

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

Petition No.: 27-008-06-1-4-00759
Petitioner: Hamilton Federal Savings & Loan Association¹
Respondent: Grant County Assessor
Parcel No.: 0601-302-009.000-15
Assessment Year: 2006

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 Grant County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated December 21, 2006.
2. The PTABOA issued notice of its decision on October 3, 2007.
3. The Petitioner filed a Form 131 petition with the Board on October 30, 2007. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated August 14, 2008.
5. The Board held an administrative hearing on November 19, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Michael R. Bundy, President, Indi-Kid, Inc.

¹ Mr. Bundy testified that Hamilton Federal Savings & Loan Association was acquired by First American Bank in 2004. *Bundy testimony*. Mr. Bundy further testified that, although the property under appeal is still in the name of Hamilton Federal Savings & Loan Association, Indi-Kid, Inc., is purchasing the property and pays the property taxes. Pursuant to the Board's procedural rules, a party to a proceeding can be the owner of the subject property or the taxpayer responsible for the property taxes payable on the subject property. 52 IAC 2-2-13(1) and (2).

- b. For Respondent: Tamara Martin, Grant County Assessor
Nancy Leming, Grant County Chief Deputy
Gary Landrum, Grant County Deputy Assessor

Facts

7. The property is a 4,980 square foot, one-story general office building with a utility shed on .71 acre located at 2111 West 2nd Street, Marion, Franklin Township, in Grant County.
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$126,900 for the land and \$186,700 for the improvements, for a total assessed value of \$313,600.
10. The Petitioner requested an assessed value of \$30,000 for the land and \$90,000 for the improvements, for a total assessed value of \$120,000.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the Respondent assessed the property for more than its market value-in-use. *Bundy argument*. In support of its position, the Petitioner submitted an appraisal report prepared by Matthew Capozza of Capozza Real Estate Appraisals. *Petitioner Exhibit 2*. Mr. Capozza is an Indiana Certified Appraiser. *Id.* In his October 21, 2008, report, Mr. Capozza estimates the market value of the property to be \$150,000 as of October 11, 2008. *Id.*
 - b. The Petitioner also presented an opinion of value letter from Kenneth Snider of Snider Auction & Appraisal, Inc., dated January 23, 2004. *Petitioner Exhibit 1*. According to the letter, Mr. Snider performed a "drive-by-appraisal" for the First American Bank. *Id.* In his appraisal, Mr. Snider concluded the value of the property was \$100,000, as of January 23, 2004. *Id.*
 - c. Further, the Petitioner argues that the property's assessed value is overstated when compared to the assessed values of similar properties. *Bundy testimony*. In support of this contention, the Petitioner offered a comparable analysis of the 2004 appraised values and 2006 assessed

values of three similar properties located in Elkhart and Kokomo.² *Petitioner Exhibit 1*. The Petitioner contends that the comparable properties are similar to the subject property in year of construction, size, construction type, are all located in areas with mixed commercial and residential properties and all of the properties operate child-care centers. *Id.* According to the Petitioner, the 2006 assessed values of the comparable properties ranged from \$226,900 to \$244,900, while their 2004, “drive-by-appraisal” values ranged from \$202,000 to \$227,000. *Id.* The subject property, however, was appraised for \$100,000 in 2004, but its assessment increased to \$313,600 in 2006. *Bundy testimony*.

- d. Finally, the Petitioner contends the market value of the property is negatively impacted by potential use restrictions resulting from the property being zoned residential, R2, with a special use permit. *Bundy testimony*.

12. Summary of Respondent’s contentions in support of the assessment:

- a. The Respondent contends the property’s assessment is correct based on the property’s market value. *Landrum testimony*. In support of this contention, the Respondent submitted a comparable sales analysis, property record cards and sales disclosure forms for two properties that sold in the area. *Respondent Exhibit 1*. According to the Respondent, the first property, located at 215 South Miller Avenue, is smaller and older than the property under appeal and sold on November 9, 2005, for \$250,000. *Id; Landrum testimony*. The second property, located at 801 North Western Avenue, is a 4,032 square foot general office built in 1992 that sold on July 20, 2005, for \$260,000. *Id.* The subject property is 4,980 square foot general office building used as a child-care center built in 1975 that assessed for \$313,600. *Id; Landrum testimony*. Thus, the Respondent argues, these sales support the property’s current assessed value. *Id.*
- b. The Respondent also argues that the Petitioner’s opinion of value letters should not be given any weight because the appraiser indicated the appraisal was only a “drive-by” appraisal. *Landrum testimony*. Further, the Respondent argues, the appraiser failed to supply any documentation to support the estimated market values. *Id.*
- c. Similarly, the Respondent argues, the Petitioner’s October 11, 2008, appraisal is flawed. *Landrum testimony*. According to the Respondent, the appraiser compared the property under appeal, which is a classified as

² The comparable analysis lists the 2006 assessed value of the comparable properties as the “2006 Tax Appraisal.” *Petitioner Exhibit 1*.

a general office building, to three buildings classified as general retail buildings. *Id.* Thus, the county argues, the appraisal did not use comparable properties in its analysis. *Id.*

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Letter from Michael Bundy, Indi-Kid, Inc., to the County Tax Assessment Board of Appeals, dated September 19, 2007; Real Estate Comparison prepared by Indi-Kid, Inc.; and four letters from Kenneth C. Snider, Snider Auction & Appraisal, Inc. to Michael Morrison, First American Bank, dated January 23, 2004, and March 25, 2004,

Petitioner Exhibit 2 – Limited Appraisal Report prepared by Matthew F. Capozza, Capozza Real Estate Appraisals, dated October 11, 2008,

Respondent Exhibit 1 – Comparable analysis of the subject property and two sales from 2005; a property record card and exterior photograph for 2111 West 2nd Street; a property record card, exterior photograph and sales disclosure form for 215 South Miller Avenue; and a property record card, exterior photograph and sales disclosure form for 810 North Western Avenue,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

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 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 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 a prima facie case for a reduction in value. The Board reached 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, for 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). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5.
 - b. Regardless of the method used to show market value-in-use, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how the evidence demonstrates, or is relevant to, the

subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c. Here, the Petitioner presented an appraisal that concluded the value of the property was \$150,000 as of October 11, 2008. *Petitioner Exhibit 2; Bundy testimony*. The appraiser certified that the appraisal was prepared according to the Uniform Standards of Professional Appraisal Practices (USPAP). The appraisal, however, estimates the value of the property almost four years after the required January 1, 2005, valuation date. The record contains no evidence or explanation to establish how the October 11, 2008, appraised value relates to the value of the property as of January 1, 2005. Therefore, the appraisal is not probative evidence that the Petitioner's property is over-assessed for the March 1, 2006, assessment date. *See Long*, 821 N.E.2d at 471.
- d. Next, the Petitioner relies on an opinion of value letter from Snider Auction & Appraisal, Inc. *Petitioner Exhibit 1*. In that letter, Mr. Snider estimated the value of the property to be \$100,000, as of January 23, 2004, as a result of a "drive-by appraisal". *Id.* Although Mr. Snider's appraisal states it was "processed and presented ... according to nationally recognized appraisal methods," it is not clear the appraisal was prepared according to the Uniform Standards of Professional Appraisal Practices (USPAP). Further, the appraised value is not supported by any factual evidence in the letter or in the record. Mr. Snider does not support his valuation with any sort of cost or income data. Nor does he provide sales comparables. In fact, there is no information in the record as to how Mr. Snider arrived at his \$100,000 estimate. Consequently, the opinion of value letter is not probative of the subject property's market value-in-use. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- e. The Petitioner also contends the property is over-valued based on the assessments of comparable properties in Elkhart and Kokomo. *Petitioner Exhibit 1*. According to the Petitioner, other similar properties were assessed at a value close to their appraised value. *Bundy testimony*. The subject property, however, is assessed for two to three times its appraised value. Here, the Petitioner merely argues that comparable properties in other counties were assessed differently than the subject property. This argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). 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 taxpayer must present probative evidence to show that the assessed value, as determined by the assessor does not accurately reflect the property's market value-in-use. *Id.*

- f. Finally, to the extent the Petitioner can be seen to argue that the property's value should be adjusted or receive a negative influence factor because the property is impacted by zoning restrictions, the Petitioner failed to show that its zoning classification lowers the market value of the property. Mr. Bundy merely contends, without supporting evidence, that the property has limited value in terms of what it would get on the open market. Statements that are unsupported by factual evidence are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119, 1120 (Ind. Tax ct. 1998). Even if the Board were to accept the Petitioner's arguments regarding any failure to apply an adjustment to the subject property, we find that the Petitioner has not presented probative market evidence to show that the assessment is not a reasonable measure of the property's true tax value. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) (“[W]hen a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”)
- g. The Petitioner's property may, in fact, be over-assessed, but the Board cannot determine the property's market value-in-use based on the evidence presented by the Petitioner's representative. Therefore, the Petitioner failed to raise a prima facie case that its assessment should be lowered. Where the 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*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to support a change in the subject property's assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments 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 pursuant to 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 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/bills/2007/SE0287.1.html>.