

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

Petitions Nos.: 42-022-07-1-4-00002
42-022-07-1-4-00003
Petitioner: Steven L. Rode
Respondent: Knox County Assessor
Parcels Nos.: 022-012-OT01-012-068
022-012-OT01-012-085
Assessment Year: 2007

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

PROCEDURAL HISTORY

1. The Petitioner initiated assessment appeals with the Knox County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated August 28, 2008.
2. The Petitioner received notice of the decisions of the PTABOA through Form 115s, Notification of Final Assessment Determinations, dated September 30, 2008.
3. The Petitioner initiated appeals to the Board by filing Form 131 petitions dated November 12, 2008. The Petitioner elected to have these cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated April 8, 2009.
5. The Board held an administrative hearing on May 12, 2009, 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: Steven L. Rode, Petitioner
 - b. For Respondent: Ray Loheider, Knox County Assessor

FACTS

7. The properties at issue in this appeal are two commercial parcels. The first parcel, Parcel No. 022-012-OT01-012-085, is a former service station and convenience store. The

second parcel is an adjacent vacant lot - Parcel No. 022-012-OT01-012-068. The properties together are located at 618-620 Main Street, Vincennes Township, Knox County, Vincennes, Indiana.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject properties to be \$22,300 for the land for the vacant lot; and \$19,000 for the land and \$77,300 for the improvements, for a total assessed value of \$96,300 for the former gas station property.
10. For 2007 the Petitioner requested the assessed value of the properties to be \$3,345 for the vacant lot; and \$5,715 for the land and \$11,595 for the improvements, for a total assessed value of \$17,310 for the former gas station property.

PETITIONER'S CONTENTIONS

11. The Petitioner contends that the properties suffer from economic and functional obsolescence that the county did not account for in the properties' 2007 assessments. *Rode testimony.* According to the Petitioner, the property was constructed as a gas station and convenience store with three underground gasoline storage tanks. *Id.*; *Board Exhibit A.* Mr. Rode argues that the tanks failed to meet the Indiana Department of Environmental Management standards in 2002. *Id.*
12. The Petitioner further contends that until the properties can be tested and an environmental cleanup completed, the properties' tax assessments should reflect an 85 percent negative influence factor. *Rode argument.* In support of this contention, the Petitioner offered copies of a proposal from Active Environmental Services, Inc., to perform environmental testing of the subject properties. *Petitioner Exhibits 2 through 5.* The soil sampling and legal fees cost approximately \$8,500. *Id.*
13. Mr. Rode argues that the environmental conditions on the properties are reflected in the \$39,000 purchase price of the properties. *Rode testimony.* According to Mr. Rode, he bought the properties in 2007 after they were on the market for four years. *Id.* In support of his argument, the Petitioner submitted a copy of a closing statement dated April 20, 2007. *Petitioner Exhibit 1.*

RESPONDENT'S CONTENTIONS

13. The Respondent testified that the county was "raising no opposition." *Loheider testimony.* Mr. Loheider testified that he agreed the 2007 assessed value is incorrect and that the properties should receive a negative influence factor, but he argues that the 85 percent adjustment requested by the Petitioner is too high. *Id.*

RECORD

14. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The compact disk recording of the hearing labeled 42-022-07-1-4-00002, -00003 Rode Hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Copy of closing statement for the purchase of the properties on April 20, 2007, for a \$55,000 purchase price,
 - Petitioner Exhibit 2 – Copy of a proposal for a site investigation by Active Environmental Services, Inc., dated November 3, 3008,
 - Petitioner Exhibit 3 – Appendix A to the Active proposal,
 - Petitioner Exhibit 4 – Appendix B to the Active proposal, showing a cost of \$7,895.60,
 - Petitioner Exhibit 5 – Copy of a note to the Petitioner from Rob George of Active.
 - Respondent Exhibits – None submitted
 - Board Exhibit A – Form 131 petition and related attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
 - d. These Findings and Conclusions.

ANALYSIS

15. 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.

16. The Petitioner raised a prima facie case for a reduction in the properties' assessed values. The Board reached this decision for the following reasons:
- a. 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). 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 assess real property using a mass-appraisal version of the cost approach, as 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. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that assumption 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. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
 - c. Regardless of the method used, the 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - d. The Petitioner argues that the property should be adjusted for its environmental conditions by a negative influence factor. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor

and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- c. Here the Petitioner presented no evidence to support his requested 85% negative influence factor. Mr. Rode, however, did submit evidence that he purchased the properties on April 20, 2007 after the properties were on the market for four years. *Petitioner Exhibit 1*. Although the sale is somewhat removed from the January 1, 2006, valuation date, the Respondent affirmatively testified that he did not "oppose" the Petitioner's case. Therefore the Board finds that the Petitioner's purchase of the properties in 2007 is sufficient to raise a prima facie case that the properties are over-valued.
- d. The question then is what was the actual purchase price of the properties? The Petitioner contends he purchased the properties for \$39,000. *Rode testimony*. The closing statement, however, shows a purchase price of \$55,000. *Petitioner Exhibit 1*. While much of the difference between the approximately \$39,000 settlement to the seller and the identified sales price of \$55,000 are standard costs and fees associated with purchasing a property and therefore not deductible from the purchase price, the transaction involved two credits to the buyer – one for \$8,000 for the removal of the tanks and one for \$2,500 for an environmental study. *Id.* Thus, the actual price of the properties appears to be \$44,500 after the credits to the buyer are taken into account. Because the Respondent failed to defend the assessments and, in fact, testified that the assessments should be lowered, the Board finds that the value of the properties should be no more than \$44,500.

Conclusion

13. The Petitioner raised a prima facie case that the subject properties are over-valued on the basis of their sale price. The Respondent failed to defend the assessments. The Board finds in favor of the Petitioner and determines the true tax value of the properties is no more than \$44,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to no more than \$44,500.

ISSUED: _____

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>.