

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

Petition #: 68-017-06-1-4-00079
Petitioner: Mark A. Marquis
Respondent: Randolph County Assessor
Parcel #: 018-00457-00
Assessment Year: 2006

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

Procedural History

1. On July 9, 2007, Mark A. Marquis appealed his property’s assessment to the Randolph County Property Tax Assessment Board of Appeals (“PTABOA”).
2. On January 11, 2008, the PTABOA issued its determination making no change to the property’s assessment.
3. On February 5, 2008, Mr. Marquis filed a Form 131 petition with the Board. He elected to have this case heard under the Board’s procedures for small claims.
4. The Board issued a notice of hearing to the parties dated March 6, 2008.
5. On April 10, 2008, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack (“ALJ”).
6. Persons present and sworn in at hearing:
 - a) For Mr. Marquis: Mark A. Marquis, *pro se*
 - b) For the Assessor: Beverly Fields, Randolph County Assessor
Charles E. Ward, witness

Facts

7. The property is a vacant commercial lot located at 302 North Main Street, Lynn, Indiana.
8. Neither the Board nor the ALJ inspected the property.

9. The PTABOA listed the property's assessment as \$14,300.
10. Mr. Marquis did not request a specific value.

Issue

11. Mr. Marquis offered the following evidence and arguments:
 - a) The property under appeal is a vacant lot that Mr. Marquis bought in October 2003, for \$15,000. *Marquis testimony*. He contends that the property's assessment, which amounts to \$2.17 per square foot, is too high. Mr. Marquis argues that his property should instead be assessed for \$0.30 to \$0.60 per square foot, which would be in line with the assessments of other vacant properties in the area.
 - b) To support his contention, Mr. Marquis pointed to the assessments of several purportedly comparable properties. Those properties were assessed for amounts ranging from \$0.16 per square foot to \$1.29 per square foot. *Marquis testimony; Pet'r Exs. 6-11*. In his view, the properties he identified were more suitable comparators than the ones offered by the Assessor, because his properties had actually sold within the last five years. *Marquis testimony*.
 - c) The \$15,000 he paid for the property in 2003 is irrelevant, because the Manual defines a property's true tax value as "market value-in-use," not its market value.
12. The Assessor offered the following evidence and arguments:
 - a) The \$15,000 that Mr. Marquis paid for the property in 2003 offers the best evidence of its market value. *Fields, Ward argument*. Assessors were directed to use sales from 2004 and 2005 to generate March 1, 2006 assessments, and Mr. Marquis bought the property less than one year from the beginning of that period. *Ward argument*.
 - b) To further support the subject property's assessment, the Assessor pointed to the assessments of several vacant commercial lots in Lynn. Those lots were assessed for amounts ranging from \$2.01 per square foot to \$2.97 per square foot. *Fields testimony; Resp't Ex. 5*.
 - c) Some of the purportedly comparable properties that Mr. Marquis identified were significantly larger than his property. *Ward argument*. And unlike Mr. Marquis's property, they were classified as industrial and located away from the business district. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Form 131 petition.
 - b) The digital recording of the hearing.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 130 petition
 - Petitioner Exhibit 2: Form 115
 - Petitioner Exhibit 3: Form 131 petition
 - Petitioner Exhibit 4: Subject property record card (PRC)
 - Petitioner Exhibit 5: Picture of subject and nearby properties
 - Petitioner Exhibit 6: PRC for 424 North Main Street
 - Petitioner Exhibit 7: PRC for 101 North Main Street
 - Petitioner Exhibit 8: PRCs for four properties on West Sherman Street owned by Dennis Thurston
 - Petitioner Exhibit 9: PRCs for four properties on West Sherman Street owned by Howard Enterprises
 - Petitioner Exhibit 10: PRC for 107 West Sherman Street
 - Petitioner Exhibit 11: PRC for 406 North Main Street
 - Petitioner Exhibit 12: Conversion factor for acres to square feet

 - Respondent Exhibit 1: Form 131 petition
 - Respondent Exhibit 2: Form 115 determination
 - Respondent Exhibit 3: Form 130 and attachments
 - Respondent Exhibit 4: PRC for subject property
 - Respondent Exhibit 5: Summary sheet and PRCs for subject and four comparable properties
 - Respondent Exhibit 6: Sales disclosure form for subject property

 - Board Exhibit A: Form 131 Petition
 - Board Exhibit B: Notice of Hearing
 - d) These Findings and Conclusions.

Analysis

Burden of Proof

14. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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).

15. In making its case, the petitioner must explain how each piece of evidence relates to its 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”).
16. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Mr. Marquis’ Case

17. Mr. Marquis did not provide sufficient evidence to support his contentions. The Board reaches this conclusion 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 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, sales-comparison, and income approaches. *Id.* at 3, 13-15. 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, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 any information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) Mr. Marquis claimed that other parcels of land that were comparable to his were burdened with significantly lower assessments. His instinct was partly right—one can indirectly estimate a given property’s value by looking at the values of comparable properties. Indeed, that is what the sales-comparison approach does. But the sales-comparison approach requires one to look at the comparable properties’ values as derived through market transactions. Mr. Marquis, by contrast, used the assessed values for his purportedly comparable properties. Those assessed values didn’t come from market transactions; they were mass-appraisal estimates based on a completely separate valuation approach. Thus, by relying on assessments, rather than sale prices, of purportedly comparable

properties, Mr. Marquis improperly mixed otherwise accepted valuation methodologies.

- d) Even if the Board were to overlook Mr. Marquis' use of assessments rather than sale prices, he did not properly apply the basic principles underlying the sales-comparison approach. That approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property that already exists in the market place. MANUAL at 13-14. A person applying the sales-comparison approach must first identify comparable properties that have sold. *Id.* He or she must then adjust those properties' sale prices to reflect the subject property's value. *Id.* The adjustments reflect differences between the subject and comparable properties that affect value. *Id.*
- e) Thus, to use the sales-comparison approach as evidence in a property assessment appeal, a party first must establish that the properties being examined are comparable to each other. Conclusory statements that two properties are "similar" or "comparable" do not suffice; instead, the party must compare the subject property's characteristics to the characteristics of each purportedly comparable property. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 470-71 (Ind. Tax Ct. 2005). He or she must also explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f) Mr. Marquis did not sufficiently explain how the other parcels compared to his property. While he calculated each parcel's assessed value per square foot, he neither compared relevant features such as size, use, and location, nor considered how those features affected the properties' respective market values-in-use. And he didn't make any adjustments for significant differences between the properties.
- g) Because Mr. Marquis didn't offer any probative market-based evidence to establish his property's true tax value, he failed to make a prima facie case rebutting the presumption that his property is correctly assessed.¹

Conclusion

18. Mr. Marquis failed to make a prima facie case of error. The Board therefore finds for the Assessor.

¹ The Board does not rely on the property's 2003 sale price. Thus, it needn't address Mr. Marquis's argument that the sale price is irrelevant because the Manual defines a property's true tax value as its "market value-in-use" rather than simply its "market value." Suffice it to say, where two parties negotiate an arm's-length sale of a property, and the buyer uses the property for the same general purposes as the seller, the sale price offers compelling evidence of the property's market value-in-use. Of course, the party relying on that sale price must explain how it relates to the property's value as of the relevant valuation date. *See Long*, 821 N.E.2d at 471.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: _____

Commissioner, Betsy Brand
Indiana Board of Tax Review

Commissioner, Terry Duga
Indiana Board of Tax Review

Chairman, Robert Wentz
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>