

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

Petition No.: 27-008-07-1-4-00360
Petitioner: RAI BRO Corp. (Karamjit Singh and Balvinder Kaur)¹
Respondent: Grant County Assessor
Parcel Nos.: 27-06-01-104-300.000-008; 27-06-01-104-301.000-008; 27-06-01-104-302.000-008
Assessment Year: 2007

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

Procedural History

1. On September 2, 2008, the Petitioner filed notice with the Grant County Assessor contesting the subject property's 2007 assessment. On March 27, 2009, the Grant County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Petitioner relief.
2. On May 7, 2009, the Petitioner timely filed a Form 131 petition with the Board. The Petitioner elected to have its appeal heard under the Board's small claims procedures.
3. On March 24, 2010, the Board held an administrative hearing through Jennifer Bippus, its Administrative Law Judge ("ALJ").
4. The following people were sworn in:
 - a) For the Petitioner: Karamjit Singh, President, RAI BRO Corp.
John H. Whittenberger II, appraiser
 - b) For the Respondent: Tamara Martin, Grant County Assessor
Nancy Leming, Deputy Grant County Assessor

¹ The Form 131 petition lists Dawson Enterprises as the property owner, but it is signed by Karamjit Singh as president of RAIBRO Corp. *Board Ex. A*. Thus, RAIBRO is the petitioner. Although RAIBRO did not own the subject property on March 1, 2007, it was responsible for paying at least some of the taxes based on that assessment. *See Pet'r Ex. 7 at 4.*

Facts

- 5. The subject property consists of three commercial parcels located at 1402 West Second Street, Marion, Indiana. In the proceedings below, both the Petitioner and the Respondent treated the three parcels as one property. *See Board Ex. A.* The PTABOA similarly issued only one determination. *Id.* On appeal to the Board, the parties continued to treat the three parcels as a single property. In fact, the Petitioner filed a single Form 131 petition despite the form’s instructions and the Board’s procedural rules, both of which generally require a separate petition for each tax parcel. *Id.*; 52 IAC 2-5-1(b). Nonetheless, because the parcels are contiguous and the issues on appeal for each parcel are similar, the Petitioner could have asked for leave to file a single petition. 52 IAC 2-5-1(b). In the interest of economy, the Board will proceed as if the Petitioner had asked for and been granted leave to file a single petition for all three parcels. Unless otherwise indicated, the Board refers to the three parcels collectively as “the subject property.”
- 6. Neither the Board nor the ALJ inspected the subject property.
- 7. The PTABOA determined that the subject property’s assessed value was \$330,000, broken down as follows:

Parcel 27-06-01-104-300.000-008

Land: \$33,000 Improvements: \$242,000 Total: \$275,000

Parcel 27-06-01-104-301.000-008

Land: \$33,000 Improvements: \$0 Total: \$33,000

Parcel 27-06-01-104-302.000-008

Land: \$22,000 Improvements: \$0 Total: \$22,000

- 8. The Petitioner requested a total assessment of \$289,000.

Parties’ Contentions

- 9. Summary of the Petitioner’s contentions:
 - a) The subject property includes 267 acres of land on which the Petitioner operates a convenience store that also sells fuel. *Pet’r Ex. 1 at 10-11.* On August 7, 2007, the Petitioner and Dawson Enterprises, Inc. executed an Agreement for Installment Sale of Real Estate and Personal Property, (“Sale Agreement”) under which the Petitioner agreed to buy the subject property together with fixtures and equipment used in selling and dispensing petroleum products. *Pet’r Ex. 7.* The Sale Agreement listed a sale price of \$305,000, a portion of which was attributable to that equipment. Of that \$305,000 sale price, \$76,250 was due when the agreement was executed with the remainder payable in installments. Those installments were spread over 7 years but

amortized over 15 years at 6.99% interest. *Id. at 2.* The agreement requires Dawson to transfer title upon payment of all sums due under the agreement. *Id. at 3.*

- b) The Sale Agreement also required Dawson to sell the Petitioner products, merchandise, and gasoline inventory located at the subject property. *Pet'r Ex. 7 at 1.* Those items were to be valued at 75% of their retail value based on an independent audit. *Id.* The Petitioner submitted an invoice that may have been related to that audit. It reflects a total of \$6,001.41, but it includes various credits to the Petitioner, including one for a \$35,000 down-payment on the inventory. *Pet'r Ex. 8.*
- c) The Petitioner offered an appraisal report from John H. Whittenberger II, an Indiana Certified General Appraiser. *Pet'r Ex. 1.* Mr. Whittenberger used the sales-comparison and cost approaches to estimate the subject property's market value-in-use at \$289,000 as of January 1, 2006. *Id. at 17.* Mr. Whittenberger further certified that he prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Id. at 2, 6.*
- d) Mr. Whittenberger also analyzed the cash equivalency of the property's August 2007, sale price in light of Dawson having financed the sale. *Pet'r Ex. 1 at Addendum.* In Mr. Whittenberger's view, the Sale Agreement included a lower cash down-payment and interest rate than local lenders made available to even the most qualified buyers. *Id.* Using a discounted cash flow analysis based on typical lender terms, including a discount rate of 8.5%, Mr. Whittenberger estimated the cash equivalency of the sale price at \$289,000. *Id.* At the Board's hearing, Mr. Whittenberger testified that his 8.5% discount rate may have been a bit low, and that his clients had actually been quoted 9%. *Whittenberger testimony.* Using 9% as a discount rate, Mr. Whittenberger concluded that the sale price's cash equivalency was \$284,450. In any event, Mr. Whittenberger noted that, because the sale price included non-realty items, one would need to subtract the value of those items to determine the real estate's contribution to the cash-equivalent sale price. *Id.*

10. Summary of the Respondent's contentions:

- a) The Petitioner offered almost no evidence at the PTABOA hearing, and only argued that the subject property's assessment was too high. *Martin testimony.* While the PTABOA was told about the August 2007 sale, the Petitioner did not mention any concessions for personal property, which the Petitioner has now listed at \$6,000. *Id.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,

c) Exhibits:

- Petitioner's Exhibit 1: Appraisal report from John H. Whittenberger II,
- Petitioner's Exhibit 2: Property record card for parcel 27-06-01-104-300-000-008,
- Petitioners' Exhibit 3: Property record card for parcel 27-06-01-104-301.000-008,
- Petitioners' Exhibit 4: Property record card for parcel 27-06-01-104-302.000-008,
- Petitioners' Exhibit 5: Form 131 petition,
- Petitioners' Exhibit 6: Form 115,
- Petitioners' Exhibit 7: Agreement for Installment Sale of Real Estate and Personal Property,
- Petitioners' Exhibit 8: Invoice from Dawson Enterprises, Inc. to RAI BRO Corp.

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
14. Once the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

15. The Petitioner proved that the subject property's true tax value was \$289,000. The Board reaches this conclusion because:

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- a) 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
- b) 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) *reh’g den. sub nom. PA 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 (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to rebut an assessment’s presumed 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Long*, 821 N.E.2d at 471. For March 1, 2006 assessments, the relevant valuation date was January 1, 2005. 50 IAC 21-3-3 (*Repealed by Dep’t of Local Gov’t Fin.; filed Apr 8, 2010, 1:45 p.m.: 20100505-IR-050090502FRA*).
- d) Here, the Petitioner offered an appraisal prepared by John H Whittenberger II, a certified appraiser. Mr. Whittenberger, who prepared his appraisal in accordance with USPAP using two generally accepted valuation approaches, estimated the subject property’s market value-in-use at \$289,000, as of January 1, 2006. Based on Mr. Whittenberger’s appraisal, the Petitioner made a prima facie case that the subject property’s assessment should be \$289,000.
- e) The burden therefore shifted to the Respondent to impeach or rebut Mr. Whittenberger’s appraisal. She did neither.
- f) At most, the Respondent pointed to the \$305,000 sale price listed in the August 2007 Sale Agreement. Of course, that sale price was still \$25,000 less than the

subject property's assessment. Regardless, the Board sees at least three reasons, why that sale price did not rebut Mr. Whittenberger's appraisal.

- g) First, the sale occurred more than 1 ½ years after the relevant January 1, 2006, valuation date. The Respondent therefore needed to explain how that sale price related to the subject property's value as of January 1, 2006. Because she failed to do so, the Board gives that sale price no probative weight. *See Long, supra*, 821 N.E.2d at 471.
- h) Second, the sale price covered unidentified equipment used to sell and dispense petroleum products and other merchandise. Because the Sale Agreement does not describe the equipment, the Board cannot tell whether that equipment qualified as real property or personal property. To the extent the equipment was personal property, its contributory value should not be included in the subject property's assessment. And the record does not show the equipment's contributory value. Although the Respondent claimed that the personal property included in the sale amounted to \$6,000, she apparently was referring to the Petitioner's Exhibit 8—an invoice from Dawson to the Petitioner listing mostly food items and other inventory. Under the Sale Agreement, however, that inventory was not included in the \$305,000 sale price; instead, the sale price for that inventory was to be determined by a separate audit. In any event, \$6,001.41 was not the total value of the inventory but rather the balance after the Petitioner received several credits, including a \$35,000 credit for its down-payment.
- i) Finally, the Petitioner did not pay cash or its equivalent, but instead financed the sale through Dawson, the seller. Mr. Whittenberger credibly explained that the actual cash equivalency of the sale price was actually \$289,000 or less.

Conclusion

16. The Petitioner made a prima facie case. The Respondent failed to impeach or rebut the Petitioner's evidence. The Board therefore finds for the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the subject property's March 1, 2007, assessment should be lowered to \$289,000.

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>>