

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

Petition No.: 34-002-07-1-4-00072
Petitioners: Robert Ken and Penny L. Irwin
Respondent: Howard County Assessor
Parcel No.: 34-10-06-453-003-000-002
Assessment Year: 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On March 24, 2008, the Petitioners initiated an assessment appeal with the Howard County Property Tax Assessment Board of Appeals (the PTABOA).
2. The PTABOA issued a notice of its decision on October 10, 2008.
3. The Petitioners filed a Form 131 petition with the Board on October 27, 2008. They 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 April 16, 2009.
5. Administrative Law Judge Dalene McMillen held the Board's administrative hearing on May 28, 2009. She did not inspect the subject property.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioners: Robert Ken Irwin,
 - b. For Respondent: Jamie Shepherd, Howard County Assessor
Brian Thomas, Howard County Representative
Shelia Pullen, Center Township Assessor

Facts

7. The subject property is a commercial parcel located at 1801 South Elizabeth Street in Kokomo. It contains a 7,980-square-foot office building.

8. The PTABOA determined the assessed value of the property to be \$132,500 for the land and \$430,300 for the improvements, for a total assessment of \$562,800.
9. The Petitioners requested values of \$95,000 for the land and \$430,300 for improvements, for a total assessment of \$525,300.

Issues

10. Summary of the Petitioners' contentions:
 - a. The Petitioners mainly dispute a 40% increase in the subject land's assessment between 2006 and 2007. That 40% appeared on the subject property's record card under a column titled "influence factor," but Mr. Irwin also referred to it as an "annual adjustment" and a "trending factor." *Irwin testimony*. The assessor relied on the sales of a few small parcels to arrive at that 40% adjustment. But the buyers in those transactions paid a premium. *Irwin testimony; Pet'rs Ex. 12*. By contrast, the assessor ignored nearby vacant buildings that remain unsold and therefore hurt neighborhood property values. The assessor should have considered those properties as well as Kokomo's generally depressed economy. Also, the assessments for larger parcels located near the subject property only increased by 2%. *Irwin testimony*.
 - b. The Petitioners further contend that the subject property is assessed too high in light of two sales that the assessor used in her ratio study. The first sale involved a 1.06-acre parcel of bare land on Appletree Lane that sold on March 24, 2006, for \$69,960, or \$66,000 per acre. *Irwin testimony; Pet'rs Exs. 6-7*. The second sale involved a house and .468 acres of land located at 1324 East Hoffer Street. That property sold for \$70,000 on February 4, 2005. *Irwin testimony; Pet'rs Exs. 6, 8*. In 2002, the East Hoffer property's assessment was allocated as follows: 47% for land and 53% for improvements. Using the same allocation, the 2005 sale price would equal \$70,299 per acre. Even if the allocation were 75% for land and 25% for improvements, the per-acre price would still only be \$112,180. *Irwin testimony; Pet'rs Ex. 6*. Those three sale prices (\$66,000, \$70,299, and \$112,180) average to \$82,826 per acre. Thus, in Mr. Irwin's view, the subject property should be assessed for no more than \$95,000 per acre—the rate that it was assessed at before the assessor applied the 40% influence factor. *Irwin testimony*.
 - c. In fact, the assessor did not follow the relevant assessment guidelines in applying that 40% influence factor. According to those guidelines, influence factors are designed to account for how individual parcels of land vary from the norm. Thus, an influence factor should only be applied if a parcel of land has peculiar conditions that affect its value. *Irwin testimony; Pet'rs Exs. 10-11*. The assessor,

however, applied a 40% influence factor to almost every property in the subject property's neighborhood. *Irwin testimony; Pet'rs Ex. 9.*

- d. Finally, the Petitioners bought the subject property on January 5, 1999, for \$350,000. *Petitioner Exhibit 5; Irwin testimony.* Its value did not increase 61% over the eight years between that purchase and the March 1, 2007, assessment date at issue in this appeal. To the contrary, economic conditions in Kokomo have actually declined over the past several years. *Irwin testimony.*

11. Summary of the Respondent's contentions:

- a. Because the Petitioners failed to offer probative evidence of the subject property's market value-in-use, they failed to meet their burden of proof. *Thomas argument.*
- b. Regardless, the Respondent contends that the subject property is assessed correctly. To show why, the Respondent offered a copy of Howard County's sales-ratio study for commercial and industrial properties and a letter from the Department of Local Government Finance approving that ratio study for 2007. *Resp't Ex. C.* The subject property's 2007 assessment was determined by applying the annual-adjustment factor derived from that ratio study to the property's 2006 value. *Id; Thomas testimony.* While the subject property's record card arguably makes it appear as if the 40% adjustment was a positive influence factor, it was really an annual adjustment. *Thomas testimony.*
- c. The assessor recognized that the sale involving 1700 East Hoffer—one of the properties that Mr. Irwin said was sold at a premium—was a “strong sale.” *Thomas testimony.* In performing the ratio study, the assessor therefore used a price that was only 81% of that property's actual sale price. *Id; Resp't Ex. C.*

Record

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

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

Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Petitioner Exhibit 2 – Notification of Final Assessment Determination – Form 115, dated October 10, 2008,

Petitioner Exhibit 3 – Letter from Ken Irwin to Shelia Pullen, Center

- Township Assessor, dated March 24, 2008,
- Petitioner Exhibit 4 – Howard County property information print-out for parcel #34-10-06-453-003.000-002,
- Petitioner Exhibit 5 – History worksheet on purchase price, summary of true tax value, and summary of real estate taxes for parcel #34-10-06-453-003.000-002,
- Petitioner Exhibit 6 – Petitioners’ summary of comparable sales worksheet,
- Petitioner Exhibit 7 – Howard County property information print-out for Appletree Lane, parcel #34-10-06-452-012.000-002,
- Petitioner Exhibit 8 – Howard County property information print-out for 1324 East Hoffer Street, parcel #34-10-06-408-013.000-002,
- Petitioner Exhibit 9 – Howard County property information print-out for 1508 East Hoffer Street, parcel #34-10-06-433-010.000-002,
- Petitioner Exhibit 10 – Petitioners’ written discussion of influence and trending factors,
- Petitioner Exhibit 11– Copy of 50 IAC 2.2-4-10, Platted lots; property record card calculations,
- Petitioner Exhibit 12 – Petitioners’ written argument,
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- Respondent Exhibit A – Notice of Appearance of Consultant on Behalf of Assessor dated May 28, 2009 and Verification by Local Government Representative,
- Respondent Exhibit B – Respondent’s testimony brief,
- Respondent Exhibit C – Ratio Study Approval Process; January 22, 2008 letter from Cheryl Musgrave to Jamie Shepherd; ratio-study documents (21 pages),
- Respondent Exhibit D – Original 2007 property record card for 1801 South Elizabeth Street, parcel #34-10-06-453-003.000-002,
- Respondent Exhibit E – PTABOA 2007 property record card for 1801 South Elizabeth Street, parcel #34-10-06-453-003.000-002,
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- 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

13. The most applicable governing cases are:
 - a. A petitioner seeking review of a determination of an assessing official has the burden to make 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 makes 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.
14. The Petitioners failed to make a prima facie case for reducing the subject property’s assessment. The Board reaches 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). The appraisal profession has traditionally used three methods to determine a property’s market value: the cost, sales-comparison and income approaches to value. 2002 REAL PROPERTY ASSESSMENT MANUAL at 3, 13-15. In 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, to determine market value-in-use. *Id.*
 - b. A property’s market value-in-use, as ascertained by applying the Real Property Assessment Guidelines for 2002, is presumed to be accurate. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). To rebut that presumption, a taxpayer may offer evidence that is consistent with the Manual’s definition of true tax value, such as actual construction costs, appraisals, sales information for the subject or comparable properties, or any other information

compiled in accordance with generally accepted appraisal principles. See MANUAL at 5.

- c. By contrast, a taxpayer does not rebut the presumption that a property's assessment is correct simply by contesting the methodology that the assessor used to compute it. See *Eckerling* 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.* And strictly applying the Guidelines is not enough to make that showing. *Id.*
- d. 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. 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). Otherwise, that evidence lacks probative value. *Id.* For March 1, 2007, assessments, that valuation date was January 1, 2006. 50 IAC 21-3-3(b).
- e. Here, the Petitioners offered little evidence to show the subject property's market value in use. True, Mr. Irwin pointed to the sale prices for two properties. And one can estimate a property's value indirectly by examining the sale prices of comparable properties. Indeed, that is what an appraiser applying the sales-comparison approach does. See MANUAL at 3, 13-14. To use a sales-comparison analysis in an assessment appeal, however, the person offering that analysis must explain how the characteristics of the sold properties compare to those of the property under appeal and how any differences affect the properties' relative values. *Long*, 821 N.E.2d at 470. Because Mr. Irwin did virtually nothing to compare the subject property to the other two properties, the sale prices for those properties lack probative value.
- f. Mr. Irwin also testified that the Petitioners bought the subject property for only \$350,000. But that sale was from 1999. The Petitioners therefore needed to explain how that sale price related to the property's value as of January 1, 2006. And they offered no probative evidence to do that. Instead, Mr. Irwin simply asserted that Kokomo was in economic decline and that property values could not have increased 61% between 1999 and the March 1, 2007, assessment date.
- g. Finally, the Petitioners took issue with how the assessor determined the 40% adjustment factor that she applied to the subject land's assessment. They argued that she based that factor on sales in which the buyers had paid a premium and that she ignored other relevant facts. But those arguments simply attack the assessor's methodology. As the Tax Court explained in *Eckerling*, that does not suffice to rebut the presumption that the subject property was accurately assessed.

Conclusion

- 15. Because the Petitioners did not offer any probative evidence of the subject property’s market value-in-use, they failed to a prima facie case. The Board therefore 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>.