurance Company v. Maley* 803 N.E.2d 276 (Ind. Tax Court 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 its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
33. The Petitioner purchased the property for \$56 million on August 18, 2005. The Board has often said that the purchase of a property is the best evidence of a property’s value. *See e.g. Armbruster v. Lawrence Twp. Assessor*, Indiana Board of Tax Review, Petition No. 49-400-02-1-5-07385 (2006); *Huguenard v. Boone County Assessor*, Indiana Board of Tax Review, Petition No. 06-010-07-1-5-00141 (2009). Here, however, the Petitioner’s appraiser documented several reasons why the purchase price did not reflect

the property's market value-in-use including that the Petitioner purchased a below market rate on its mortgage as part of its purchase of the property and the Petitioner used 1031 exchange dollars and therefore paid a premium to shelter proceeds from a recent sale.

34. More importantly, the Respondent did not argue that the correct value of the Petitioner's property was its purchase price and, in fact, the PTABOA lowered the assessment to approximately \$10 million less than the Petitioner's price. Instead, the Respondent only argues that the purchase price "proves" the market was stronger in 2006 than the Petitioner's appraisal suggests. *Simons argument*. In addition, Mr. Simons argues, the rental income data used by the Petitioner's appraisers was incorrect because they should have used 2004, 2005 and 2006 date for a 2007 appraisal and 2005, 2006 and 2007 data for the 2008 appraisal. *Id.* Similarly, Mr. Simons contends the appraisal under-estimated the property's income and over-estimated the capitalization rates. *Id.* As a result, Mr. Simons argues, the values in the appraisals are incorrect. *Id.* The Respondent's representative, however, made no attempt to present a USPAP-compliant appraisal of its own to counter those presented by Petitioner. Nor did Mr. Simons even prepare an income approach calculation based on the income and capitalization rates he contends that the Petitioner's appraisers should have used. Thus, Mr. Simons' conclusory statements offer no evidence useful in impeaching the Petitioner's prima facie case.

SUMMARY OF FINAL DETERMINATION

35. The Petitioner raised a prima facie case that the 2007 and 2008 assessed values of its property are overstated. The Respondent failed to rebut or impeach the Petitioner's case. The Board finds in favor of the Petitioner and holds that the property's 2007 value should be \$10,000,000 for the land and \$30,000,000 for improvements for a total value of \$40,000,000, and the 2008 assessed values should be \$9,840,000 for the land and \$26,660,00 for improvements for a total value of \$36,500,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.