

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

Petition Nos.: 34-002-07-1-4-00105
34-002-07-1-4-00198
Petitioner: Robert Thiemrodt
Respondent: Howard County Assessor
Parcel Nos.: 34-10-07-301-006.000-002
34-10-06-310-003.000-002
Assessment Year: 2007

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

Procedural History

1. The Petitioner initiated assessment appeals for two properties with the Howard County Property Tax Assessment Board of Appeals (the PTABOA) by written documents, dated March 24, 2008, and April 17, 2008, respectively.
2. The PTABOA issued notices of its decision on both matters on January 20, 2009.
3. The Petitioner filed Form 131 petitions with the Board on February 13, 2009. The Petitioner elected to have his cases heard according to the Board's small claim procedures.
4. The Board issued notices of hearing to the parties dated April 16, 2009.
5. The Petitioner requested that the matters be consolidated for purposes of hearing. The Board held an administrative hearing on May 28, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Robert Thiemrodt, property owner
 - b. For Respondent: Jamie Shepherd, Howard County Assessor
Brian Thomas, Howard County Representative
Shelia Pullen, Center Township Assessor

Facts

7. Parcel No. 34-10-07-301-006.000-002 is a 6,300 square foot neighborhood shopping center with two detached 96 square foot utility sheds located at 501 East Lincoln Road, Kokomo in Center Township, Howard County (the Shopping Center). Parcel No. 34-10-06-310-003.000-002 is a 2,550 general retail and utility storage building located at 1708 South Home Avenue, Kokomo in Center Township, Howard County (the Retail Building).
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. The PTABOA determined the assessed values of the properties to be \$109,300 for the land and \$275,800 for the improvements, for a total assessed value of \$385,100 for the Shopping Center; and \$28,400 for the land and \$61,000 for the improvements, for a total assessed value of \$89,400 for the Retail Building.
10. The Petitioner requested a total assessed value of \$308,007 for the Shopping Center and a total assessed value \$50,724 for the Retail Building.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in the assessments:
 - a. The Petitioner contends the Shopping Center is over-assessed compared to other similar properties in the area. *Thiemrodt testimony*. In support of his position, the Petitioner, who is a realtor in Howard County, submitted a comparable sales analysis and multiple listing sheets (MLS) and exterior photographs for four properties that sold in 2005. *Petitioner Exhibit 1; Thiemrodt testimony*. The Petitioner contends the comparable properties are similar to the property under appeal in location, construction, parking area and use. *Id.* According to Mr. Thiemrodt, the four comparables sold from \$42.55 to \$51.40 per square foot. *Petitioner Exhibit 1; Thiemrodt testimony*. The Shopping Center, however, was assessed for \$61.12 per square foot. *Id.* Mr. Thiemrodt argues that the properties located at 201 North Dixon Road and 1016 Cooper Street are the most comparable properties because they are multi-tenant strip mall type buildings with similar traffic flow. *Thiemrodt testimony*. Therefore, Mr. Thiemrodt contends the Shopping Center should be assessed at \$308,007 or \$49 per square foot. *Thiemrodt testimony*.
 - b. In response to the Assessor's argument that his comparables were located in different neighborhoods, the Petitioner removed the land values and offered a comparable analysis of only the building values of three comparable properties. *Petitioner Exhibits 2 and 11; Thiemrodt testimony*. According to Mr. Thiemrodt,

the building values of the comparable structures range from \$32.41 to \$41.07 per square foot. *Id.* The subject building, however, was assessed for \$43.77 per square foot. *Id.* According to Mr. Thiemrodt, this further shows the Shopping Center is over-assessed. *Thiemrodt testimony.*

- c. In response to the Respondent's Representative's argument, Mr. Thiemrodt testified that he purchased a strip retail center on 2106 West Sycamore for \$220,000 in 2006. *Respondent Exhibit G; Thiemrodt testimony.* According to Mr. Thiemrodt, he did not use 2106 West Sycamore in his comparable analysis because it is not located in the same area as the property under appeal. *Thiemrodt testimony.* Mr. Thiemrodt further testified that if the purchase price of \$220,000 was divided by the 4,200 square feet of the building area, the property's value is \$52.38 per square foot. *Thiemrodt testimony.* Thus, Mr. Thiemrodt argues, if the property at 2106 West Sycamore was used as a comparable it would still show that the Shopping Center is over-assessed at \$61.12 per square foot. *Thiemrodt testimony.*
- d. The Petitioner similarly contends that the Retail Building is over-assessed compared to other properties in the area. *Thiemrodt testimony.* In support of his position, Mr. Thiemrodt offered a sales comparable analysis and multiple listing sheets (MLS) and exterior photographs for five properties that sold in 2005 and 2006. *Petitioner Exhibit 6; Thiemrodt testimony.* The Petitioner contends the five comparables sold from \$12.82 to \$53.78 per square foot, whereas the Retail Building was assessed for \$77.75 per square foot.¹ *Petitioner Exhibit 6.* According to Mr. Thiemrodt, the property located at 201 East Defenbaugh is a 3,236 square foot building that is superior to the Retail Building in both quality of construction and size, but it sold for \$136,000 or \$42.27 per square foot. *Petitioner Exhibit 6; Thiemrodt testimony.* Thus, Mr. Thiemrodt argues, the Retail Building should be assessed for \$50,724 or \$42.27 per square foot. *Petitioner Exhibit 6; Thiemrodt testimony.*
- e. Additionally, Mr. Thiemrodt offered a comparable sales analysis of only the building values of three comparable properties. *Petitioner Exhibit 7; Thiemrodt testimony.* The Petitioner contends the building values of the properties ranged from \$15.32 to \$28.27 per square foot. *Id.* The Retail Building, however, was assessed for \$53.16 per square foot. *Id.* According to Mr. Thiemrodt, this further shows the Retail Building is over-assessed. *Thiemrodt testimony.*
- f. Finally, in rebuttal, Mr. Thiemrodt testified that the Retail Building was leased to Stee, Inc. which operated a dry cleaning business on the property for 23 years. *Petitioner Exhibit 10; Thiemrodt testimony.* According to Mr. Thiemrodt,

¹ Mr. Thiemrodt testified that Petitioner's Exhibit 6 was calculated using the original assessed value of \$93,300 on the Retail Building. However, the Howard County Property Tax Assessment Board of Appeals (PTABOA) reduced the assessment to \$89,400 or \$74.50 per square foot for 2007. *Petitioner Exhibit 6; Thiemrodt testimony.*

however, due to the local economy the dry cleaners closed in June 2009. *Thiemrodt testimony*. Therefore, Mr. Thiemrodt contends, the income approach to value is not applicable to the Retail Building. *Thiemrodt testimony*.

12. Summary of Respondent's contentions in support of the assessments:

- a. The Respondent contends the Shopping Center is correctly assessed at \$385,100 and the Retail Building is correctly assessed at \$89,400. *Respondent Exhibits B and J; Thomas testimony*. In support of this position, the Respondent submitted a copy of the Howard County Commercial and Industrial Sales Ratio Study (the Ratio Study) and a letter from the Department of Local Government Finance (DLGF) indicating that the Ratio Study was approved for 2007. *Respondent Exhibit C*. The Respondent's Representative, Mr. Thomas, testified that the Petitioner's 2007 assessment was determined by applying a trending factor approved by the DLGF to the properties' previous assessments. *Respondent Exhibit C; Thomas testimony*. According to Mr. Thomas, the trending factor was calculated by finding the contributory value between land and improvements through sales of vacant and/or improved parcels to establish the median level of sales prices within a defined neighborhood in Howard County. *Respondent Exhibit B; Thomas testimony*.
- b. The Respondent also argues that a sales analysis of strip retail centers shows that Howard County has consistently assessed strip retail centers close to their sales prices from 2001 to 2007. *Respondent Exhibit E; Thomas testimony*. According to Mr. Thomas, this shows retail centers are assessed fairly and accurately in Howard County. *Thomas testimony*. Further, Mr. Thomas argues, the assessed values of strip retail centers are normally lower than their sales price. *Id.* For example, Mr. Thomas testified, the Petitioner owned a strip retail center located at 2106 West Sycamore Street that was assessed for \$155,600, which he sold on May 19, 2006, for \$220,000. *Respondent Exhibit G; Thomas testimony*.
- c. Moreover, the Respondent argues, the Petitioner's comparable sales analysis is flawed because the Petitioner did not give any consideration to the effective age in determining the square foot prices of the comparable properties. *Thomas testimony*. According to Mr. Thomas, Howard County conducted an age analysis on strip malls in Kokomo to establish the effect a property's age had on its price per square foot. *Exhibit F; Thomas testimony*. Mr. Thomas argues that the age analysis shows there is a correlation between assessments and the per square foot price based on effective age. *Id.*
- d. Further, Mr. Thomas argues, the Petitioner's comparable properties should not be given any weight because the Petitioner failed to show that he followed International Association of Assessing Officers (IAAO) Standards or that he considered any outliers that would affect property values. *Respondent J; Thomas*

testimony. According to Mr. Thomas, the Petitioner simply chose properties that would achieve a reduction in assessed value with no consideration given to the properties' market value-in-use. *Id.*

- e. The Respondent argues that its assessment of the Retail Building is correct based on its income approach valuation. *Respondent Exhibit N; Thomas and Shepherd testimony.* According to Mr. Thomas, the Petitioner provided a lease agreement on the Retail Building in his 2006 appeal. *Id.* The PTABOA determined the 2006 assessed value of the property using the income approach to be \$89,400. *Respondent Exhibit N; Thomas and Shepherd testimony.* While the 2007 annual adjustment would have increased the Retail Building's assessment by \$3,900 to \$93,300, the PTABOA determined that the income approach was the most accurate way to value the property's market value-in-use for 2007 and reduced the assessment back to \$89,400. *Id.* Thus, the Respondent concludes, for the March 1, 2007, assessment year, the Retail Building's \$89,400 assessment is fair and accurate. *Thomas testimony.* The Respondent contends that it also tried to obtain income information on the Shopping Center property, but the Petitioner refused to provide the information. *Thomas testimony.*
- f. Finally, Mr. Thomas contends the Petitioner has not presented any probative evidence to establish the 2007 assessments of the two properties on appeal are incorrect. *Respondent Exhibits B and J; Thomas testimony.*

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – The Shopping Center's Sales analysis, three exterior photographs, Notice of Assessment of Land and Structures – Form 11 R/A – C/I and Howard County Request for Review worksheet; and multiple listing sheets and three exterior photographs for 3905 Southland Avenue, 3901 Southland Avenue, 1016 South Cooper Street, and 201 North Dixon Road,

Petitioner Exhibit 2 – Sales comparable analysis of building values only for the Shopping Center,

- Petitioner Exhibit 3 – Notification of Final Assessment Determination – Form 115, dated January 20, 2009, for the Shopping Center,
- Petitioner Exhibit 4 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 for the Shopping Center,
- Petitioner Exhibit 5 – Citizen’s Guide to Property Taxes prepared by the Indiana Department of Local Government Finance, dated November 20, 2007,
- Petitioner Exhibit 6 – The Retail Building’s comparable sales analysis, three exterior photographs, Notice of Assessment of land and Structures – Form 11 R/A – C/I and Howard County Request for Review worksheet; and multiple listing sheets and three exterior photographs for 1124 South Washington Street, 1601 North Davis Road, 201 East Defenbaugh Street, 1500 South Main Street and 608 East Markland,
- Petitioner Exhibit 7 – Sales comparable analysis of building values only for the Retail Building,
- Petitioner Exhibit 8 – Notification of Final Assessment Determination – Form 115, dated January 20, 2009, for the Retail Building,
- Petitioner Exhibit 9 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 for the Retail Building,
- Petitioner Exhibit 10 – Lease agreement for the Retail Building between Robert Thiemrodt and Stee, Inc., dated June 12, 2004,
- Petitioner Exhibit 11 – Sales price, assessed value, and assessed value per square foot worksheet, three exterior photographs, a multiple listing sheet, the Howard County property record sheet and a Google Map for 400 East Southway Boulevard,
- Respondent Exhibit A – Notice of Appearance of Consultant on Behalf of Assessor dated May 28, 2009, and Verification by Local Government Representative pursuant to 52 IAC 1-1-3.5 (b) for the property tax appeal of the Shopping Center,
- Respondent Exhibit B – Respondent’s testimony brief for the property tax appeal of the Shopping Center,
- Respondent Exhibit C – Howard County’s 2007 Annual Adjustment Ratio Study for Commercial and Industrial Properties,

Respondent Exhibit D – Indiana strip mall statistics on capitalization rates prepared by Howard County,
Respondent Exhibit E – Howard County strip retail center sales information prepared by Howard County,
Respondent Exhibit F – Kokomo strip retail age analysis prepared by Howard County,
Respondent Exhibit G – Property record card for Parcel No. 34-03-35-126-051.000-002 located at 2106 West Sycamore Street,
Respondent Exhibit H – Property record card for Parcel No. 34-10-07-301-006.000-002 located at 501 East Lincoln Road,
Respondent Exhibit I – Notice of Appearance of Consultant on Behalf of Assessor dated May 28, 2009, and Verification by Local Government Representative pursuant to 52 IAC 1-1-3.5 (b) for the property tax appeal of the Retail Building,
Respondent Exhibit J – Respondent’s testimony brief for the property tax appeal of the Retail Building,
Respondent Exhibit K - Howard County’s 2007 Annual Adjustment Ratio Study for Commercial and Industrial Properties,
Respondent Exhibit L – Property record card for the Retail Building,
Respondent Exhibit M – Four exterior photographs for the Retail Building,
Respondent Exhibit N - Lease agreement for the Retail Building between Robert Thiemrodt and Stee, Inc., dated June 12, 2004,

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheets.

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 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 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. 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 Shopping Center and the Retail Building are over-assessed based on the sale of comparable properties. *Thiemrodt testimony*. Mr. Thiemrodt argued that the Shopping Center should be assessed for no more than \$308,007 or \$49 per square foot by comparing it to four comparable properties that sold for \$42.55 to \$51.40 per square foot in 2005. *Petitioner Exhibit 1; Thiemrodt testimony*. Similarly, Mr. Thiemrodt argued the Retail Building should be assessed for no more than \$50,724 or \$42.27 per square foot by comparing it to five comparable properties that sold for \$12.82 to \$53.78 per square foot in 2005 and 2006. *Petitioner Exhibit 6; Thiemrodt testimony*.
- e. The sales comparison approach is based on the assumption that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable substitute property already existing in the market place. *Long*, 821 N.E.2d at 471. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*
- f. Here, the Petitioner failed to make any meaningful comparison between the subject properties and the comparable properties. In fact Mr. Thiemrodt’s entire analysis for the Shopping Center comparables was that they were “very similar, almost identical in nature, multi-tenant, strip mall type, location wise, traffic wise...” Further, the Petitioner failed to value the differences between the properties. For example, Mr. Thiemrodt made no adjustments for land size, building size, location, or the age of the buildings. He merely concluded that various properties were the “most comparable” to the subject properties and that, based on those sales, the Shopping Center should be valued at \$49 per square foot and the Retail Building should be valued at \$42.27 per square foot. These opinions are far too conclusory to raise a prima facie case for a change in value.
- g. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to raise a prima facie case that the properties on appeal were over-valued. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

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 pursuant to 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 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/bills/2007/SE0287.1.html>.