

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

Petition Nos.: 45-026-07-1-5-00032
45-026-07-1-5-00033
Petitioner: Standard Bank and Trust Company Trustee Trust #19400¹
Respondent: Lake County Assessor
Parcel Nos.: 45-03-29-331-010.000-024
45-03-29-331-011.000-024
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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 6, 2009.
2. The PTABOA held a hearing on December 22, 2010, and issued its determinations on March 7, 2011.
3. The Petitioner filed appeals to the Board by filing Form 131 petitions on January 21, 2011.² The Petitioner elected to have its cases heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 20, 2011.

¹ Standard Bank and Trust Company, Trustee, Trust #19400 d/b/a Mega Holdings of Indiana, Inc., aka Mega Properties, is the entity appointing Uzelac & Associates, Inc., as the Petitioner's representative. Uzelac and Associates, Inc., was retained on a contingency basis.

² The Petitioner failed to wait until the PTABOA issued its determination to file an appeal with the Board. However, the PTABOA did not hold its hearing within the 180 day deadline. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.") The Petitioner, therefore, had the right to file its Form 131 petition at any time after the 180 day time period had elapsed. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") While the PTABOA ultimately issued a decision on the Petitioner's appeal, that determination merely affirmed the assessed value calculated by the assessor.

5. The Board held an administrative hearing on June 20, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.

6. Persons present and sworn in at hearing:

For Petitioner: Dirk Abe Rivera, tax representative,

For Respondent: Robert W. Metz, Lake County Assessor's representative,

Facts

7. The subject property is a grocery store located at 4624 Magoun Avenue in East Chicago, Indiana.

8. The ALJ did not conduct an on-site visit of the property.

9. For 2007, the PTABOA determined the assessed value of parcel 45-03-29-331-010.000-024 (Parcel 10) to be \$295,200 for the land and \$1,007,500 for the improvements, for a total assessed value of \$1,302,700, and the assessed value of parcel 45-03-29-331-011.000-024 (Parcel 11) to be \$441,700 for the land and \$13,100 for the improvements, for a total assessed value of \$454,800.

10. The Petitioner requested an assessment for both parcels totaling \$798,200.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its properties' assessments:

- a. The Petitioner's representative contends that the properties are over-assessed based on an appraisal. *Rivera testimony*. In support of this contention, the Petitioner presented an appraisal prepared by First Real Estate Services, Ltd., in accordance with the Uniform Standards of Professional Appraisal Practice. *Petitioner Exhibit 1*. The appraisers, both of whom are certified general appraisers, valued the Petitioner's properties using the three approaches to value and estimated their value at \$815,000 as of March 1, 2007. *Id.* According to Mr. Rivera, the appraised value encompasses both parcels because the property is being used as one economic entity. *Rivera testimony*.
- b. The Petitioner's representative further contends that, because the valuation date for the March 1, 2007, assessment is January 1, 2006, he trended the properties' appraised value of \$815,000 to that date. *Rivera testimony*. According to Mr. Rivera, applying the Consumer Price Index (CPI) resulted in a total value of \$798,200 for the properties. *Id.* In support of this contention, the Petitioner submitted a worksheet showing the trending calculation. *Petitioner Exhibit 2*.

- c. The Petitioner's representative argues that the Petitioner's purchase price does not reflect the market value of the properties. *Rivera argument*. According to Mr. Rivera, the purchase agreement indicates that equipment and inventory were included in the sale as well as the value of the business. *Rivera testimony*. Furthermore, the Petitioner contends, the purchase was not an arm's-length transaction because the purchaser and subsequent tenant are related and had previous business relationships involving similar grocery stores. *Id.* The Petitioner further claims that, according to their appraisers, the buyer was not typically motivated and did not appear to be well-informed about the subject properties' market. *Id.; Petitioner Exhibit 3*. In support of these contentions, the Petitioner submitted the closing statement from the purchase, an analysis of the purchase by the Petitioner's appraisers, and an affidavit explaining that the purchaser bought the property as an investment for his brother-in-law who thereafter leased the property from the purchaser. *Petitioner Exhibits 1, 3, 4, and 5*.
- d. The Petitioner's representative further contends that the appraisal prepared by Property Valuation Services, LLC, should be given no weight. *Rivera testimony*. According to the Petitioner's appraiser's, the income approach in the Property Valuation Services appraisal was based upon the leased fee value of a non-arm's-length transaction with no attempt to verify the lease rate with market rates. *Petitioner Exhibit 3*. The use of site-specific rent was a mistake that became apparent when the original lessee became delinquent and went out of business. *Id.* The new tenant, who rents the grocery store at about half the prior rent, is already behind in payments. *Id.*
- e. Moreover, the Petitioner's appraisers contend that the capitalization rate used in the Property Valuation Services appraisal relied upon rates derived from the sale of properties that are not comparable to the subject property. *Petitioner Exhibits 3 and 4*. According to the Petitioner, the Property Valuation Services appraisal calculates its capitalization rate from national credit tenant properties such as Arby's, AutoZone and Walgreen's, which are far superior to the original tenant. *Id.* The Petitioner, therefore, contends the 9.25% capitalization rate used in that appraisal failed to accurately reflect the investor's risk and inflated the appraisal's value conclusion. *Id.*
- f. Finally, the Petitioner's representative contends the sales comparison approach used in the Property Valuation Services appraisal contained no comparable sales from the subject properties' market area. *Rivera testimony*. According to Mr. Rivera, three of the comparable sales were located in Illinois and the two sales in Indiana were for properties located in Elkhart and Ft. Wayne. *Id.; Petitioner Exhibits 3 and 4*. Mr. Rivera argues that these locations are not similar to the subject properties' market. *Rivera argument*.

12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent's representative, Mr. Metz, contends that the assessment is correct based on the properties' purchase price. *Metz testimony*. According to Mr. Metz, the properties sold on February 16, 2006, for \$2,275,000, which included \$500,000 in personal property. *Id.* In support of this contention, Mr. Metz submitted the sales disclosure form. *Respondent Exhibit 1*.
 - b. The Respondent's representative further contends that the properties' assessment is correct based on an April 6, 2006, appraisal prepared by Property Valuation Services, LLC. *Metz testimony*. According to Mr. Metz, the appraisal estimated the leased fee value of the properties to be \$3,020,000 and the value of the fee simple interest to be \$1,695,000. *Id.*; *Respondent Exhibit 2*.

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-026-07-1-5-00032, -00033 Standard Bank,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Appraisal prepared by First Real Estate Services Ltd.,
 - Petitioner Exhibit 2 – Worksheet showing the trending analysis,
 - Petitioner Exhibit 3 – First Real Estate Services' analysis of the finance appraisal,
 - Petitioner Exhibit 4 – Rebuttal issues,
 - Petitioner Exhibit 5 – Affidavit explaining the relationship of the landlord and the tenant,

 - Respondent Exhibit 1 – Sales disclosure form for the subject property,
 - Respondent Exhibit 2 – Appraisal prepared by Property Valuation Services, LLC,

 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing dated May 20, 2011,
 - Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

14. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 478.
15. The weight of the evidence supports the appraised value of the properties as determined in the Property Valuation Services, LLC, appraisal submitted by the Respondent. 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 have traditionally 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. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Guidelines. *See 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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 Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Taxpayers 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 practices. *MANUAL* at 5.
 - c. Regardless of the method used to rebut an assessment’s presumption of 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. The Petitioner argues that its properties are over-valued based on their appraised value. *Rivera argument*. In support of its contention, the Petitioner submitted an appraisal prepared by First Real Estate Services, Ltd., that estimated the value of the properties to be \$815,000 as of March 1, 2007. *Petitioner Exhibit 1*. The appraisers are Indiana certified appraisers who attested that they prepared the Petitioner's appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* While the appraisal values the property as of March 1, 2007, the Petitioner's representative presented a calculation based on the consumer price index trending the appraised value to the January 1, 2006, valuation date, resulting in a value of \$798,000 for the two parcels at issue in this appeal. *Petitioner Exhibit 2*. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that the property is over-assessed.
- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
- f. Here, the Respondent presented the sales disclosure form for the Petitioner's properties showing that the Petitioner purchased the parcels for \$2,275,000 on February 6, 2006. *Respondent Exhibit 1*. According to the sales disclosure form, personal property worth \$500,000 was included in the sale, resulting in a value of \$1,775,000 for the real estate. *Id.* In addition, the Respondent submitted an appraisal of the properties prepared by Property Valuation Services, in which the appraiser estimated the fee simple value of the properties to be \$1,695,000 and the leased fee value of the properties to be \$3,020,000 as of March 24, 2006. *Respondent Exhibit 2*. Both the purchase of the properties and the appraisal occurred sufficiently contemporaneously with the January 1, 2006, valuation date for the March 1, 2007, assessment to be probative. *See Long*, 821 N.E.2d at 471. Therefore, the Board concludes that the Respondent rebutted the Petitioner's evidence.
- g. The price paid for the properties under appeal and the appraisals estimating the properties' market value are all acceptable approaches to determining the market value-in-use of the subject properties. The Board therefore must weigh the evidence presented by both parties and determine the most persuasive evidence of the property's value.

- h. Here, the Petitioner purchased the properties for \$2,275,000 on February 16, 2006, which is only six weeks after the January 1, 2006, valuation date for the March 1, 2007, assessment. *Respondent Exhibit 1*. The sales disclosure form, signed by the parties to the sale under oath, reports that personal property totaling \$500,000 was included in the sale price, resulting in a value of \$1,775,000 for the real estate. *Id.* The purchase price of a property can be the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence).
- i. The Petitioner's representative, however, contends the Board should disregard the sale price because the sale was somehow "not an arms-length transaction." *Petitioner Exhibit 2*. While the Petitioner presented an affidavit showing that the purchaser of the properties bought the grocery store for his brother-in-law and his brother-in-law subsequently leased the properties from the purchaser, there is no evidence that there was any relationship between the buyer and the seller of the properties that would support a finding that the purchase of the subject properties was not a market sale. In fact the sales disclosure form has a place to report the "existence of [a] family or business relationship between [the] buyer and seller" and no such relationship was disclosed. *Respondent Exhibit 2*. The best the Petitioner's affidavit can show is that four years after purchasing the properties, the purchaser is claiming that he "paid a premium" for the grocery store. *Petitioner Exhibit 5*. Because the Petitioner seeks to lower the properties' assessed values, however, the Board gives little weight to such self-serving statements.³
- j. The Petitioner's representative also contends that the properties' purchase price included the value of an on-going business, but Mr. Rivera presented no evidence to support that contention or to value the business interest that the Petitioner purportedly purchased. *Rivera testimony*. Although Mr. Rivera referred to the purchase agreement in his testimony, he failed to submit any sales contract into evidence in support of his contention. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- k. Even if the properties' purchase price included some amount for the value of the on-going business, that good will or business value would not have been included in the

³ The Petitioner's representative also contends that the Petitioner somehow had insufficient experience or information for the sale to be a market transaction. However, the Petitioner's affidavit specifically states that the Petitioner had been involved in owning or operating grocery stores prior to its purchase of the subject properties. Therefore, the Board gives little weight to Mr. Rivera's unsupported allegation.

April 6, 2006, appraisal prepared by Property Valuation Services, LLC, for the Petitioners. *Respondent Exhibit 2*. The appraisers are Indiana certified appraisers who attested that they prepared the Petitioner's appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* The appraisers determined the properties' fee simple value to be \$1,695,000. *Id.* The appraisal also estimated the value of the leased fee interest to be \$3,020,000. *Id.* Despite the Petitioner's representative's contention that, like the sale, the Property Valuation Services appraisal also included the value of the on-going business, there is no evidence that the appraisal valued the grocery store as a business. To the contrary, the appraisal clearly valued the real estate and improvements thereon in its fee simple valuation. To the extent that the leased fee valuation could somehow be considered "valuing the business," the Board gives the leased fee value of the properties no weight. *See Schooler v. Boone County Assessor*, Ind. Bd. of Tax Rev., Petition No. 06-003-07-1-5-00444, (May 7, 2010) and *Kerasotes Showplace Theatres, LLC v. Grant County Assessor*, Ind. Bd. of Tax Rev., Petition No. 27-023-06-1-4-00825 (July 15, 2009).

- l. The Petitioner's appraisers contend that the Property Valuation Services' appraisal's income approach contained "no market rent comparables" and based its capitalization rate on national chains. The Board notes, however, that the appraisal was estimating the properties' "leased fee interest" rather than its fee simple interest. The appraisal appears to value the fee simple interest based on the properties' cost approach and sales comparison approach. The Petitioner's appraisers cited no purported deficiency with the Property Valuation Services' appraiser's cost approach, but contend that the appraisers used no comparable sales from the Petitioner's properties' market in their comparable sale analysis. The Petitioner's appraisers, however, did not go forward to explain why or how these "flaws" invalidate the Respondent's evidence. "Open-ended questions" and "conclusory statements" are not sufficient to rebut a case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel's calculations. Rather, he merely asked open-ended questions or made conclusory statements"). It is well within an appraiser's expertise to choose the sales he or she deems "most comparable" to the subject property or how best to value a property. Therefore, the Board finds the method of valuation and the comparable properties chosen by the Property Valuation Services' appraisers to be reasonable absent any evidence to the contrary.

- m. While the Petitioner also submitted an appraisal, prepared by First Real Estate Services that estimated the value of the property to be \$815,000 as of March 1, 2007, which the Petitioner's representative trended to January 1, 2006, resulting in a value of \$798,200, the First Real Estate Services' appraisal values the properties at less than half of the value for which they were purchased in a timely, arms-length transaction. The value determined in the Property Valuation Services' appraisal submitted by the Respondent, on the other hand, supports and is supported by the Petitioner's purchase of the properties. The Board, therefore, finds that the Property Valuation Services'

appraised value offered by the Respondent is the best evidence of the properties' market value-in-use as of January 1, 2006 for the March 1, 2007, assessment.

Conclusion

- 16. The Petitioner raised a prima facie case that its properties were over-valued for the March 1, 2007, assessment year. The Respondent rebutted the Petitioner's evidence. The Board finds that the weight of the evidence supports the Property Valuation Services' appraised value and determines the assessed value of the properties to be \$1,695,000 for the 2007 tax year.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the subject properties should be lowered to \$1,695,000 for both parcels for the March 1, 2007, assessment.

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>>