

REPRESENTATIVE FOR PETITIONER: P. Thomas Haney,
President of Safe Harbor, LLC

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen,
Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SAFE HARBOR, LLC,	)	Petitions: 27-008-06-1-4-00001
	)	27-008-06-1-4-00002
	)	27-008-06-1-4-00003
Petitioner,	)	27-008-06-1-4-00004
)	
	)	Parcels: 27-06-01-104-220.000-015
v.	)	27-06-01-104-221.000-015
	)	27-06-01-104-222.000-015
	)	27-06-01-104-223.000-015
FRANKLIN TOWNSHIP)	
ASSESSOR,	)	Grant County
)	
	)	Franklin Township
Respondent.)	
	)	2006 Assessment

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

July 7, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue: Does the evidence establish that the current assessment of the subject property, a medical office situated on four parcels, is excessive and should be changed?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioner sought review of its 2006 property tax assessments by filing an appeal with the Grant County Assessor on November 29, 2006.
2. The Grant County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on March 21, 2007. They made no change.
3. On April 20, 2007, the Petitioner filed Form 131 Petitions for Review of Assessment for the subject property and elected to opt-out of small claims procedures.

Hearing Facts And Other Matters Of Record

4. The subject property includes four parcels of land with a medical office building located at 110 North Baldwin Avenue in Marion, Indiana.
5. The PTABOA determined the following assessed values:

Parcel 27-06-01-104-220.000-008	\$9,900 (land)
Parcel 27-06-01-104-221.000-008	\$25,400 (land)
Parcel 27-06-01-104-222.000-008	\$13,100 (land)
	\$199,600 (improvements)
Parcel 27-06-01-104-223.000-008	\$13,100 (land).

Thus, the total assessed value for the subject property is \$261,100.
6. The Petitioner requests a total assessed value of \$70,000 for all the land and \$151,000 for improvements, which would be a total assessment of \$221,000.
7. Patti Kindler, the designated Administrative Law Judge, held the hearing on April 9, 2008. She did not conduct an on-site inspection.

8. The following persons were sworn and presented testimony at the hearing:
- For the Petitioner – P. Thomas Haney, President of Safe Harbor LLC,
For the Respondent – Gary Landrum, Deputy Grant County Assessor.
9. The Petitioner submitted the attachments to its 131 Petitions (Board Exhibit A) as its exhibits. Those attachments are as follows:
- One page summary of the Petitioner’s contentions,
 - Copy of the Form 130 and Form 115,
 - Article titled “How do you buy or sell in this market?” from USA Today,
 - Summary of the taxes and assessed value for each parcel for 2001 and 2002, as well as the assessed values for 2003 and 2006,
 - Subject property record cards,
 - Aerial map.
10. The Respondent presented the following exhibits:
- Respondent’s Exhibit 1 – Sales Disclosure Form for the subject parcels,
Respondent’s Exhibit 2 – PRC¹ for parcel 27-06-01-222.000-008,
Respondent’s Exhibit 3 – PRC for parcel 27-06-01-221.000-008,
Respondent’s Exhibit 4 – PRC for parcel 27-06-01-220.000-008,
Respondent’s Exhibit 5 – PRC for parcel 27-06-01-223.000-008,
Respondent’s Exhibit 6 – “Bypass Land Values” summary of data from other land sales also shown by Exhibits 7-19,
Respondent’s Exhibit 7 – PRCs and Sales Disclosure Form for 1400 N. Baldwin,
Respondent’s Exhibit 8 – PRCs and Sales Disclosure Forms for 1323 N. Baldwin,
Respondent’s Exhibit 9 – PRC and Sales Disclosure Form for 1128 N. Baldwin,
Respondent’s Exhibit 10 – PRC and Sales Disclosure Form for 1121 N. Baldwin,
Respondent’s Exhibit 11 – PRCs and Sales Disclosure Form for 1325, 1327, and 1331 Spencer,
Respondent’s Exhibit 12 – PRCs and Sales Disclosure Form for 201 N. Baldwin,
Respondent’s Exhibit 13 – PRCs for 1325 W. 4th St. and Sales Disclosure Form for 1318 and 1320 W. 5th St.,
Respondent’s Exhibit 14 – PRCs and Sales Disclosure Form for 1325 W. 4th St., an aerial map, and Sales Disclosure Form for 1327 and 1329 W. 4th St.,
Respondent’s Exhibit 15 – PRCs for 2620 S. Western and Sales Disclosure Forms for 2600 S. Western,
Respondent’s Exhibit 16 – PRC for 3101 S. Western and Sales Disclosure Form for property at SR 9 and 31st St.,
Respondent’s Exhibit 17 – PRC and Sales Disclosure Form for 3409 S. Western,

¹ “PRC” stands for property record card.

Respondent's Exhibit 18 – PRC for 3622 S. Western and Sales Disclosure Form for vacant land on S. Western,
Respondent's Exhibit 19 – Note regarding Arena Federal Credit Union and Sales Disclosure Form for unspecified address on Baldwin,
Respondent's Exhibit 20 – PRCs and photograph for 407 N. Baldwin and an aerial map.

11. The following additional items are part of the record of proceedings:

Board Exhibit A – Form 131 Petition for each parcel with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Notice of Appearance of Respondent's Attorney,
Board Exhibit E – Notice of County Assessor Representation.

Contentions

12. Summary of the Petitioner's contentions:

a) The subject property was purchased as vacant land in 2002 for \$70,000. The medical building was constructed for \$141,200. Other improvement costs included \$7,500 for asphalt paving, \$1,500 for landscaping, and \$800 for miscellaneous expenses. The total actual costs were \$221,000. The assessment should not exceed that amount.

Haney testimony; Board Exhibit A at 3.

b) The current land assessment is based only on the Walgreens land purchase for \$450,000 in 2002. The Walgreens property sold 21 months later for \$600,000, one day later it sold for \$865,000, and after another 370 days it sold again for \$3,861,500. This sales history in a truly commercial neighborhood of national chain stores is not a true comparison with a cottage industry business like the subject property, which is almost two miles away. Big name companies and national chain stores will pay over market value to acquire a site. Such sales artificially inflate local market values, which is what happened in this case. *Haney testimony; Board Exhibit A at 3.*

c) The land assessments developed from comparable sales do not take into account all the vacant lots on the bypass that have not sold over the years. Further, the local

economy is very poor. Two major employers left town. The population has declined. Unemployment has increased. Real estate values have diminished. These facts should cause the subject assessment to decrease rather than increase. *Haney testimony.*

- d) A USA Today article regarding residential real estate trends, reports that values dropped between the third quarter of 2006 and the first quarter of 2007. According to the article, residential real estate values dropped anywhere from 5.6 percent to 10.5 percent. Although the subject property is not a residential property, commercial values obviously will follow that trend. *Haney testimony; Board Exhibit A at 10.*
- e) A comparable property is located just two blocks from the subject property, but that comparable's building is larger. The comparable property has been on the market for over a year. The asking price has been reduced to \$200,000 from its originally listed price of \$240,000. *Haney testimony; Board Exhibit A at 13.*

13. Summary of the Respondent's contentions:

- a) The 2006 assessed land value for each parcel used a \$330,000 per acre base rate. The total assessed land value of all four parcels is only \$61,500. That value is lower than the value the Petitioner requested. It is also less than what the Petitioner paid for the land. The sales disclosure form shows that the subject land (four vacant parcels totaling .1862 acres) sold on April 5, 2002, for \$70,000. The Petitioner's actual purchase price was \$375,940 per acre. *Landrum testimony; Resp't Exs. 1-5.*
- b) A spreadsheet of vacant land sales between 1999 and 2007 illustrates the price per acre for seventeen commercial transactions in the area. From those, properties that sold between 2003 and 2006 sold for more than \$330,000 an acre. *Landrum testimony; Resp't Exs. 6-19.* The best way to assess property is through sales data and sales disclosures of similar properties. The fact that a large company may have

- purchased the land does not invalidate the sale. The evidence supports a value of at least \$330,000 per acre. *Meighen argument.*
- c) The magazine article focuses on the depreciation of residential property values in other cities. The commercial sale of the Advance Auto Parts land in Marion, however, shows an appreciation in commercial values. Advance Auto Part's vacant land sold in 2000 for \$471,000 an acre and sold again in 2006 for \$615,000 an acre. *Meighen argument; Resp't Ex 10.*
- d) The building located on the Swayzee Home and Farm Service property (the Petitioner's comparable) is thirty years older than the subject building. It is not enough for the Petitioner to say that two buildings are similar to each other without making a detailed comparison. In addition, it is not enough for the Petitioner to claim its assessment is wrong because the two buildings are not assessed at the same value. *Meighen argument; Resp't Ex. 20.*
- e) According to the Guidelines, a construction cost estimate must include all the direct labor and material costs, plus all the indirect labor and material costs including supervision, permits and fees, insurance, taxes, construction interest, profit, equipment rental and utilities used during construction. The Petitioner's "roundabout, something like" 2002 construction cost estimate for the property is insufficient to establish there should be a change in the assessment. Further, 2002 construction costs would need to be trended to the required valuation date, January 1, 2005, but the Petitioner failed to do so. *Meighen argument.*

Administrative Review And Burden

14. 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).

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. 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”).
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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Analysis

17. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are the three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines for application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of those guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

18. While the Petitioner offered some testimony about actual construction costs for the subject building and other improvements, it did not document the testimony with construction invoices or a construction contract. The Petitioner admitted the total construction costs were “rough estimates” and “I wouldn’t bet my life on these numbers.” The Respondent correctly pointed out that costs must include all the direct labor and material costs, plus all the indirect labor and material costs including supervision, permits and fees, insurance, taxes, construction interest, profit, equipment rental and utilities used during construction. GUIDELINES, intro. at 1. There is no evidence that the Petitioner’s cost figures included all these elements. Generalized, estimated, and possibly incomplete cost evidence such as the Petitioner offered here is not enough to make a prima facie case.

19. Furthermore, a 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. If the Petitioner presents evidence of value relating to a different date, there must also be some explanation about how that value demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Assuming *arguendo* that the Petitioner proved the actual 2002 construction costs were \$221,000, it still was required to offer some explanation for how that cost relates to January 1, 2005. It did not do so. Therefore, the cost of construction evidence does not make the Petitioner’s case.

20. The Petitioner failed to establish how the newspaper article about a downward trend in some housing markets (but not others) is relevant to this case — the subject property is not housing. Conclusory testimony that commercial properties obviously will follow this trend does not help make the Petitioner’s case. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that unsubstantiated conclusions are not probative evidence).

21. Conclusory testimony about a poor local economy, employers leaving town, declining population, and increasing unemployment also fails to make the Petitioner's case. *Id.* Nevertheless, the Board notes the current land assessment is actually less than 90% of the 2002 purchase price. This fact generally would be consistent with the Petitioner's claim that values are declining and perhaps gives the claim a little credibility. But the Petitioner presented no probative evidence or explanation for how its actual cost somehow supports an even lower land value than the current 2006 assessment. Even if it were true that values declined during this period, the Petitioner failed to offer any probative evidence or explanation to measure such a decline relating to the subject property.

22. The Petitioner also offered testimony about the purported faults caused by considering only the Walgreen sales. The Petitioner failed to prove that the value of the subject property was based on only the Walgreen sales. The Petitioner also failed to prove that the Walgreen sales represented artificially inflated values. According to the Petitioner, the subject property is in a different type of "cottage industry" area. Although there was testimony that the subject property is almost two miles away, the record lacks sufficient facts or meaningful comparative analysis to draw any conclusion about relative values. The Petitioner failed to make a case with the evidence and arguments relating to the Walgreen sales.

23. The Petitioner offered testimony that a comparable commercial property was on the market for more than a year and the list price was reduced from \$240,000 to \$200,000. It argued that this fact shows the assessment for the subject property is excessive. But the Petitioner failed to provide details explaining how the properties are truly comparable. Without facts and analysis to establish comparability, such evidence does not make a case. *See Long*, 821 N.E.2d at 471; *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties.)

24. The Petitioner failed to make a prima facie case. When a taxpayer fails to provide substantial evidence to support a claim, the Respondent's duty to support the assessment 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); *Whitley Products*, 704 N.E.2d at 1119.

Summary Of Final Determination

25. The Board finds in favor of the Respondent. The assessments of the subject parcels should not be changed.

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

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Chairman, 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>