

PRO SE PETITIONER: Gerald Kimmons

PRO SE RESPONDENT: Assessor Catherine Lane

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Gerald Kimmons	)	
	)	
	)	Petition No. 42-022-08-1-5-10001
Petitioner,	)	
	)	Parcel No. 42-12-22-100-001.000-022
v.	)	
	)	Knox County
Knox County Assessor,	)	Vincennes Township
	)	2008 Assessment
Respondent.	)	

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

May 27, 2011

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE 1:** Did the Petitioner prove that his assessment as of March 1, 2008, is not the market value-in-use of the subject property and did the Petitioner prove what a more accurate value is?

**ISSUE 2:** Should the assessments as of March 1, 2006, or March 1, 2007, be changed based on Form 133 petitions the Petitioner presented in conjunction with his Form 131 petition for 2008?

## HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a 42 unit self-storage facility located at 644 Cullop Street in Vincennes.
2. The Petitioner initiated an assessment appeal by filing a Form 130 for 2008. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decision for 2008 on April 19, 2010. The Petitioners filed a Form 131 petition for 2008 with the Board on May 17, 2010. At that point he elected to opt out of small claims procedures.
3. The PTABOA determined the assessed value as of March 1, 2008, was \$8,400 for land and \$84,300 for improvements (\$92,700 total).
4. The Petitioner contends the total assessed value should be \$46,150.
5. Administrative Law Judge Kay Schwade held a hearing for this petition on March 1, 2011. There was no on-site inspection of the subject property by the Administrative Law Judge or the Board.
6. Gerald Kimmons and County Assessor Catherine Lane were sworn as witnesses.
7. The Petitioner presented the following exhibits (1 through 4 are part of, or attached to his Form 131):
  - Petitioner Exhibit 1 – Form 131, page 2,
  - Petitioner Exhibit 2 – Summary of the Petitioner’s argument,
  - Petitioner Exhibit 3 – Property record card (PRC) for 215 N. 15<sup>th</sup> Street  
(page 1, front side only),
  - Petitioner Exhibit 4 – 2006 through 2008 income and expenses and a summary  
statement from the Petitioner,
  - Petitioner Exhibit 5 – Income approach value calculations,
  - Petitioner Exhibit 6 – Income approach value calculations.

8. The Respondent presented the following exhibits:
- Respondent Exhibit 1 – Form 131,
  - Respondent Exhibit 2 – Photograph of the subject property (although the Respondent described this exhibit as photographs, only one photograph was presented),
  - Respondent Exhibit 3 – List of self-storage and mini storage facilities for sale in Indiana,
  - Respondent Exhibit 4 – Subject PRC,
  - Respondent Exhibit 5 – Income approach value calculation,
  - Respondent Exhibit 6 – Petitioner’s Schedule C, Income and Expenses with a reworked income approach value calculation attached.
9. The following items are recognized as part of the record:
- Board Exhibit A – Form 131 petition with attachments that include Form 133 petitions for 2006, 2007, and 2008,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign-In Sheet.

#### **OBJECTIONS**

10. Because the Petitioner opted out of small claims procedures, copies of documentary evidence were required to be provided to all other parties at least 5 business days before the hearing. 52 IAC 2-7-1(b)(1). Failure to comply may serve as grounds to exclude evidence. 52 IAC 2-7-1(f).
11. Both parties raised objections based on these provisions.
- a) The second page of **Petitioner Exhibit 4** is merely a summary dated 2-24-2010, apparently prepared by the Petitioner about the subject property, providing reasons he thinks the property taxes are too high, and reasons he thinks the assessment should be reduced. According to the Petitioner this page was included

in the attachments to his petition and the Respondent had a copy of this page before the hearing. According to the Respondent's objection, she did not get a copy of this page before the hearing. Much of this evidence is cumulative and neither side established how anything in it is probative. Nevertheless, we will give the Petitioner the benefit of the doubt on this question—the second page of Petitioner Exhibit 4 is admitted.

b) **Petitioner Exhibit 5** and **Petitioner Exhibit 6** contain income approach value calculations for the subject property. There appears to be no dispute that these forms originally were generated by the Respondent. But they also contain handwritten changes that were added by the Petitioner to show how he would use an income approach to value the subject property. In this condition, these documents clearly are not the same documents that came from the Respondent. They should have been provided as required by 52 IAC 2-7-1(b)(1), but they were not. Therefore, the Respondent objected. Nevertheless, exclusion is not mandatory. 52 IAC 2-7-1(f). The Petitioner testified, without any objection, to much of the same material and the Respondent offered a similar exhibit with her own version of the same calculation. Under these circumstances, the objection is overruled—Petitioner Exhibit 5 and Petitioner Exhibit 6 are admitted.

c) The second page of **Respondent Exhibit 6** has income approach value calculations for the subject property that were generated by the Respondent. According to the Respondent, the calculations were prepared from the actual profit and loss numbers supplied by the Petitioner. Again, this document should have been provided as required by 52 IAC 2-7-1(b)(1), but it was not. The Petitioner objected on that basis. The Petitioner also objected that the document was “illegal” and not relevant. As noted above, exclusion is discretionary, not mandatory. The Respondent testified, without any objection, to much of the same material and the Petitioner offered a similar exhibit with his own version of the same calculation. Under these circumstances, the objections are overruled—Respondent Exhibit 6 is admitted.

d) Ultimately, all of the objections and bickering over these exhibits is of no consequence. Although all of these exhibits from both parties are admitted as evidence, the parties failed to establish how any of them have probative value. Therefore, we conclude that none of these exhibits actually helps prove what an accurate market value-in-use might be.

#### **SUMMARY OF THE PETITIONERS' CASE**

12. The property taxes on the subject property have become excessive and unfair. This situation is making the business unsustainable. The value of any commercial property is the profitable return it generates for the owner. Based on the income, the subject property can support property taxes at only \$1,600 to \$1,700 per year. *Kimmons testimony; Pet'r Ex. 2.*
13. The subject property was listed with realtors for 10 years before the Petitioner purchased it in 2002 for \$4,000 at public auction. At that time it was vacant, unimproved land. *Kimmons testimony.*
14. The subject property has 42 units currently assessed at \$2,245 per unit. Fifteenth Street Storage (15<sup>th</sup> Street Storage) located at 215 N. 15<sup>th</sup> Street has 251 units assessed at \$1,029 per unit. The subject property's assessment per storage unit is 2.18 times the 15<sup>th</sup> Street Storage assessment. Based on the per unit assessment of the 15<sup>th</sup> Street Storage, the subject property's assessment should be \$43,218. This amount is approximately half of the current assessment and would reduce the property taxes to \$1,600 to \$1,700. That would make the business sustainable. *Kimmons testimony; Pet'r Ex. 1.*
15. If the income approach is used to value the subject property there is no value because there is no profit. Every year this property operates at a loss. Using the Respondent's own income approach formula, the highest possible value that could be calculated for the subject property would be \$23,013; however, the value by the income approach is \$0

because there is no profit—there is nothing to capitalize. Nevertheless, it would be ridiculous to give the property an assessed value of \$0. *Kimmons testimony; Pet'r Ex. 5, 6.*

16. The Petitioner filed Form 133 petitions at the local level for the 2006 and 2007 assessment years as instructed by the previous county assessor. Because the county assessor or the PTABOA failed to act on these petitions, the Petitioner filed the Form 133 petitions along with the Form 131 petition to the Board. *Kimmons testimony.*

#### **SUMMARY OF THE RESPONDENT'S CASE**

17. The current assessment reflects the application of 20% obsolescence depreciation to each of the buildings. The PTABOA also classified the land as “12” signifying the land is not used as primary commercial land. The PTABOA made these adjustments in an attempt to satisfy the Petitioner. *Lane testimony; Resp't Ex. 4.*
18. Based on the lowest unit rent rate for the subject property (\$35), the potential gross income for the subject property is \$61,740. Assuming vacancy/collection loss of 15%, expenses of 35%, and an 11% capitalization rate, the income approach summary indicates the subject property's value is \$310,000. *Lane testimony; Resp't Ex. 5.*
19. On the other hand, if the Petitioner's actual gross income is considered, the income approach indicates a value of \$93,200. This amount is still slightly more than the current assessment. It does not support any further reduction. *Lane testimony; Resp't Ex. 6.*
20. On November 17, 2009, the Petitioner filed a Form 130 petition for the 2008 assessment year and attempted to file Form 133 petitions for the 2006 and 2007 assessment years. The Form 133 petitions were not accepted or date stamped because they were not timely. The Form 130 was processed because it was timely filed. *Lane testimony.*

## ADMINISTRATIVE REVIEW AND BURDEN

21. 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).
22. 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”).
23. 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.

## ANALYSIS

### Issue 1: Assessment as of March 1, 2008

24. The Board is a creation of the legislature and, therefore, it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). “All doubts regarding a claim to power of a governmental agency are resolved against the agency.” *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996). The Board lacks jurisdiction to hear or determine claims that the amount of property taxes is excessive or unfair.

25. The assessed value of a property is just one of the major factors in determining what a tax liability is. It is, however, a factor that is within the Board's authority and jurisdiction. Ind. Code § 6-1.5-4-1(a)(1).
26. Real property is assessed on the basis of 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 of a similar user, from the property." Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. Other evidence relevant to market value-in-use can rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
27. In trying to make his case the Petitioner attempted to compare his assessment to the assessment of another self-storage facility. To effectively use any kind of comparison approach to value a property, one must show that properties truly are comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). One must identify the subject property's characteristics, explain how those characteristics compare to the alleged comparable properties, and explain how any differences affect market value-in-use. *Id.* at 471. The subject property and 15<sup>th</sup> Street Storage are both self-storage facilities and we know the number of storage units at each property, but otherwise the Petitioner did not provide any basis for comparison. The Petitioner did nothing to establish how any differences between the properties (such as age, size, location, etc.)



might affect their relative values.<sup>1</sup> The Petitioner admitted that the basis for his comparison was the number of storage units at each property. The Petitioner's attempted comparison of these two assessments does not prove anything meaningful about what the actual market value-in-use of his property really is.

28. Simply comparing assessments is problematic. It is not enough for the Petitioner to show his property is assessed higher than some other property. A taxpayer cannot rebut the presumption that his assessment is correct without presenting evidence of market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006). *See also Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). He must present probative evidence that the assessed value as determined by the assessor is not an accurate market value-in-use. *Westfield Golf*, 859 N.E.2d at 399; *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (focus is on determining whether the assessed value is actually correct.)
29. As previously mentioned, the income approach is one of the generally accepted techniques for determining a property's market value-in-use. And here both sides presented calculations purporting to value the subject property on that basis. They reach substantially different conclusions that range from \$0 to \$310,000. Therefore, the credibility, reliability, and persuasive weight of each calculation are important; however, both parties virtually ignored those considerations. This determination cannot. After reviewing all of the evidence, we conclude that none of the values purportedly derived from the income approach are credible for several reasons.
- a) There is no substantial evidence about the education, training, experience, or any other qualifications that Mr. Kimmons or Ms. Lane might have regarding the valuation of commercial property according to the income approach.

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<sup>1</sup> Some details about the storage buildings at 15<sup>th</sup> Street Storage might have been on the back side of the PRC (Pet'r Ex. 3), but the Petitioner failed to provide it.

- b) There is no evidence that any of those purported valuations were prepared in accordance with generally accepted appraisal principles.
  - c) The capitalization rates in the various calculations range from 10% to 15%, but there is no evidence or explanation to support any of those rates.
  - d) Perhaps most importantly, the Petitioner admitted it would be “ridiculous” to conclude the subject property has no value, although that is what his calculations suggest. And he presented no substantial evidence based on the income approach that supports the assessment he requested.
30. The Petitioner failed to overcome the presumption that the assessment of \$92,700 is accurate. He was required to present substantial, probative evidence that assessment is incorrect. He also was required to present substantial, probative evidence showing what a more accurate valuation would be in order to make a prima facie case. He failed to do so. Therefore, there will be no change to the existing 2008 assessment. *See Meridian Towers*, 805 N.E.2d at 478; *Clark*, 694 N.E.2d at 1230.

Issue 2: Assessment as of March 1, 2006 and 2007

31. The Petitioner claimed Form 133 petitions for his 2006 and 2007 assessments also are pending with the Board. He sought similar reductions for those assessments as a step toward getting back some of the taxes he previously paid. The Petitioner argued that local officials failed to act on these petitions so the Board should make the corrections. The Respondent explained that the Form 133 petitions for 2006 and 2007 were not processed or even “date stamped” because they were not timely when the Petitioner attempted to file them on November 17, 2009. There appears to be no dispute about the fact that no action was taken in regard to the Form 133 petitions for 2006 or 2007.
32. A Form 131 petition and a Form 133 petition are separate, distinct paths to seek relief. The time limits for initiating an action, the types of things that can be addressed, and

what must happen at the county level before going to the Indiana Board are significantly different on each path. The most relevant governing statute for a Form 133 petition states:

(a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:

- (1) The description of the real property was in error.
- (2) The assessment was against the wrong person.
- (3) Taxes on the same property were charged more than one (1) time in the same year.
- (4) There was a mathematical error in computing the taxes or penalties on the taxes.
- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing an assessment.
- (8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

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(e) A taxpayer may appeal a determination of the county property tax assessment board of appeals to the Indiana board for a final administrative determination. An appeal under this section shall be conducted in the same manner as appeals under sections 4 through 8 of this chapter.

Ind. Code § 6-1.1-15-12.

33. Subsection (e) authorizes an appeal of the county board's determination, but it provides no path to get around the county board. And the Petitioner provided no substantial argument or authority for doing so. Even if it is true that county officials should have acted on his Form 133 petitions, there is no authority for bypassing the county board. The Form 133 petitions must be acted upon by the required local officials before they come to this Board. Therefore, we have no authority to make any determination about the merits or change anything for 2006 or 2007.

34. The Petitioner's claim has fatal problems beyond the lack of any county board determination because the purported error is not the kind of thing that can be addressed with a Form 133. The issues that can be addressed by a Form 133 are much more limited than those that can be addressed by a Form 131. Form 133 petitions are only for objective errors that can be corrected with exactness and precision. They are not for corrections that require subjective judgment. Ind. Code § 6-1.1-15-12; *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 854 (Ind. Tax Ct. 1990).
35. The evidence and argument that the Petitioner presented relate entirely to subjective determinations about the actual market value-in-use of the subject property. Consequently, they could not possibly lead to legitimate corrections based on a Form 133.
36. Finally, for all the reasons discussed regarding 2008, the Petitioner simply failed to make a prima facie case on the merits.

#### **SUMMARY OF FINAL DETERMINATION**

37. The Board finds in favor of the Respondent and will not order any assessment change.

This Final Determination for the above captioned matter is issued on the date first written above.

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>