

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

Petition No.: 53-005-05-1-4-00868
Petitioner: McDonald's Corp.
Respondent: Bloomington Township Assessor
Parcel No.: 013-15760-00
Assessment Year: 2005

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

Procedural History

1. The Petitioner's representative initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 24, 2005.
2. The Petitioner received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated April 7, 2006.
3. The Petitioner's representative initiated an appeal to the Board by filing a Form 131 dated April 26, 2006. The Petitioner elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 23, 2007.
5. After the Board received and granted a request for continuance filed by the Petitioner, the Board held an administrative hearing on April 15, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Milo E. Smith, Tax Representative
 - b. For Respondent: Marilyn Meighen, Attorney for Monroe County
Ken Surface, Contractor for Monroe County
Judith Sharp, Monroe County Assessor

Facts

7. The property under appeal is an improved commercial parcel located at 2300 N. Walnut Street in Bloomington, Bloomington Township, in Monroe County, Indiana.

8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property is \$185,900 for the land and \$399,700 for the improvements, for a total assessed value of \$585,600.
10. The Petitioner requested an assessed value of \$185,900 for the land and \$165,000 for the improvements, for a total assessed value of \$350,900.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:¹
 - a. The Petitioner argues that the 2002 REAL PROPERTY ASSESSMENT MANUAL requires uniform assessments. *Id.* According to Mr. Smith uniformity refers to the degree to which properties are equally assessed. *Id.* The Manual states that "[t]he underlying concept of this manual...[will be the ease of] administration and the accuracy and uniformity of the assessments produced," and further states that "level of uniformity refers to the degree to which property classes are equally assessed within assessing jurisdictions," according to the Manual, Page 6. *Petitioner Exhibit 1 and 2.*
 - b. The Petitioner contends that subject property was not assessed in a uniform and equal manner with other similar properties. *Smith testimony.* According to the Petitioner's representative, the subject property was assigned a grade factor of "B+2" but that similar McDonald's restaurants properties were assigned a grade factor of "B". *Smith testimony.* Further, Mr. Smith argues, that the comparable restaurants had a "B+2" grade for 2002 and those grades were changed to "B" for 2005. *Id.* The Petitioner argues that because the subject property is similar to the other restaurants, it should also be assigned a grade factor of "B." *Id.* In support of this contention, the Petitioner submitted Property Record Cards for four McDonald's restaurants located in Monroe County with grade factors of "B+2" in 2002 and "B" in 2005. *Petitioner Exhibits 3- 6; Smith testimony.* In further support of the argument that the subject property is not assessed uniformly, Mr. Smith argues that the restaurants are assessed between \$56 and \$108 per square foot even though the properties are almost identical. *Smith testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the Petitioner failed to make a prima facie case because the Petitioner did not present sufficient evidence to establish the market value-in-use of the subject property. *Meighen testimony.* According to the

¹ The Petitioner's Form 131 listed three issues. At the hearing, Milo Smith, tax representative for the Petitioner, withdrew two issues, the effective age of paving and the condition of the restaurant, leaving only the issue of grade. *See Board Exhibit D.*

- Respondent, under the new law in Indiana, the methodology of assessment is not important. *Id.* Evidence must be entered to establish market value-in-use. *Id.*
- b. In support of its argument, the Respondent cited *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006), *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax. Ct. 2006), and *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). *Respondent Exhibit 12.* According to the Respondent, the Tax Court *P/A Builders* held that it is the bottom line market value that is probative. 842 N.E.2d 899. Similarly, in *O'Donnell*, the Court held that petitioners who argue methodology miss the point and fail to make a prima facie case. 854 N.E.2d 90. Finally, the Respondent argues that, in *Eckerling*, the Court held that the petitioner's argument failed because it focused on methodology and failed to submit evidence of market value-in-use. 841 N.E.2d 674.
 - c. The Respondent further argues that the Petitioner missed the point by merely arguing that the subject property's grade is different than other properties instead of providing evidence of the subject property's market value-in-use. *Meighen argument.* According to the Respondent, the Indiana Tax Court in *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007), rejected such an argument. The Respondent contends that, in the *Westfield Golf* case, the Court held that by merely arguing that an assessment is higher than the assessments of similar businesses and therefore violates the rule of uniformity and equality, fails because it disputes methodology instead of market value-in-use. *Id.*
 - d. Finally, the Respondent contends that the subject property's assessment is correct as evidenced by the sales and listings of several comparable restaurant properties in Indiana. *Meighen argument, Surface testimony.* In support of this contention, Respondent submitted three sales disclosure forms for sales of a former McDonald's property at 1921 S. Walnut Street, a map with that identifies the property and photographs of the improvements. *Respondent Exhibits 1-4.* The Respondent also entered into evidence a sales disclosure form and photograph of the property at 3151 W. Third Street, and internet listings for three Indiana restaurant properties currently for sale. *Respondent Exhibits 5-8.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition and related attachments,
 - b. The digital recording of the hearing labeled 53-009-05-1-4-00868McDonaldsCorp,
 - c. Exhibits:

Petitioner Exhibit 1 – 2002 Real Property Assessment Manual Page 7,
Petitioner Exhibit 2 – 2002 Real Property Assessment Manual Page 6,

Petitioner Exhibit 3 – Property record cards for 2002 and 2005 for Parcel No. 013-15720-00,
Petitioner Exhibit 4 – Property record cards for 2002 and 2005 for Parcel No. 007-32740-00,
Petitioner Exhibit 5 – Property record cards for 2002 and 2005 for Parcel No. 013-15730-00,
Petitioner Exhibit 6 – Property record cards for 2002 and 2005 for Parcel No. 015-19490-00,

Respondent Exhibit 1 – 2003 sales disclosure and photograph for Parcel No. 015-12570-00,
Respondent Exhibit 2 – 2005 sales disclosure and photograph for Parcel No. 015-12570-00,
Respondent Exhibit 3 – 2006 sales disclosure and photograph for Parcel No. 015-12570-00,
Respondent Exhibit 4 – Map identifying Parcel No. 015-12570-00,
Respondent Exhibit 5 – 2002 sales disclosure and photograph for Parcel No. 017-05360-02,
Respondent Exhibit 6 – LoopNet real estate sales listing for an Indianapolis-area Arby's restaurant,
Respondent Exhibit 7 – LoopNet real estate sales listing for a Columbus-area McDonald's restaurant,
Respondent Exhibit 8 – LoopNet real estate sales listing for an Arby's restaurant in Frankfort,
Respondent Exhibit 12 – Summary of case law,

Board Exhibit A – Form 131 petition and related attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.
Board Exhibit D – Withdrawal form for issues 2 and 3,

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”).

- c. 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.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner contends that the grade factor assigned to the subject property should be lowered from “B+2” to “B.” *Smith testimony*. In support of this contention, the Petitioner provided four Property Record Cards for other properties, which the Petitioner claims are similar to the subject property, but valued substantially less. *Petitioner Exhibit 3-6; Smith testimony*.
 - b. Under Indiana’s true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185, 190 (Ind. Tax Ct. 2003). “Construction quality and the resultant quality grade assigned is a composite characteristic.” 2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A, App. A, at 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. To establish a prima facie case on grade, the Petitioner must present probative evidence that the assessed grade was incorrect and probative evidence establishing the correct grade. *Sollers*, at 191.
 - c. Here, Petitioner presented no evidence that the grade of the subject property was incorrect. The Petitioner merely argued that other similar properties were assessed with a different grade. This exact argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the landing area for the petitioner’s driving range was assessed as “usable undeveloped” land and assigned a value of \$35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of \$1,050 per acre. 859 N.E.2d at 397. Westfield appealed contending that its assessment was not uniform and equal. *Id.*
 - d. The Indiana Tax Court held that under the prior assessment system, “true tax value” was determined by Indiana’s assessment regulations and “bore no relation to any external, objectively verifiable standard of measure.” 859 N.E.2d at 398. Therefore, “the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties.” *Id.*

- e. Presently, “Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use.” 859 N.E.2d at 399. “As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.” *Id.* Thus, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property’s market value-in-use. *Id.* See also *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor’s technical failure to comply strictly with the Guidelines).

- f. Like the petitioner in *Westfield Golf*, the Petitioner here only argued that the method of its assessment was not uniform. The Petitioner failed to offer any evidence to show that its assessment exceeded the property’s market value-in-use. Thus, the Petitioner failed to raise a prima facie case. Where the taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to raise 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 now determines the assessment should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
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>.