

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

Petition: 03-009-11-1-4-00007
Petitioner: Mann Company North LLC
Respondent: Bartholomew County Assessor
Parcel: 03-05-15-240-000.800-009
Assessment Year: 2011

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

PROCEDURAL HISTORY

1. The Petitioner initiated the assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (the “PTABOA”) by filing a Form 130 dated February 28, 2012.
2. The PTABOA mailed its notice of final assessment determination (“Form 115”) on January 30, 2013, denying the Petitioner relief.
3. The Petitioner appealed to the Board by filing a Form 131 petition for review on March 5, 2013.
4. The Petitioner elected to have the administrative hearing conducted under the Board’s small claims procedures and the Respondent did not elect to have the proceeding removed from the Board’s small claims procedures.
5. Paul Stultz, the Board’s appointed administrative law judge (the “ALJ”), held the administrative hearing on June 24, 2014. The ALJ did not inspect the subject property.
6. Tax representative Milo Smith and certified appraiser Belinda Graber were sworn as witnesses for the Petitioner. Virginia Whipple was sworn as a witness for the Respondent. County Assessor Gordon “Lew” Wilson was sworn as a witness but did not testify.

FACTS

7. The subject property is a multi-tenant retail building containing an auto service area. It is located at 3250 West Market Place Drive in Edinburgh.

8. The PTABOA determined the 2011 assessed value for the land is \$413,000 and the assessed value for the improvements is \$1,484,200, for a total assessed value of \$1,897,200.
9. At the hearing, the Petitioner requested a total assessed value of \$1,170,000 for the subject property.

RECORD

10. The official record contains the following:
 - a. A digital recording of the hearing,
 - b. Petitioner Exhibit 1 – 2011 Subject Property Record Card (“PRC”)
Petitioner Exhibit 4¹ – Copy of 2002 Real Property Assessment Manual, page 2
Petitioner Exhibit 5² – Copy of 2002 Real Property Assessment Manual, page 6
Petitioner Exhibit A2 – Four tables from RealtyRates.com
Petitioner Exhibit A3 – An income statement 2011

Respondent Exhibit A – Whipple and Wilson Credentials
Respondent Exhibit B – Copies of 2010 and 2011 PRCs
Respondent Exhibit C – Aerial view of the subject property
Respondent Exhibit D – Photographs of the subject property
Respondent Exhibit E – Corrected PRC of the subject property for the cost approach,
Respondent Exhibit F – Cost approach vacancy factor memorandum
Respondent Exhibit G – IncomeWorks summary
Respondent Exhibit H – IncomeWorks approach without vacancy
Respondent Exhibit I – IncomeWorks approach with vacancy
Respondent Exhibit J – Reconciliation of values memorandum

Board Exhibit A – Form 131 petition with attachments
Board Exhibit B – Notice of Hearing
Board Exhibit C – Hearing sign-in sheet

- c. These Findings and Conclusions

BURDEN OF PROOF

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor,*

¹ The Petitioner’s exhibit list describes Petitioner Exhibit 4 as being a copy from the 2011 Real Property Assessment Manual. The exhibit, however, is a copy from the 2002 Real Property Assessment Manual.

² The Petitioner’s exhibit list describes Petitioner Exhibit 5 as being a copy from the 2011 Real Property Assessment Manual. The exhibit, however, is a copy from the 2002 Real Property Assessment Manual.

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). A burden-shifting statute creates two exceptions to the rule.

12. First, Ind. Code § 6-1.1-15-17.2(a) “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Under Ind. Code § 6-1.1-15-17.2(b), “the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.”

Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15.” Under those circumstances,

if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving the assessment is correct.

13. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the burden-shifting language. The change applies to all appeals pending before the Board. *See P.L. 97-2014.*
14. In the present case, the parties expressly agreed on the record that the Petitioner has the burden of proving the 2011 assessment is incorrect.

CONTENTIONS

15. Summary of the Petitioner’s case:
 - a. The Petitioner contends that the perimeter-to-area ratio (the “PAR”) “should be two with a perimeter of 973, not 1283.” Ms. Whipple agreed on the record with the Petitioner’s contention and that such items should be changed. *Smith testimony.*
 - b. The Petitioner contends that all but one of the small shops located in the subject property are vacant and that the vacant shops have not been leased since their construction in 2002. *Smith testimony.*
 - c. The Petitioner cited to the Real Property Assessment Manual stating that true tax value does not mean fair market value. The Petitioner further contends that true tax

- value is defined as the market value-in-use of a property for its current use, as reflected by the utility received by the owner. *Smith testimony; Petitioner Ex. 4.*
- d. The Petitioner cited to the Real Property Assessment Manual stating that a taxpayer is allowed to introduce evidence of income to demonstrate the utility received by the owner. *Smith testimony; Petitioner Ex. 5.*
 - e. Ms. Graber presented the Petitioner's income approach to value. Mr. Smith provided her with the income statement from the Petitioner's tax return for 2011. Taking the information contained therein, and using information from RealtyRates.com, which is a published data service that monitors sales, leases, financing, and construction of different investment properties nationally, Ms. Graber constructed an income statement showing gross income and actual expenses for 2011. *Graber testimony; Petitioner Exhibit A2, Petitioner Exhibit A3.*
 - f. Ms. Graber contends that the first RealtyRates chart contained in Exhibit 2 shows average reserve requirements. For retail properties, the rates per square foot are \$0.26 for the minimum, \$0.82 for the maximum and \$0.50 for typical. In her calculation, Ms. Graber used \$0.60 per square foot, which is between typical and maximum, to compute the reserves for replacement. *Graber testimony; Petitioner Exhibit A2.* For the capitalization rate, Ms. Graber looked at the average capitalization rates for anchored centers, un-anchored centers and Indianapolis as a whole. Based on those indicators, combined with the application of her experience in the market, she calculated an overall capitalization rate of 9.5%. *Graber testimony.* Ms. Graber added the tax rate and ultimately calculated a capitalization rate of 10.97%. The resulting value based on the income approach totaled \$1,169,885, which was subsequently rounded to \$1,170,000. *Graber testimony; Petitioner Exhibit A3.*
 - g. The Petitioner contends that the primary problem with the building is that the bay depth is too deep. For retail facilities, the optimum bay depth is 40 to 50 feet deep. A building with a depth of 60 feet would be "un-leasable" and "difficult to rent." Ms. Graber calculated the average depth of the shops in the subject property to be 95 feet. *Graber testimony.*
 - h. When questioned about using actual data in her calculation, Ms. Graber testified that she just found out about the property the day before the hearing. At that time, she was given the income statement and, as a result, all she had was historical data. Ms. Graber contends that historical data is factual and is therefore more accurate than local market data where various rates and losses are merely assumed. Ms. Graber further testified that when using actual data, typical management is assumed as opposed to superior or inferior management. *Graber testimony.*
 - i. The Petitioner contends that its calculation is based on actual income, not potential income, and that true tax value is the market value-in-use of the property for its current use, not its potential income. Consequently, as indicated above, the Petitioner

contends that the value of the subject property as reflected by the utility received by its current owner should be \$1,170,000. *Smith testimony.*

16. Summary of the Respondent's case:

- a. The Respondent presented an aerial view and photographs of the subject property. A photograph taken from Executive Drive shows the Harley Davidson store, while the other shops are difficult to discern. The Respondent contends that the Harley Davidson shop and one other shop are being leased and that there are service areas in the back that Harley Davidson uses. *Whipple testimony; Respondent Exhibits C and D.*
- b. The Respondent agrees with the Petitioner that the PAR should be 2. The Respondent prepared a corrected PRC with a PAR of 2 that computed a value of \$1,539,160 before applying depreciation or a market factor. After applying a market factor of 1.27% and a vacancy factor (as explained in Respondent Exhibit F) of negative 20%, the value of the building is \$1,563,800. After adding the other improvements and the land, the Respondent's cost approach value with regard to the subject property results in a total value of \$2,137,800. *Whipple testimony; Respondent Exhibits E and F.*
- c. The Respondent used IncomeWorks to compute the value using the income approach. IncomeWorks uses local data for the factors involved. The Respondent computed the value using the income approach two ways: without vacancy and with vacancy. *Whipple testimony; Respondent Exhibit G.*
- d. To compute the value without vacancy, the Respondent used the building's total square footage of 42,481. The Harley Davidson store was treated as an anchor because of its draw and size (22,132 square feet). The Harley Davidson store was valued at \$10.54 per square foot. The remaining area (20,349 square feet) was attributed to the inline space and was valued at \$8.00 per square foot. The rental rates for inline space ranged from \$8.00 to \$12.00 per square foot. Because the inline space is difficult to rent due to the depth, the Respondent used the lower \$8.00 value. The Respondent used Bartholomew county data for the vacancy rate (15.42%), the expenses (22.10%) and the capitalization rate (10.00%). The value using the income approach without vacancy resulted in a total of \$2,609,575. *Whipple testimony; Respondent Exhibit H.*
- e. To compute the value with vacancy, the Respondent reduced the square footage attributed to the inline space by 50% making the total square footage 32,306. The Harley Davidson store (22,132 square feet) was valued at \$10.54 per square foot. The inline space was reduced to 10,174 square feet and valued at \$8.00 per square foot. The Respondent used the same Bartholomew county data for the vacancy rate (15.42%), the expenses (22.10%) and the capitalization rate (10.00%). The value using the income approach with vacancy resulted in a total of \$2,073,248. *Whipple testimony; Respondent Exhibit I.*

- f. The Respondent concedes that not all of the subject property has been rented. The Respondent contends, however, that the utility of the property is in the potential income stream. The Respondent cites International Association of Assessing Officials standards which state that market information is used to develop such values. *Whipple testimony*.
- g. In Respondent Exhibit J, the Respondent recalculated the cost approach to reflect the PAR correction resulting in a value of \$2,137,800. The income approach value of \$2,073,200 is the IncomeWorks value with vacancy as discussed in the previous paragraph. The Respondent contends that the income approach is the best approach to value the subject property because it reflects the 2011 market. The Respondent further contends that the cost approach should not be used because it is less reliable due to uncertainty with regard to depreciation factors. The Respondent notes that the sales approach was not considered because the subject property is an income producing property. Therefore, the income approach is more accurate. Ultimately, the Respondent requests a 2011 value of \$2,073, 200. *Whipple testimony; Respondent Exhibit J*.

ANALYSIS

- 17. 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, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm an assessed valuation. 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. *Id* at 3.
- 18. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2011, the assessment and valuation dates were the same, March 1, 2011. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- 19. The Petitioner raised the issue of the PAR contending that it should be two. Even if the PRC contained an error in calculating the PAR, the Petitioner failed to meet its burden by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne County Assessor*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, the Petitioner needs to show the assessment does not accurately reflect the market

value-in-use. *Id.*; see also *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that proper focus is not on methodology, but rather, on what the correct value actually is). Even though the Respondent agreed that the PAR should be 2, the Petitioner still failed to meet its burden. The Petitioner must do more than contest the methodology. The Petitioner must present evidence showing that the assessment is not the market value-in-use of the subject property and evidence of a more accurate valuation.

20. Ms. Graber prepared an income approach valuation using the Petitioner's actual income and expenses from the 2011 tax return. She testified that all income and expenses are actual amounts, except for management and reserve for replacement. She used 7% for management expenses, but did not explain how she arrived at that rate. The reserve for replacement rate was based on national data from RealtyRates.com. For the capitalization rate, Ms. Graber looked at national rates for anchored and un-anchored centers. She also looked at Indianapolis rates for anchored and un-anchored centers. Based on those rates and her years of experience in the market, she calculated an overall rate of 9.5%. She added the tax rate for capitalization which resulted in a final rate of 10.97%.
21. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also necessary to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property is not consistent with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expense data helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. See *Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013).
22. The Petitioner failed to establish that its income approach to value calculations conform to generally accepted appraisal principles. Although Ms. Graber was identified as an appraiser, the record does not establish that she did an appraisal of the subject property or that her "indicated value" for it is computed according to generally accepted appraisal principles. Her capitalization rate considered national data and Indianapolis data for both anchored and un-anchored stores. A relevant, credible capitalization rate needs to be more representative of the local market than one based on a national average or even the Indianapolis average. The same can be said for the reserves for replacement.
23. Accordingly, the Petitioner failed to prove the 2011 assessment of the subject property should be reduced. See *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006), (stating that "when 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.").

24. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of 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).
25. The Petitioner's failure to make a case does not, however, end the Board's inquiry because the Respondent requested an increase in the assessed value. The Respondent, of course, has the burden of proving the assessment should be increased.
26. The Respondent's case suffers from similar problems. The Respondent claimed the income approach with vacancy was the best indicator of value. IncomeWorks was used to compute a value. The IncomeWorks evaluation report indicates a rental income of \$10.54 per square foot for the anchor, \$8.00 per square foot for the inline space, vacancy of 15.42%, expenses of 22.10%, and a capitalization rate of 10.00%. The Respondent valued only 50% of the inline space due to vacancy. The evidence, however, contains no substantial basis for any of those key factors. Furthermore, there is no evidence that this valuation was prepared according to generally accepted appraisal principles. Consequently, the Respondent failed to support any increase in the assessment.

CONCLUSION

27. Because the Respondent admitted the PAR should be 2, the PRC must be changed to make that correction. Nevertheless, the Petitioner failed to make a case that the 2011 assessment needs to be reduced. Similarly, the Respondent failed to make a case for increasing the 2011 assessment. The end result is no change to the assessed value.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the 2011 assessment will not be changed.

ISSUED: September 22, 2014

Chairman, 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.