

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

Petition No.: 41-041-06-1-3-00003
Petitioner: Indiana Motor Lodge
Respondent: Johnson County Assessor
Parcel No.: 2500340400100
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 Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 5, 2007.
2. The PTABOA issued its decision on December 18, 2007.
3. The Petitioner filed a Form 131 petition with the Board on February 1, 2008. 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 September 10, 2009.
5. The Board held an administrative hearing on October 20, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, taxpayer representative
 - b) For Respondent: Michael Watkins, Johnson County Assessor's Office¹

Facts

7. The property is a hotel located at 110 Seek Road in the city of Greenwood, in Johnson County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

¹ Mr. Watkins is a full-time employee of the Johnson County Assessor.

9. For 2006, the PTABOA determined the assessed value of subject property to be \$322,300 for the land and \$1,259,900 for the improvements, for a total assessed value of \$1,582,200.
10. The Petitioner requests an assessed value of \$214,300 for the land plus the appropriate base rate adjustment for the correct number units. There was no other value specified.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its assessment:
 - a) The Petitioner's representative contends the subject property is not assessed in a uniform and equal manner based on the assessments of neighboring properties. *Smith testimony; Petitioner Exhibits 1A and 2.* In support of this contention, Mr. Smith compared the land base rates of the subject property and five neighboring commercial properties. *Id.* The base rates of the five properties ranged from \$130,680 to \$340,920, and the assessed value per acre for the properties ranged from \$90,590 up to \$217,800. *Smith testimony; Petitioner Exhibit 1A.* According to Mr. Smith the properties are comparable because any of the businesses and improvements located on a specific parcel could be relocated to any of the other parcels with only an adjustment for the improvement size. *Id.*
 - b) The Petitioner's representative also argues that an addition to the hotel has been incorrectly assessed with 16 units instead of 12. *Smith testimony; Petitioner Exhibit 1A.* In support of this contention, Mr. Smith offered an affidavit from the builder of the addition attesting to the fact that the structure was built in 1994 with a total of 24 units, or 12 units per floor. *Smith Testimony; Petitioner Exhibit 3.* In addition, Mr. Smith submitted property record cards from the property's 2002 and 2005 assessments which list the number of units as 12 per floor. *Smith Testimony; Petitioner Exhibit 4*
 - c) In response to the Respondent's case, the Petitioner's representative argues that the sale of the subject property offered by the Respondent as evidence was outside of the relevant time frame for the 2006 assessment. *Smith testimony.* Further, Mr. Smith argues, the sale involved a going business and undoubtedly included personal property. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent's representative argues that the property was properly assessed based on its sales price. *Watkins testimony.* In support of this contention, Mr. Watkins offered a sales disclosure form for the subject property which reported the property was sold on March 15, 2007 for \$2.2 million. *Watkins testimony; Respondent Exhibit 1.*

- b) Mr. Watkins further argues that, although the sale date is outside the time frame relevant to the 2006 assessment, the sale price is a good indication of what the property owner believes the value of the property to be. *Watkins testimony*. According to Mr. Watkins, even if the Board assumes a 10% appreciation per year, the sale price still exceeds the property's assessed value for 2006. *Id.*

Record

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

- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1A: Summary of the Petitioner's case,

Petitioner Exhibit 1: Joint Memorandum issued by the Board and the Department of Local Government Finance,

Petitioner Exhibit 2: Map, aerial photograph, and assessment information for the subject property and the Petitioner's comparable properties,

Petitioner Exhibit 3: Affidavit of Richard L. Sprague,

Petitioner Exhibit 3A: A copy of 52 IAC 3-1-8,

Petitioner Exhibit 4: 2002, 2005, and 2006 property record cards for the subject property,

Respondent Exhibit 1: Sales disclosure form for the subject property dated March 15, 2007,

Board Exhibit A: Form 131 Petition,

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 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.
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) 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). 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. In Indiana, assessing officials generally value 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 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 or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) In addition, for 2006, the 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 it 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).
 - d) Here, the Petitioner’s representative presented no market value evidence that the assessed value of the subject property was incorrect. Mr. Smith merely argued that other similar properties were assessed with a different land value. This exact

argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the landing area for the taxpayer's driving range was assessed as "usable undeveloped" land and assigned a value of \$35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of \$1,050 per acre. 859 N.E.2d at 397. Westfield appealed contending that its assessment was not uniform and equal. *Id.*

- e) The Indiana Tax Court held that under the prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard of measure." 859 N.E.2d at 398. Therefore, "the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties." *Id.* Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use." 859 N.E.2d at 399. "As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.* Thus, 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.*; see also *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines). Like the petitioner in *Westfield Golf*, the Petitioner's representative here only argued that the method of the Petitioner's assessment was not uniform. Mr. Smith failed to offer any evidence to show that the Petitioner's assessment exceeded the property's market value-in-use. Thus, the Petitioner failed to raise a prima facie case.
- f) Moreover, the Petitioner's representative failed to show the comparability of those neighboring properties. By comparing the Petitioner's assessed value to the assessed values of other comparable properties, Mr. Smith essentially relies on a "sales comparison" method of establishing the market value-in-use of the Petitioner's property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative

market value-in-use. Here, Mr. Smith merely offered the property record cards for the purportedly comparable properties and alleged that the properties were comparable, because “any one [of the improvements] could be built on any one of these five comparables.” This falls far short of the showing required to prove comparability.²

- g) The Petitioner’s representative also argues that the Assessor erred in its assessment of the hotel’s addition with 16 units rather than 12 units. In support of this contention, Mr. Smith submitted an affidavit from the builder attesting that the hotel was built in 1994 with a total of 24 units, or 12 units per floor. *Petitioner Exhibit 3*. The Petitioner’s representative also purports to submit the property’s 2006 property record card showing the assessment of the property as having 16 units rather than 12, but Mr. Smith only presented the front page of the property record card addressing the land valuation. Thus, there is no evidence in the record as to how the improvements were assessed for the 2006 tax year. Further, the 2002 and 2005 property record cards submitted by the Petitioner show that the improvements were assessed based on the area of the buildings rather than the number of rooms. Therefore, even if the Petitioner’s representative had shown the Assessor improperly recorded the number of units in the hotel, Mr. Smith did not show that the assessment of the property was in error.³
- h) Further, the Petitioner’s representative cannot rely solely on the methodology used to assess the Petitioner’s property to make a case its assessment should be changed. The goal under Indiana’s new assessment system is to ascertain market value-in-use. Even if the Respondent’s assessment did not fully comply with the Guidelines, the Petitioners must show that their property’s total assessment is not a reasonable measure of its true tax value. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006). Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *Id.*
- i) Where the taxpayer fails to provide probative evidence that an assessment should be changed, 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).

² Even if the Petitioner’s representative had sufficiently proven the comparability of the neighboring properties, the Board notes that the Petitioner’s evidence does not support a finding that the Petitioner’s property is assessed higher than other comparable properties. According to the Petitioner’s Exhibits, two of the five properties have a base rate of \$217,800 – like the Petitioner’s assessment – and one property has a base rate of \$340,920. Thus, most of the Petitioner’s “comparable” properties are assessed with an identical or higher base rate than the Petitioner’s property.

³ The Board notes, that to the extent that the addition is assessed with 16 units rather than 12, the property record card should be corrected to reflect a more accurate description of the property.

Conclusion

16. The Petitioner failed to raise a prima facie case. 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 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>.