

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

Petition #: 68-017-06-1-4-00081
Petitioner: Mark A. Marquis
Respondent: Randolph County Assessor
Parcel #: 018-00653-00
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 reducing the property’s assessment, although apparently not to the level that he wanted.
3. Less than one month later, 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 two-story commercial building located at 108 North Main Street, Lynn, Indiana.

8. Neither the Board nor the ALJ inspected the property.
9. The PTABOA listed the property's value as \$8,200 for the land and \$31,900 for the improvements, for a total assessment of \$40,100.
10. Mr. Marquis requests a total assessment of \$28,661.

Issue

11. Mr. Marquis offered the following evidence and arguments:
 - a) In 2003, Mr. Marquis bought the property for \$37,000. He rents the bottom story to a business. *Id.* The upper story contains two studio apartments, one of which isn't usable. *Id.*
 - b) Because he holds the property as an investment, Mr. Marquis believes that the income approach offers the best method for estimating its value. *Id.*; *Pet'r Ex. 6.* Using that approach, he estimated the property's value at \$28,661. *Marquis testimony; Pet'r Ex. 8.* He followed the formula described in the 2002 Real Property Assessment Manual. Thus, he divided the property's net income by its rate of return. *Id.*
 - c) Mr. Marquis calculated the property's net income for 2006 by taking its rents (\$6,500) and subtracting expenses (\$376.17) and property taxes (\$965.84). *Marquis testimony; Pet'r Exs. 6-8.* In Mr. Marquis's view, he was not under-renting the property because he was charging higher rent than owners of comparable properties in Lynn and Winchester charge. *Pet'r Ex. 5.* His expenses were very low, in part, because he didn't insure the building. *Marquis testimony.*
 - d) Mr. Marquis used an 18% capitalization rate. To calculate that rate, he started with a 10% desired rate of return, and "adjusted" it for expenses. *Marquis testimony.* He also noted that dividing the property's gross income for 2006 by the \$37,000 he paid for it yields an 18% rate. *Id.*
12. The Assessor offered the following evidence and arguments:
 - a) Normally, appraisers use three methods to determine a property's value—the cost, income, and sales-comparison approaches. *Ward argument.* The Assessor's witness, Charles Ward acknowledged that the cost approach may not be appropriate for older buildings like Mr. Marquis's. *Id.*
 - b) Mr. Ward employed the sales-comparison approach to show that Mr. Marquis's property was correctly assessed. He looked at sales of three properties that he believed were comparable to Mr. Marquis's property. Those properties sold for prices ranging from \$10.36 per square foot to \$14.00 per square foot. *Id.*; *Resp't*

Exs. 8-10. Mr. Marquis bought his property for \$12.17 per square foot. *Ward testimony.*

- c) To correctly use the income approach, an appraiser must use stabilized, market income and market rent. *Ward argument.* The appraiser must then subtract vacancy and collection allowances, as well as maintenance and insurance costs to determine a bottom-line net operating income. *Id.* The appraiser then divides that net operating income by a capitalization rate to determine the property's value. *Id.*
- d) There are two ways to calculate a capitalization rate. *Id.* The first method, which Mr. Ward termed a "band of investment" analysis, looks to returns on an investor's equity and loans. The second method entails dividing the sale prices of comparable properties by the rent that they generate. *Id.* Typically, capitalization rates run between 8% and 14%, with 10% being average. *Id.* A 10% rate, if loaded by 3% for property taxes, would yield a value of \$47,000. *Id.* The 18% Mr. Marquis used doesn't reflect what happens in the market. *Id.*
- e) Finally, the \$37,000 Mr. Marquis paid for the property in 2003 should carry some weight in determining its value. *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: Listing of rents for other properties
 - Petitioner Exhibit 6: 2002 Real Property Assessment Manual, page 14
 - Petitioner Exhibit 7: Rents and expenses for the subject property for 2006
 - Petitioner Exhibit 8: Income approach worksheet

 - Respondent Exhibit 1: Form 131 petition
 - Respondent Exhibit 2: Form 115 determination
 - Respondent Exhibit 3: Form 133 for the property
 - Respondent Exhibit 4: Subject PRC
 - Respondent Exhibit 5: Form 130 petition
 - Respondent Exhibit 6: Subject PRC with notes from PTABOA hearing
 - Respondent Exhibit 7: Photograph of subject property

Respondent Exhibit 8: Summary sheet and PRCs for comparable properties

Respondent Exhibit 9: Second summary sheet with additional comparable properties

Respondent Exhibit 10: PRC for 204 West Grant Street

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.

The Petitioner's Case

17. Mr. Marquis did not provide sufficient evidence to support his contentions. The Board reaches this conclusion for the followings:
 - 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 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) Parties must also explain how their evidence relates to an appealed property's market value-in-use as of the relevant valuation date. *See 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). For the March 1, 2006 assessment at issue in this case, that valuation date was January 1, 2005. *See* IND. ADMIN. CODE tit. 50, r. 21-3-3 (indicating that, for assessments on or after March 1, 2006, the valuation date is "January 1 of the year preceding the year of the assessment date.").
- d) Mr. Marquis's attempt to value his property using the income approach fails because he didn't adequately support his 18% capitalization rate. The income approach assumes that a potential buyer will pay no more for a property than it would cost him to purchase an equally desirable substitute investment offering the same risk and return. MANUAL at 14. Because a capitalization rate reflects the return that an investor requires in light of the investment's risks, it is integral to the income approach. And as the equation's denominator, it greatly influences any ultimate value estimate.
- e) A taxpayer therefore must use great care in choosing a capitalization rate. That rate should generally reflect the annual rate of return necessary to attract investment capital. *Hometown Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). And many factors influence it, including "apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." *Id.* (quoting *Lacy Diversified Industries, LTD. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003)).
- f) Here, Mr. Marquis barely explained why he used a capitalization rate of 18%. He testified that when he bought the property, he followed a rule of thumb that investors generally want a 10% rate of return. He then adjusted that rate upward to 18%. But he didn't explain his adjustment. He also testified that dividing the property's gross income by the \$37,000 he paid for it yields an 18% rate.
- g) His first explanation is wholly conclusory. His second explanation, however, has at least some facial appeal. Indeed, the Assessor's own witness testified that

appraisers obtain market capitalization rates by doing something very similar to what Mr. Marquis said he did—dividing a property’s net operating income by its sale price.

- h) But that explanation fails for at least three reasons. First, Mr. Marquis divided the subject property’s sale price by its gross, rather than its net, income. If he had used the property’s net income, he would have derived a lower rate. Second, a property’s actual arm’s-length sale price directly shows its market value. Thus, it offers better evidence of that property’s value than an indirect estimate from any of the three generally accepted valuation approaches. Yet Mr. Marquis is not asking for an assessment equal to his property’s \$37,000 sale price; he wants almost \$9,000 less. Finally, Mr. Marquis bought the property in 2003, and he didn’t explain how that sale price, or the capitalization rate he derived from it, related to the property’s value as of the relevant January 1, 2005, valuation date.
- i) Thus, Mr. Marquis’s income-approach estimate lacks sufficient probative value. And because he didn’t offer any other market-based evidence, he failed to make a prima facie case rebutting the presumption that the Assessor correctly assessed his property.

Conclusion

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

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>