

REPRESENTATIVE FOR PETITIONER:

Anthony J. Pankau, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Susan A. Larson, Porter County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Anthony J., Jr. & Carole A. Pankau	)	Petition No.:	64-004-07-1-4-00025
	)		64-004-08-1-4-00247
)		
Petitioners,)		
)		
	)	Parcel No.:	64-09-27-226-003.000-004
v.)		
)		
Porter County Assessor,	)	County:	Porter
	)	Township:	Center
)		
Respondent.	)	Assessment Years:	2007 and 2008

Appeal from the Final Determination of the
Porter County Property Tax Assessment Board of Appeals

December 29, 2010

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioners' parcel is over-stated for the 2007 and 2008 tax years.

PROCEDURAL HISTORY

2. The Petitioners initiated their assessment appeals by filing a Form 130 Petition to the Property Tax Assessment Board of Appeals for Review of Assessment on March 13, 2009.¹ The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations on April 22, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed Form 131 Petitions for Review of Assessment on May 20, 2010, petitioning the Board to conduct an administrative review of the property's 2007 and 2008 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on October 7, 2010, in Valparaiso, Indiana.
5. The following persons were sworn at the hearing:

For the Petitioner:

Anthony J. Pankau, Jr., Property owner
Carole A. Pankau, Property owner,
Timothy M. Harris, Petitioners' appraiser,

¹ The administrative record does not include a Form 130 or Form 134 for the March 1, 2008, assessment date. According to the Petitioners, the assessor's office never completed the Form 134 for the 2008 assessment. However, both the 2007 and 2008 appeals were heard before the PTABOA on March 18, 2010, and Final Determinations were issued for both years.

For the Respondent:

Susan Larson, Porter County Hearing Officer.

6. The Petitioners presented the following exhibits:

Petitioner Exhibit A – Settlement statement for their purchase of the property,
Petitioner Exhibit B – Valpo Workout Company, LLC, equipment list,
Petitioner Exhibit C – Cost approach summary from the appraisal report,
Petitioner Exhibit D – Building lease agreement dated September 22, 2005,
Petitioner Exhibit E – Form 1040 Supplemental Income and Loss,
Petitioner Exhibit F – Appraisal dated March 26, 2009,
Petitioner Exhibit G – Valpo Athletic Club’s 2007 and 2008 Profit and Loss statement,
Petitioner Exhibit H – Chart of the property’s value under the sales, cost, and income methods of valuation.

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – GIS map of property sales on U. S. 30 (Morthland),
Respondent Exhibit 2 – List of commercial/industrial sales after January 1, 2003,
Respondent Exhibit 3 – GIS location of the comparable sales used in the Petitioners’ appraisal,
Respondent Exhibit 4 – Property record card and BING map,
Respondent Exhibit 5 – Preliminary informal meeting statement,
Respondent Exhibit 6 – Petitioners’ settlement statement from their purchase of the property.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing, dated July 26, 2010,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a fitness facility with a 10,504 square foot building on 3.636 acres located at 2352 U.S. Highway 30, Valparaiso, Indiana.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2007 and 2008, the PTABOA determined the assessed value of the property to be \$677,000 for the land, and \$578,800 for the improvements, for a total assessed value of \$1,255,800.
12. The Petitioners contend the total assessed value of the property should be \$950,000 for both years.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
15. 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. Wash. 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

17. The Petitioners contend that the assessed value of their property is over-stated based on the property's appraised value. The Petitioners presented the following evidence in support of their contentions:
- A. The Petitioners contend that their property is over-valued based on an appraisal of the property. *A. Pankau testimony*. In support of this contention, the Petitioners presented an appraisal prepared by Jason L. Harris and Timothy M. Harris – both certified general appraisers. *Petitioner Exhibit F*. According to Mr. Harris, the appraisers used the sales comparison approach and the cost approach to value the property, but did not use the income approach because properties like the subject property are not generally rented in the open market place. *Harris testimony*. Based on their analysis, the appraisers estimated the value of the property to be \$950,000 as of January 1, 2006. *Id.* Mr. Harris testified that the property's estimated value is "consistent" with a previous appraisal of the property that he prepared for a third party.² *Id.*
- B. The Petitioners further contend that, although the property was purchased on September 20, 2005, for \$1,250,000, the purchase price included the on-going business and client list, the personal property associated with the health club and an amount of \$80,000 for a ten month rental period. *A. Pankau testimony*. In support of this contention, the Petitioners presented the settlement statement, the list of

² The Respondent's representative objected to Mr. Harris's testimony as irrelevant because the appraiser did not have permission from the client to use the information; nor was the previous appraisal submitted as evidence. Ms. Larson's objection goes to the weight of the evidence rather than its admissibility and was over-ruled in hearing.

- equipment included in the sale, and a lease agreement. *Petitioner Exhibits A, B, and D.* According to Mr. Pankau, subtracting the value of the equipment and the lease amount from the property's purchase price results in a value of \$900,000 for the real estate. *A. Pankau testimony; Petitioner Exhibit H.* Mr. Pankau admitted, however, that the value of the personal property was not shown on the settlement statement. *A. Pankau testimony.*
- C. Finally, the Petitioners contend that their property is over-valued based on the property's income in 2007 and 2008. *A. Pankau testimony.* In support of this contention, the Petitioners presented the lease agreement, the Form 1040 Supplemental Income and Loss, and a calculation based on the income method of valuation. *Petitioners Exhibit D, E, and H.* According to Mr. Pankau, using the income approach results in lower values than the assessed value – \$736,910 for 2007 and \$864,450 for 2008. *A. Pankau testimony; Petitioner Exhibit H.*
18. The Respondent contends the property's assessed value is correct and equitable. The Respondent presented the following evidence in support of the assessment:
- A. The Respondent's representative contends the property is correctly assessed based on the Petitioners' purchase price. *Larson testimony; Respondent Exhibit 6.* According to Ms. Larson, the Petitioners' settlement statement shows the property was purchased for \$1,250,000. *Id.* If personal property was included in the sales price, Ms. Larson argues, it should have been noted on the sale documents. *Larson testimony.*
- B. Ms. Larson further contends that there were many sales in the subject property's neighborhood and pricing for the Route 30 corridor was consistent. *Larson testimony.* In support of her contention, Ms. Larson submitted GIS maps showing the parcels that sold during the relevant time period and their respective sale prices. *Respondent Exhibit 1.*

ANALYSIS

19. 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 at 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 approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In 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.
20. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
21. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3. For the March 1, 2008, assessment, the valuation date was January 1, 2007. *Id.*

22. The Petitioners argue that their property is over-valued based on its appraised value. *A. Pankau argument*. In support of their contention, the Petitioners submitted an appraisal that estimated the value of the property to be \$950,000 as of January 1, 2006. *Petitioner Exhibit F*. The appraisers are both Indiana certified appraisers who attested that they prepared the Petitioners' appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. Thus, the Board finds that the Petitioners raised a prima facie case that their property is over-assessed.
23. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
24. The Respondent's representative contends the property's assessment was correct based on the Petitioners' purchase of the property for \$1,250,000 on September 20, 2005. The purchase of a property is often the best evidence of a property's value. *See Hubler Realty v. Hendricks County Assessor*, Indiana Tax Court, Cause No. 49T10-1001-TA-5, reported at 2010 Ind. Tax LEXIS 51 (Decided November 29, 2010) (The Board's determination assigning greater weight to the property's purchase price than its assessed value was proper and supported by the evidence). Thus, the Board concludes that the Respondent presented sufficient evidence to rebut the Petitioners' case. *See Meridian Towers*, 805 N.E.2d at 479.
25. The Petitioners' appraisal and the evidence of the Petitioners' purchase of the property both occurred sufficiently contemporaneously with the statutory valuation date to be probative of the property's market value-in-use. The Board must, therefore, weigh the

evidence presented by both parties and determine the most persuasive evidence of the property's value.

26. Here, Mr. Pankau testified that the Petitioners' purchase price did not reflect the property's market value-in-use because the Petitioners purchased an on-going business and client list and the personal property related to the business. In support of Mr. Pankau's testimony, the Petitioners submitted a list of equipment purchased with the health club. In addition, the appraisal reported that the gym was an on-going business that had operated several years prior to the Petitioners' purchase. *Petitioner Exhibit F at 26*. The evidence therefore shows that the property's purchase price included more than just the value of the real estate. Thus the Board holds that the weight of the evidence supports the property's appraised value rather than its purchase price.³

CONCLUSION

27. The Petitioners raised a prima facie case. The Respondent rebutted the Petitioners' evidence. The Board finds the weight of the evidence supports the Petitioners' valuation and holds that the property's assessment should be \$950,000 for the 2007 and 2008 assessment dates.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the property for the March 1, 2007, and March 1, 2008, assessment dates should be changed.

³ The Respondent's representative also presented maps and sales information to "prove" land pricing was consistent in the area. The Respondent's evidence, however, showed sales ranging from a residential lot that sold for \$119,500 to a 3.57 acre commercial parcel that sold for \$6,114,000 and the Respondent's representative failed to show how any of the properties were comparable to the subject property. The Board can glean little from a list of sales of such diverse properties. Thus, the Respondent's evidence fails to rebut the Petitioners' prima facie case.

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, 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>