

PETITIONER REPRESENTATIVE:

Duane R. Zishka, Uzelac & Associates, Inc., Tax Representatives

RESPONDENT REPRESENTATIVE:

Charles Simons, Contractor for Vanderburgh County Assessor

INDIANA BOARD OF TAX REVIEW

Public Storage Properties XV, Inc.	)	Petition Nos.:	82-027-06-1-4-12586
	)		82-027-07-1-4-01491
)		
Petitioner,	)	Parcel:	09-440-14-138-002
)		
v.	)	County:	Vanderburgh
	)	Township:	Knight
Vanderburgh County Assessor,	)	Assessment Year:	2006 and 2007
)		
Respondent.)		

Appeal from the Final Determination of
Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA)

October 15, 2009

FINAL DETERMINATION

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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated for 2006 and again in 2007 based on an income approach valuation of the property.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner's representative Duane R. Zishka, of Uzelac & Associates, Inc., filed a letter to the township assessor notifying the assessor of the petitioner's request for review of the property's 2006 assessment on April 9, 2007. Similarly, Mr. Zishka filed a letter to the township assessor initiating an appeal of the property's 2007 assessment on May 22, 2008. A Form 115 Notification of Final Assessment Determination was mailed to Public Storage Properties on October 22, 2008, for the 2006 tax year and on February 17, 2009, for the 2007 tax year. The Petitioner filed Form 131 Petitions to the Board to conduct reviews of the PTABOA's decision on November 26, 2008, for tax year 2006 and on March 31, 2009, for 2007. The Petitioner re-filed its 2007 Petition on April 20, 2009, to cure a defect in its Petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a consolidated hearing on the Petitioner's appeals on July 21, 2009, in Evansville, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Duane R. Zishka, Uzelac & Associates, Inc.

For the Respondent:

Jonathan Weaver, Vanderburgh County Assessor,
Charles Simons, Contractor for Vanderburgh County Assessor,
Candy Wells, Hearing Officer for Vanderburgh County Assessor,
Tiffany Collins, Administration Assistant for Vanderburgh PTABOA.

5. The Petitioner presented the following evidence:¹
- Petitioner Exhibit 1 – Overview of Public Storage Properties,
 - Petitioner Exhibit 2 – 2006 and 2007 Income Analysis of the subject property,
 - Petitioner Exhibit 3 – Overview of the RealtyRates.com investor survey,
 - Petitioner Exhibit 4 – Capitalization rates for self-storage facilities from RealtyRates.com for 2006 and 2007,
 - Petitioner Exhibit 5 – Vanderburgh County 2006 and 2007 tax rate chart,
 - Petitioner Exhibit 6 – Reserve requirements from the RealtyRates.com investor survey,
-
- Respondent Exhibit 1 – Recommendation to the PTABOA,
 - Respondent Exhibit 2 – Property record card (PRC) of the property,
 - Respondent Exhibit 3 – Vanderburgh County industrial ratio study for 2006 and 2007,
 - Respondent Exhibit 4 – Excerpts from “Property Appraisal and Assessment Administration.”
6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
- Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
7. The property under appeal is a self-storage facility located at 1920 N. Green River Road, Knight Township, Vanderburgh County, Evansville, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2006, the PTABOA determined the assessed value of the property to be \$1,263,600 for the land and \$793,400 for the improvements, for a total assessed value of \$2,057,000. For 2007 the PTABOA determined the assessed value of the property to be \$1,184,600 for the land and \$912,300 for the improvements, for a total assessed value of \$2,096,900.
- Board Exhibits A.*

¹ Both parties submitted exhibit packets for each year. The exhibit packets each bore the same exhibits for either the 2006 or 2007 tax year.

10. The Petitioner requested a total assessed value of \$1,738,600 for 2006 and \$1,724,300 for 2007 in its Form 131 Petitions. *Board Exhibits A*. At hearing, however, the Petitioner's evidence showed slightly different values of \$1,787,100 for 2006 and \$1,748,500 for 2007. *Petitioner Exhibits 2*.

JURISDICTIONAL FRAMEWORK

11. 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 Ind. 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

12. 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).
13. 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”).
14. 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.

PETITIONER'S CONTENTIONS

15. The Petitioner contends that the 2006 and 2007 assessed values of its commercial self-storage property are over-stated. *Zishka testimony*. In support of this contention the Petitioner's representative submitted an income capitalization valuation estimating the property's market value to be \$1,787,100 in 2006 and \$1,748,500 in 2007. *Id.*; *Petitioner Exhibit 2*. According to Mr. Zishka, he used a stabilized net operating income, based on information extracted from company records, a banded capitalization rate he constructed using information from an on-line investor survey, and an effective tax rate calculated using public records for Vanderburgh County. *Id.*; *Petitioner Exhibits 3 through 6*.
16. Mr. Zishka testified he used a three-year time span of income and expenses for each year's capitalization analysis, which he argues stabilizes the income and expenses. *Zishka argument*. According to Mr. Zishka, the income he used in his capitalization was taken from the business records of the Petitioner. *Id.* This, Mr. Zishka argues, eliminates the usual requirement of coming to net operating income by taking potential gross income and adjusting it for collections, loss and vacancy. *Id.* Mr. Zishka further testified that he set replacement reserves at twenty-cents per square foot based on research he conducted at *www.realtyrates.com*, a website service that promotes itself as having polled 312 appraisal and brokerage firms, developers, investors, and lenders nationwide to glean data compiled into tables for different types of property. *Zishka testimony*; *Petitioner Exhibit 3*.
17. In building his capitalization rate Mr. Zishka testified that he used the minimal survey rate of 9.0700% for 2006 and 9.2300% for 2007 from the online service *www.realtyrates.com*. *Zishka testimony*; *Petitioner Exhibit 4*. Mr. Zishka testified that he adjusted the survey rate using a 2.3849% effective tax rate (ETR) for both years, which he calculated using the tax rates from Vanderburgh County public records.² *Id.*; *Petitioner Exhibit 5*. Thus, Mr. Zishka argues, he used a loaded capitalization rate of

² While his exhibits show he used the same ETR for both years, Mr. Zishka testified he used a higher rate for 2007.

11.4549% for 2006 and 11.6149% for 2007. *Zishka testimony; Petitioner Exhibits 4, 5 and 6.*

18. For 2006, the Petitioner's representative calculated a stabilized rental income of \$358,925 and deducted \$154,218 for expenses, resulting in a net operating income of \$204,707. *Petitioner Exhibit 2.* Applying his loaded capitalization rate of 11.4549%, Mr. Zishka estimated the property's value to be \$1,787,100. *Id.* Similarly, for 2007, the Petitioner's representative calculated a stabilized rental income of \$369,653 and deducted \$166,570 for expenses, resulting in a net operating income of \$203,083. *Id.* Applying his loaded capitalization rate of 11.6149%, Mr. Zishka estimated the property's value to be \$1,748,500. *Id.* Thus, Mr. Zishka argues, the property's assessed values of \$2,057,000 for 2006 and \$2,096,900 for 2007 are overstated. *Zishka argument.*

RESPONDENT'S CONTENTIONS

19. The Respondent contends that the property's 2006 and 2007 assessments are correct. *Simons testimony.* In support of this contention, the Respondent's representative offered a copy of the 2006-pay-2007 Vanderburgh County-Knight Township Commercial Property Ratio Study. *Respondent Exhibit 3.* Mr. Simons argues that the property's value was determined based on the sales and interest rates in Vanderburgh County for each tax year. *Simons testimony.*
20. The Respondent further contends that Petitioner's income capitalization approach to value is flawed because it fails to follow the accepted appraisal standards established by the International Association of Assessing Officers (IAAO) in its guide *Property Appraisal and Assessment Administration* (1990). *Simons contention.* In support of this contention the Respondent submitted excerpts from the IAAO guide. *Petitioner Exhibit 4.* According to Mr. Simons, the Petitioner's analysis fails to consider potential gross income and net operating income and that it leaves out the steps required as outlined in the guide. *Simons testimony.* He further contends the Petitioner's analysis overlooks the

vacancy and collections figures and does not include the per-unit rental rate which would be used in finding potential gross income. *Id.*

21. In addition, the Respondent's representative contends that the figures Mr. Zishka used in his analysis for maintenance and repair and for replacement reserves are skewed and not appropriately explained. *Simons argument.* In support of his argument, Mr. Simon read an excerpt from the IAAO guide that states that replacement reserves cover roofing, appliances and some mechanical equipment which may fail before the end of a property's economic life. *Id.* Mr. Simons argues that, in the case of the Petitioner's self-storage units, there are no shingle roofs, no appliances and the only thing possibly needing repair is the overhead door of each unit. *Id.* As a result, Mr. Simons contends the cost figures for reserves and maintenance and repair are over-stated. *Id.*
22. Finally, the Respondent contends that the capitalization rates used by the Petitioner are too high and do not reflect the local rates for Vanderburgh County. *Simons argument.* In support of this contention the Respondent's representative referenced the ratio study he performed for commercial properties in Knight Township and quoted five interest rates he obtained from local banks during the preparation of the ratio study. *Id.* Those rates ranged from 6.5% to 7.5%, which Mr. Simons argues is substantially lower than the website rate used by the Petitioner's representative.³ *Id.* Mr. Simons also argues that using data from an international website is inappropriate because the information comes from places far removed from the local market in which the Petitioner operates. *Id.*

ANALYSIS

23. Indiana assesses real property based on its "true tax value," 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."

³ Mr. Simons offered a sheet showing five bank interest rates from January 1, 2005, that he used for the 2006 ratio study. Mr. Zishka objected to the exhibit because the evidence had not been exchanged prior to the hearing. Judge Barter sustained the objection and Mr. Simons was not allowed to enter the list. Mr. Simons, however, subsequently testified as to those rates without objection.

2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) (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. 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 (the GUIDELINES) (incorporated by reference at 50 IAC 2.3-1-2).

24. A property's market value-in-use, as determined using the 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); *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 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 property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
25. The Petitioner's representative argues that the property is over-assessed based on an income capitalization analysis that he prepared for each tax year under appeal. *Petitioner Exhibit 2*. Mr. Zishka referred to his income analysis as an "appraisal practice." *Zishka 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, not upon 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 the 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).

26. Here, the Petitioner's representative offered rental income and expense information taken from Petitioner's records. However, the Petitioner's representative failed to provide any data to support its rental and expense information. Mr. Zishka presented no income statements or accounting documents. He merely submitted a summary statement that identifies the purported income and expense totals for 2003 through 2006. *Petitioner Exhibit 2*. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
27. In addition, Mr. Zishka's income and expense information were gleaned solely from the Petitioner. He provided no evidence to demonstrate whether the Petitioner's income and expenses were typical for comparable properties in the market. Thus, any low rental income or high expense levels may be attributable to the Petitioner's management of the properties as opposed to their market value. *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).
28. Further, the Respondent identified several ways in which the Petitioner's representative's analysis differed from IAAO standards. In his presentation, the Petitioner's representative merely referred to his analysis as "reasonable" and "appropriate" and asserted that he used "a national appraisal method with national sources" from a national company. Mr. Zishka, however, failed to show that his income approach to value methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, the Petitioner's income approach calculation lacks relevance or probative value in this case.

29. The Petitioner failed to raise a prima facie case that the subject property was assessed in excess of its market value-in-use for the March 1, 2006, and March 1, 2007, assessment dates. Where a 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. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

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

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.