

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

Petition No.: 06-019-10-1-4-00424
Petitioners: Lee and Sally Peters
Respondent: Boone County Assessor
Parcel No.: 019-12470-00
Assessment Year: 2010

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 Petitioners appealed the assessment of their property for 2010 with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by letter dated January 18, 2010.
2. The PTABOA issued notice of its decision on January 19, 2011.
3. The Petitioners filed a Form 131 petition with the Board on February 23, 2011. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 18, 2012.
5. The Board held an administrative hearing on March 14, 2012, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Lee Peters, property owner
 - b. For Respondent: Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA Member

Facts

7. The property under appeal is a 2,852 square foot general office building located at 60 - 90 North Main Street, Zionsville, in Boone County.

8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2010, the PTABOA determined the assessed value of the property to be \$229,000 for the land and \$191,000 for the improvements, for a total assessed value of \$420,000.
10. The Petitioners requested an assessed value of \$196,000 for the land and \$164,000 for the improvements, for a total assessed value of \$360,000.¹

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend their property is over-valued based on the sale prices of comparable properties located in the Petitioners' area. *Peters testimony*. In support of their position, the Petitioners submitted information on twelve sales that occurred between 2009 and 2011. *Petitioner Exhibit 4*. The average price per square foot was \$132.48 when calculating the total area sold and the total price paid for all twelve sales; and the average price per square foot when averaging the sale price per square foot for each of the twelve sales totaled \$149.85. *Peters testimony; Petitioner Exhibit 4*. Applying these values to the subject property's 3,000 square feet, results in values of \$397,447.30 and \$449,545.38 respectively. *Id.* Moreover, Mr. Peters argues, graphing the price per square foot by the size of each building, suggests that a building of the subject property's size has a value of approximately \$125.00 per square foot, resulting in a value of \$375,000 for the Petitioners' property. *Id.*
 - b. Mr. Peters also reviewed the 2009 to 2011 sale of properties closer in size to the subject property. *Peters testimony; Petitioner Exhibit 4*. Mr. Peters identified five sales of properties with buildings ranging in size from 2,642 square feet to 4,000 square feet. *Id.* The average price per square foot of these five properties was \$128.49 when calculating the total area sold and the total price paid for all five sales; and the average price per square foot when averaging the sale price per square foot for each of the five sales totaled \$130.01. *Peters testimony; Petitioner Exhibit 4*. Applying these values to the subject property's 3,000 square feet, results in values of \$385,471.63 and \$390,020.95 respectively. *Id.*
 - c. Similarly, Mr. Peters analyzed nineteen properties in the area that sold since 2005, adding the Respondent's "comparable" sales to his sales analysis. *Peters testimony; Petitioner Exhibit 4*. According to Mr. Peters, the average price per square foot was \$136.08 when calculating the total area sold and the total price

¹ At the hearing, Mr. Peters requested that the property's assessed value be reduced to somewhere between \$360,000 and \$390,000. *Peters testimony*.

paid for all nineteen sales; and the average price per square foot when averaging the sale price per square foot for each of the nineteen sales totaled \$151.26. *Peters testimony; Petitioner Exhibit 4.* Applying these values to the subject property's 3,000 square feet, results in values of \$408,238.88 and \$453,776.43 respectively. *Id.* Moreover, Mr. Peters argues, graphing the price per square foot by the size of each building, suggests that a building of the subject property's size has a value of approximately \$135.00 per square foot, resulting in a value of \$405,000 for the Petitioners' property. *Id.*

- d. The Petitioners also contend that their property is over-valued based on its income value. *Peters testimony.* In support of this contention, Mr. Peters presented an income analysis. *Id.; Petitioner Exhibit 3.* In his analysis, Mr. Peters testified that he used the units that were actually rented to calculate the subject property's gross revenue and he subtracted the property's actual expenses such as real estate taxes, mortgage payments and insurance, resulting in revenue of \$21,756.99. *Id.* Applying capitalization rates of 6% and 8%, Mr. Peters argues, results in a value of between approximately \$272,000 and \$362,000 for the subject property. *Id.*
- e. Finally, Mr. Peters contends that the assessor erred in assessing the value of the Petitioners' property. *Peters testimony.* According to Mr. Peters, the size of the land should not impact the assessed value of the property, because the county's original assessed value of the land and buildings should have been the total market value of the property regardless of the size of the lot. *Id.* Alternatively, Mr. Peters contends, only the land should be valued.² *Id.* According to Mr. Peters, the "best use" of the Petitioners' property would be to "bulldoze" the improvements, because the building is sixty years old and adds very little value to the property. *Peters testimony.* In addition, he testified the building is technically obsolete because it does not comply with the Americans with Disabilities Act Standards and the heating system is inadequate. *Peters testimony.* Thus, Mr. Peters concludes, if the Assessor values the building, the size of the lot is irrelevant and if the Assessor values the lot only – which Mr. Peters contends is the highest and best use of the property – the Assessor should not assign any value to the property's improvements. *Id.*
- f. In response to the Respondent's arguments, Mr. Peters contends that many of the Respondent's sales are flawed. *Peters testimony; Respondent Exhibit 5.* According to Mr. Peters, the property located at 100 North Main was not sold in an arms-length transaction because of the lease-hold improvement. *Id.* In addition, he argues, the property located at 115 South Main Street shows the building size as 2,545 square feet when it sold in 2007 and 2,800 square feet when it sold in 2010. *Id.* However, Mr. Peters argues, a local realtor indicated that the

² Moreover, Mr. Peters argues, the overall lot size is 80 feet by 90 feet; rather than 76 feet by 90 feet as shown on the property record card. *Id.; Respondent Exhibit 3.* In support of this contention, Mr. Peters submitted a surveyor's map and legal description. *Petitioner Exhibit 1.*

building actually has 2,642 square feet. *Id.* The Respondent's seventh sale shows the property address as 100 North Main; however the actual address is 110 North Main. *Id.* The Respondent's analysis also shows the building has 2,592 square feet; however, Mr. Peters argues, the building has 6,000 square feet. *Id.* Further, the property located at 170 South Main is shown with 0.021 acre, but the building is larger than the land size, which would cause an encroachment.³ *Id.* And 175 South Main sold for \$945,000 not \$920,000 as the Respondent reports.⁴ *Id.* Thus, the Petitioners argue, the county used inaccurate data to establish their property's assessed value and therefore their property's assessed value is incorrect and the Respondent's analysis should be given little weight. *Peters testimony.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent's representative argues that the statute shifting the burden of proof from the taxpayers to the assessor when an assessment increases more than five percent does not apply in this case. *Lewis testimony.* According to Ms. Lewis, the Petitioners' property increased in assessed value due to the addition of a second lot that was omitted from the Petitioners' assessed value for several years. *Id.* In support of this contention, the Respondent's representative submitted the 2009 and 2010 property record cards and four aerial maps of the subject property. *Respondent Exhibits 3, 6, and 9.* Ms. Lewis testified that the Petitioners' property's 2009 property record card shows that the property was assessed for one lot that measured 38' by 90' in size. *Id.* The aerial map, however, shows that the Petitioners' property sits on two 38' by 90' feet lots. *Id.* For 2010, the assessor corrected the error and added the additional 38' by 90' lot to the Petitioners' property. *Lewis testimony; Respondent Exhibit 3.* Thus, the Respondent's representative argues, the Petitioners' 2009 assessment and 2010 assessment are not comparing the same property and therefore the burden should not shift to the assessor. *Lewis testimony.*
- b. The Respondent further contends that the property under appeal is correctly assessed at \$420,000. *Garoffolo and Lewis testimony.* In support of this position, the Respondent submitted sales information for four properties located in the area of the Petitioners' property that sold in 2008 and 2009. *Respondent Exhibit 5.* According to the Respondent's representative, the average sales price of the four properties was \$225.41 per square foot; whereas the Petitioners' property was

³ In response to questioning, Ms. Lewis testified that the lot size is correct. *Lewis testimony.* According to Ms. Lewis, the building located on 170 South Main is a two-story building. *Id.*

⁴ Mr. Peters; however, testified that the \$945,000 sale price included \$25,000 in personal property. *Peters testimony.*

assessed for approximately \$151 per square foot.⁵ *Respondent Exhibit 3*. Thus, Ms. Lewis concludes, the subject property is not over-valued. *Lewis testimony*.

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Surveyor’s map and legal description for Petitioners’ property,

Petitioner Exhibit 2 – Petitioners’ written presentation,

Petitioner Exhibit 3 – 2011 income and expenses for the Petitioners’ property,

Petitioner Exhibit 4 – Petitioners’ comparable analyses,

Respondent Exhibit 1 – Boone County appeal worksheet, Petitioners’ grounds for appeal and Notice of Assessment of Land and Structures – Form 11 C/I,

Respondent Exhibit 2 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114,

Respondent Exhibit 3 – Petitioners’ property’s 2010 property record card,

Respondent Exhibit 4 – Zionsville Village 2004 and 2005 vacant land sales and standard lot size,

Respondent Exhibit 5 – Zionsville Village 2005 through 2010 commercial sales,

Respondent Exhibit 6 – Four aerial maps of the Petitioners’ property,

Respondent Exhibit 7 – Notification of Final Assessment Determination – Form 115,

Respondent Exhibit 8 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Respondent Exhibit 9 – Indiana Board of Tax Review – Notice of Hearing on Petition,

⁵ Ms. Lewis testified that normally properties located on Main Street in Zionsville sell at a higher per square foot price than properties located on the side streets because of Zionsville’s famous brick street. *Lewis testimony*. In addition, Ms. Lewis argues, visitors to Zionsville admire the store fronts on the buildings – many of which are over 100 years old. *Id.* Thus, she concludes, the Petitioners’ building still has value even though the building is 47 years old. *Id.*

Respondent Exhibit 10 – Petitioners’ property’s 2009 property record card,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his property’s assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.⁶ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

15. Here, the Petitioners and the Respondent agreed that the property’s value increased from \$306,400 in 2009 to \$420,000 in 2010, which is more than a 5% increase. *Form 11, Notice of Assessment of Land and Structures, attached to the Petitioners’ Form 131 Petition*. However, the Respondent testified that the increase in the property’s 2010 assessed value was due to the addition of a second lot that measured 38’ by 90’ that was omitted from the Petitioners’ property’s assessed value for several years. *Lewis testimony*. According to Ms. Lewis, the county assessed the Petitioners’ lot at its actual 76’ by 90’ size in 2010; whereas the Petitioners’ lot was assessed as being 38’ by 90’ in 2009 and in prior assessment years. *Respondent Exhibit 10*. Therefore, the Respondent

⁶ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

argues the Petitioners' 2009 assessment and 2010 assessment are not comparing the same property. *Id.*

16. Indiana Code § 6-1.1-15-17.2 applies where “the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property.” Ind. Code § 6-1.1-15-17.2. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Therefore, because the property's 2010 assessment accounted for a portion of the Petitioners' lot that was not previously assessed, the assessor was not assessing the “same property” in 2010 as she did in 2009. Thus, Indiana Code § 6-1.1-15-17.2 does not apply in this case.
17. The Petitioners failed to provide sufficient evidence to establish a *prima facie* case for a reduction in the assessed value of their property for 2010. The Board reached this decision for the following reasons:
 - a. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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.” MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b. The Petitioners first contend that their property is over-valued based on the average sale prices of other properties in their neighborhood. *Petitioner Exhibit 4*. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how

those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*

- c. Here, the Petitioners submitted three sales analyses and two graphs of nearby properties that sold between 2005 and 2010. However, they presented no evidence to show that their offered properties were comparable to the property under appeal. In fact, based on the Petitioners' evidence that sale prices for properties in the Petitioners' neighborhood ranged from \$85.42 per square foot to \$301.78 per square foot, the Board can infer that the commercial properties in the Petitioners' area varied a great deal. Moreover, at least two of the Petitioners' analyses resulted in an estimated value that exceeded the property's 2010 assessed value. *See Petitioner Exhibit 4, estimating the value of the property under the "average of the averages" at \$449,545.38 and \$453,776.43 respectively.* Because the Petitioners made no attempt to identify or value the differences between the properties and because at least some of the Petitioners' analyses supported the property's assessed value, the Petitioners' sales analysis fails to show that the property was assessed in excess of its market value-in-use for the 2010 assessment year.
- d. The Petitioners also contend that the property under appeal was over-valued based on the income approach to value. *Peters testimony.* "The income approach to value is based on the assumption that potential buyers will pay no more for the subject property ... than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property." MANUAL at 14. The income approach thus focuses on the intrinsic value of the property; rather than the Petitioner's operation of the property because property-specific rents or expenses may reflect elements other than the value of the property "such as quality of management, skill of work force, competition and the like." *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). *See also* MANUAL at 5 ("[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data").
- e. Here, the Petitioners offered 2011 rental and expense information from the subject property. *Petitioner Exhibit 3.* The Petitioners, however, provided no evidence to demonstrate whether the property's income and expenses were typical for comparable properties in the market.⁷ Thus, any low rent or high expenses may be attributable to the Petitioners' management of the property rather than the property's market value.

⁷ The Petitioners' evidence also shows they deducted mortgage payments and real estate taxes as an expense. *Petitioner Exhibit 3.* "[W]hen property is valued for ad valorem tax purposes, taxes should not be considered an expense item". INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION 240 (2d ed. 1996). Real estate taxes are not an allowable expense for ad valorem purposes because the amount of property tax is contingent upon the correct value of the real estate. *Id.*

See Thorntown Telephone Company, 588 N.E.2d at 619. *See also, Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). In fact, the Petitioners testified there is an office that has been “empty for six months.” *Peters testimony*. Moreover, the Petitioners used their 2011 income and expenses to estimate the property’s market value. *Peters testimony; Petitioner Exhibit 3*. But the Petitioners failed to explain how the property’s 2011 income and expenses demonstrates or relates to the property’s value as of March 1, 2010. *See Long v. Wayne Township Assessor*, 812 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005).

- f. In addition, the Petitioners failed to adequately support their choice of capitalization rates. A capitalization rate “reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as 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.” *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Here the Petitioners failed to present any evidence to show that a six percent rate or an eight percent rate was the appropriate capitalization rate for a sale of commercial property in Zionsville in 2010. Thus, the Board concludes that the Petitioners’ income analysis fails to raise a prima facie case that the subject property’s value should be lowered.
- g. Finally, the Petitioners contend that the assessor erred in assessing the value of the Petitioners’ property because if the assessor assessed the property for its current use as a commercial building, the size of the lot would not matter, and if the assessor was assessing the property for its “highest and best use,” the assessor should have assessed the land only, because the “best use” of the Petitioners’ property would be to “bulldoze” the improvements. Such unsupported contentions, however, do not rebut the presumption that the property’s assessment was correct for the 2010 assessment year. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998) (Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination). In Indiana, property is assessed according to its “current use, as reflected by the utility received by the owner or a similar user, from the property.” MANUAL at 2. Here, there is no question that the Petitioners’ lot is at least 76’ by 90’ (and may in fact be 80’ by 90’); rather than the 38’ by 90’ area for which the lot was formerly assessed. In addition, it is undisputed that the lot is improved with a commercial building that is currently being leased and therefore has value. Thus, the Assessor did not err in assessing the subject property’s land and the improvements.
- h. To the extent that the Petitioners contend that their building does not comply with ADA standards or the heating system is inadequate can be seen as a claim for obsolescence, this argument also fails. It is not sufficient for the Petitioners to merely

identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioners must explain how the purported causes of obsolescence cause the property to suffer an actual loss in value. *See Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003) (“All Indian has done in this case is provide the State Board with a laundry list of factors that may cause obsolescence to its improvements and then say ‘as a result, we’re entitled to a 70% obsolescence adjustment.’ However, Indian needed to link one with the other by showing an actual loss of value.”) Thus, in failing to tie the inadequacies of the subject property to an actual loss in value of their property, the Petitioners have failed to raise a prima facie case that the subject property’s assessment was incorrect.

- i. Ultimately, a taxpayer fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the Petitioners must show that the assessment does not accurately reflect the subject property’s market value-in-use. *Id.*; *See also P/A Builders & Developers, LLC v. Jennings County 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). Because, as the Board found above, the Petitioners failed to show that the property’s assessed value is not a reasonable measure of the property’s true tax value, the Petitioners failed to raise a prima facie case that their property’s assessed value should be lowered.
- j. The Petitioners failed to raise a prima facie case that their property was over-assessed for the March 1, 2010, assessment date. Where a taxpayer fails to provide probative evidence that a property’s assessed value should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Petitioners failed to establish a prima facie case that their property was over-assessed for the March 1, 2010, assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the 2010 assessed value of the Petitioners’ property should not be changed.

ISSUED: June 8, 2012

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 pursuant to 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 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/bills/2007/SE0287.1.html>.