

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

Petitions: 41-009-06-1-4-00002
41-009-06-1-4-00003
41-009-06-1-4-00004
Petitioner: Hurricane Food, Inc.
Respondent: Johnson County Assessor
Parcels: 41-08-15-014-001.007-009
41-08-15-014-001.008-009
41-08-14-023-002.007-009
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter. The Board 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 on September 5, 2007.
2. The PTABOA issued notice of its decision on December 18, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on February 1, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 7, 2008.
5. Administrative Law Judge Paul Stultz held the hearing on November 20, 2008. He did not conduct an inspection of the subject property.
6. Milo Smith, Tax Consultants, Inc., and Michael Watkins, Johnson County Assessor’s Office, were sworn as witnesses. Mark Alexander was present at the hearing, but not sworn as a witness.

Facts

7. The subject property consists of three separate parcels totaling 1.299 acres with a fast food restaurant located on North Morton Street in Franklin.

8. The PTABOA determined the assessments are:
- | | | | |
|----------------------------------|-----------------|-------------------------|-------------------|
| Parcel #41-08-15-014-001.007-009 | Land: \$147,000 | Improvements: \$392,400 | Total: \$539,400 |
| Parcel #41-08-15-014-001.008-009 | Land: \$110,700 | Improvements: \$0 | Total: \$110,700 |
| Parcel #41-08-14-023-002.007-009 | Land: \$175,300 | Improvements: \$0 | Total: \$175,300. |
9. The Petitioner did not specify what it believed the correct assessments should be.
10. The Form 131 Petitions listed the Tax ID numbers as the Parcel Numbers. During the hearing the Tax ID numbers were misused as the Parcel Numbers. For reference, the following chart correlates the Petition Number, Parcel Number, and Tax ID Number. This information was gathered from the Form 131 Petitions and the property record cards for each parcel.

Petition #	Parcel #	Tax ID #
41-009-06-1-4-00002	41-08-15-014-001.007-009	51001501002/07
41-009-06-1-4-00003	41-08-15-014-001.008-009	51001501002/08
41-009-06-1-4-00004	41-08-14-023-002.007-009	51001410046/06

Contentions

11. Summary of the Petitioner’s case:
- a. Johnson County analyzed thirteen commercial vacant land sales for the 2006 assessment. Only five of those sales are in the same neighborhood as the subject property. These five sales are more relevant because they are in the same neighborhood. They are comparable to the subject property. These comparables sold in a range from \$105,512 to \$395,000. The average per acre sale price for these comparables was \$247,800. Based on the five most relevant land sales, the base rate should be no more than \$274,800 an acre. *Smith testimony; Pet’r Ex. 1.*
 - b. For the 2002 reassessment, the effective age for the fast food restaurant was based on its 1994 year of construction, but they based it on 1999 for the 2006 assessment. Consequently, now the amount of physical depreciation applied to the improvement is incorrect because the effective age is wrong. The age and depreciation should be based on 1994 construction. The rule for calculating effective age did not change—a weighted effective age is calculated to account for any additional square footage or similar changes made to a structure. There was no such change, however, to the subject property. The physical depreciation should be 25% for a structure with an effective age based on 1994 construction. *Smith testimony; Pet’r Ex. 4, 5.*
 - c. The Department of Local Government and Financing (“DLGF”) ordered a reassessment in LaPorte County after being convinced that the LaPorte County

officials had changed assessment elements such as effective age and land values to reach a bottom line. *Smith testimony; Pet'r Ex. 6.*

- d. A positive 50% influence factor was applied to the land value for Parcel 41-08-15-014-001.008-009. There is no explanation for why this parcel should have a positive influence factor while the adjacent parcels that make up the rest of the subject property do not have any positive influence factor. The positive 50% influence factor should be removed. *Smith testimony.*
12. Summary of Respondent's case:
- a. Mr. Smith's fee is based on how much tax savings he can get for the Petitioner. *Smith testimony on cross examination.*
 - b. The property record card for Parcel #41-08-15-014-001.007-009 shows that the effective age for the fast food restaurant is 1999. *Watkins testimony; Resp't Ex. 2.*
 - c. The property record card for Parcel #41-08-15-014-001.008-009 shows that a positive 50% influence factor is applied to the land value. *Watkins testimony; Resp't Ex. 1.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition with attachments,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – List of sales of commercial vacant properties,
Petitioner Exhibit 2 – Summary of data regarding subject parcels,
Petitioner Exhibit 3 – DLGF's "Annually Adjusting Assessed Values Fact Sheet"
dated August 2006,
Petitioner Exhibit 4 – Subject property record card ("PRC") for parcel
#51001501002/07,
Petitioner Exhibit 5 – Page 7 from Appendix F, 2002 Real Property Assessment
Guideline Version A,
Petitioner Exhibit 6 – DLGF news release dated May 23, 2008,
Respondent Exhibit 1 – PRC for Parcel #41-08-15-014-001.008-009,
Respondent Exhibit 2 – PRC for Parcel #41-08-15-014-001.007-009,
Respondent Exhibit 3 – PRC for Parcel #41-08-14-023-002.007-009,
Board Exhibit A – Form 131 Petitions for Review of Assessment for each parcel,
Board Exhibit B – Notice of Hearing on Petition,
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 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”).
15. The Petitioner did not make a case for any assessment change because:
 - a. Indiana assesses real property based on its true tax value, which is “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 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally uses three methods to determine value: the cost approach, the sales comparison approach, and the income approach. 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 (incorporated by reference at 50 IAC 2.3-1-2).
 - b. The market value-in-use as determined using those 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). Nevertheless, 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 or comparable properties and other information compiled according to generally accepted appraisal practices. MANUAL at 5.
 - c. Even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of market value-in-use in order to prevail. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (explaining that Indiana

overhauled its property tax system and the new system shifts the focus from examining how the regulations were applied to examining whether a property's assessed value actually is the market value-in-use); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006) (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system).

- d. The Petitioner presented evidence comparing the sale price for five vacant commercial land sales to the subject property's assessment in an attempt to establish incorrect land value. But the Petitioner failed to show that this evidence conforms to generally accepted appraisal principles. While the Petitioner offered evidence regarding location and assessment data, the Petitioner failed to provide the kind of detailed facts and analysis that would be required to establish how the value-in-use of the vacant properties truly compares to the subject property with a fast food restaurant.¹ A party is responsible for explaining the characteristics of the subject property, how those characteristics compare to the alleged comparable properties, and how any differences affect the relevant market value-in-use of the properties. Without sufficient, meaningful facts and analysis, conclusive comparisons are not probative evidence. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. The Petitioner's evidence established the fact that one of the parcels has a positive 50% influence factor applied to the land value and that the effective age of the fast food restaurant was changed from 1994 to 1999. The Petitioner made only conclusory statements that the market value-in-use was incorrect due to these facts. Conclusory statements are not probative evidence. They are not sufficient to overcome the presumption in favor of the current assessment or to prove what a more accurate value- in-use might be.
- f. The Petitioner's case focused on assessment methodology. The evidence and arguments regarding a strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating that a taxpayer who challenges an assessment must show that the assessor's assessed value does not accurately reflect the property's market value-in-use and that strict application of the regulations is not enough to rebut the presumption that the assessment is correct.) The Petitioner did not show the assessor's methodology resulted in an assessment that fails to accurately reflect market value-in-use.
- g. When a petitioner fails to provide probative evidence supporting its position that an assessment should be changed, a respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of*

¹ In fact, the Petitioner indicated that all five of the purportedly most comparable properties were in the same neighborhood as the subject property. The evidence, however, shows that only one of those five properties (Sale #7) is in the same neighborhood as the subject property and the remaining four are in neighborhood #54340.

Local Gov't Fin., 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

16. The Petitioner failed to make a prima facie case for a lower assessed value. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, 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>>