

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

Petition: 41-041-06-1-3-00002
Petitioner: McDonald's Corporation
Respondent: Johnson County Assessor
Parcel: 2500 34 05 008/01
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals ("PTABOA") by filing Form 130 on September 5, 2007.
2. The PTABOA issued notice of its decision on December 18, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on February 1, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 7, 2008.
5. Administrative Law Judge Paul Stultz held the hearing on November 20, 2008.
6. The following persons were sworn as witnesses at the hearing:
For the Petitioner—Milo E. Smith, tax representative,
For the Respondent—Michael S. Watkins, county assessor employee.

Facts

7. The property is a fast food restaurant at 1197 South Park Boulevard in Greenwood.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$344,100 for land and \$575,200 for improvements (total \$919,300).
10. The Petitioner claimed the land base rate should be \$217,800 per acre and the total land value should be \$245,800. It also claimed the restaurant should have an effective age based on the year of construction, 1990, which would mean 35% physical depreciation.

Contentions

11. Summary of the Petitioner's case:
 - a. The land base rate for three neighboring properties is \$217,800 per acre. The land base rate for the Petitioner's property is \$304,920 per acre. It should be the same for all four properties. *Smith testimony; Pet'r Ex. 1.*
 - b. The effective age of the restaurant is incorrect. For the 2002 assessment, the effective year of construction was determined to be 1990. *Smith testimony; Pet'r Ex. 2.* It was changed to 1995 for the 2006 assessment. *Smith testimony.* With no change in the footprint of the structure, the effective age of the structure should not change. *Id.; Pet'r Ex. 3.* Using 1990 in the assessment calculation would increase the amount of depreciation assigned to the building from 20% to 35%. *Smith testimony.*
 - c. Local officials are not permitted to alter effective age or land values to achieve a predetermined value. *Smith testimony; Pet'r Exs. 4, 5.*
12. Summary of the Respondent's case:
 - a. The property record card reflects the current assessment. *Resp't Ex. 1.*
 - b. The Respondent offered no explanation for changing the effective year of construction from 1990 to 1995. *Watkins testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Map of the three neighboring properties with property record cards,
Petitioner Exhibit 2 – Property record card for the subject property as of June 16, 2003,
Petitioner Exhibit 3 – Real Property Assessment Guidelines for 2002 – Version A, app. F, page 7,
Petitioner Exhibit 4 – Department of Local Government Finance (“DLGF”) news release dated May 23, 2008,
Petitioner Exhibit 5 – DLGF Fact Sheet dated August 2006,
Respondent Exhibit 1 – Property record card for the subject property as of November 19, 2008,

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. 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).
 - 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 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”).
15. The Petitioner failed to make a case for any assessment change because:
- a. Indiana assesses real property based on its true tax value, which is “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 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally uses three methods to determine value: the cost approach, the sales comparison approach, and the income approach. 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 (incorporated by reference at 50 IAC 2.3-1-2).
 - b. The market value-in-use as determined using those Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). Nevertheless, 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 information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. Even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of market value-in-use in order to prevail. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (explaining that Indiana overhauled its property tax system and the new system shifts the focus from examining how the regulations were applied to examining whether a property's assessed value actually is the market value-in-use); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006) (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system).
- d. The Petitioner's case focused on the methodology issues of land base rate and effective age. Such evidence and arguments regarding application of the Guidelines, however, are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating that a taxpayer must show the assessed value does not accurately reflect market value-in-use and simply disputing about strict application of the guidelines is not enough to rebut the presumption that the assessment is correct.) In this case, the Petitioner did not show the assessor's methodology resulted in an assessment that fails to accurately reflect the property's market value-in-use. Accordingly, the Board cannot say the Petitioner presented a prima facie case.
- e. The Petitioner asserted that its land should be assessed by using the same base value as adjoining properties. Apparently that position is based on comparability. But anybody seeking to rely on comparable properties must identify characteristics of the subject property, explain how those characteristics compare to those of the purportedly comparable properties, and explain how any differences affected the relative values of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Conclusory statements that the Petitioner's property is comparable to three surrounding properties do not constitute probative evidence and fail to establish actual comparability. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner failed to provide the kind of detailed facts and analysis that might have supported a conclusion about the market value-in-use of the subject property based on the three neighboring properties.
- f. 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*, 704 N.E.2d at 1119.

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: _____

Commissioner, 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, 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>>