

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

Petition No.: 06-019-09-1-4-00357
Petitioner: Wessel Properties, LLC
Respondent: Boone County Assessor
Parcel No.: 019-12300-00
Assessment Year: 2009

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

Procedural History

1. Mr. Ronald Wessel, on behalf of Wessel Properties, LLC (the Petitioner), initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document on May 26, 2010.
2. The PTABOA issued notice of its decision on July 23, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Wessel filed a Form 131 petition with the Board on August 16, 2010. The Petitioner elected to have its case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated June 27, 2011.
5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the Board held an administrative hearing on August 11, 2011, before the duly appointed Administrative Law Judge (ALJ) Dalene McMillen.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioner: Ronald E. Wessel, property owner
Jim Knighton, Heritage Realty Group
 - b. For Respondent: Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA member
Daniel Spiker, Government Utilities Technology Service

Facts

7. The property under appeal is a 10,032 square foot general office/neighborhood retail center located at 260 South First Street, Zionsville, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2009, the PTABOA determined the assessed value of the property to be \$278,300 for land and \$626,200 for the improvements, for a total assessed value of \$913,500.¹
10. For 2009, the Petitioner's representative requested an assessed value of \$287,300 for the land and \$466,590 for the improvements, for a total assessed value of \$753,890.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:
 - a. The Petitioner's witness, Mr. Knighton, contends that the Petitioner's property's assessed value is overstated compared to the sale prices and assessed values of similar properties. *Knighton testimony*. In support of this position, Mr. Knighton submitted a comparable analysis, sales disclosure forms and property record cards for one and two story commercial buildings located within Boone County. *Petitioner Exhibits 2 – 13*. According to Mr. Knighton, the assessed values of the comparable office buildings ranged from \$17.29 to \$42.56 per square foot, with an average assessed value of \$34.50 per square foot. *Knighton testimony; Petitioner Exhibits 2 – 13*. Similarly, Mr. Knighton argues, the sales prices of the office buildings ranged from \$30.55 to \$66.06 per square foot, with an average sales price of \$57.81 per square foot; whereas the Petitioner's property was assessed for \$91.09 per square foot for 2009. *Id.* Accordingly, Mr. Knighton argues, the Petitioner's property is valued higher than the assessed values and sales price of comparable properties. *Id.*
 - b. Further, Mr. Knighton argues that the PTABOA's income calculation is flawed. *Knighton testimony*. According to Mr. Knighton, the PTABOA failed to deduct management fees, capital reserves and vacancies from the property's actual rental income. *Id.; Petitioner Exhibit 1*. In addition, he argues, the 8.25% capitalization rate the county applied was a "very aggressive" rate for Boone County. *Id.* Mr.

¹ The parties agreed that the improvement value of \$626,500 shown on the PTABOA Form 115 issued July 23, 2010, is incorrect. According to Section Five of the Notification of Final Assessment Determination, the "Determination by County Property Tax Assessment Board of Appeals," the PTABOA recommended that the property's value be reduced to \$913,500. A scrivener's error apparently occurred when the recommendation was apportioned between the land and the improvements in Section Three.

Knighton contends that an 8.25% capitalization rate is more representative of an “institutional” type, multi-story, 100,000 plus square foot commercial building. *Id.* The subject property, on the other hand, is a small “mom & pop” multi-tenant office building and therefore should have a 10% or higher capitalization rate according to the commercial appraisers that Mr. Knighton consulted.² *Id.* Thus, Mr. Knighton concludes, the county’s assessed value for the property is in excess of the property’s market value. *Id.*

- c. Finally, Mr. Knighton testified that the property under appeal was listed for sale with Heritage Realty Group on March 7, 2008, for \$1,250,000. *Knighton testimony; Respondent Exhibit 4.* According to Mr. Knighton, the Petitioner received only one tentative offer of \$800,000; however, the Petitioner declined the offer because it was not interested in selling the property for that amount. *Knighton testimony.*

12. Summary of the Respondent’s contentions in support of the assessment:

- a. The Respondent’s witness, Mr. Spiker, contends that the property under appeal is correctly assessed at \$913,500. *Spiker testimony.* Mr. Spiker testified that he developed an income approach using the income information provided by the Petitioner. *Id.* Mr. Spiker admitted that the Petitioner did not give the PTABOA a breakdown of the expenses, but, he argues, the county assumed that all of the appropriate deductions were removed. *Id.* Further, Mr. Spiker argues the Petitioner’s building was 100% occupied, so no vacancy deduction was necessary. *Id.* Mr. Spiker testified that based on the Petitioner’s data, the net income of the property was \$75,389.09. *Respondent Exhibit 9.*
- b. Mr. Spiker testified that he used Real Estate Research Corporation (RERC) and Integra Realty Resources, Inc. (Integra Realty), data to develop a capitalization rate for his income analysis. *Spiker testimony; Respondent Exhibit 6.* According to Mr. Spiker, he calculated the rate by averaging the 2007 and 2008 suburban office and neighborhood commercial retail capitalization rates for the Indianapolis market.³ *Id.* For 2007, the suburban office capitalization rates ranged from 8.10% to 8.80% and for 2008, the suburban office capitalization rates ranged from 8% to 9.10%. *Id.* Similarly, for 2007, the neighborhood commercial retail capitalization rates ranged from 7.70% to 8.50% and for 2008, the neighborhood commercial retail capitalization rates ranged from 7.25% to 9.10%. *Id.* Mr. Spiker concluded the average capitalization rates were 8.46% for suburban office properties and 8.10% for neighborhood commercial retail properties, or an overall

² Mr. Knighton testified that he tried to get “opinion” letters from the commercial appraisers he spoke with but they declined for “liability” reasons. *Knighton testimony; Petitioner Exhibit 1.*

³ Mr. Spiker testified the Petitioner’s property is located in Zionsville Village, which is comprised of primarily “mom and pop” type businesses. *Spiker testimony.*

average capitalization rate of 8.28%, which he rounded to 8.25%. *Spiker testimony*. Mr. Spiker multiplied the Petitioner's net operating income of \$75,389.09 by his rounded capitalization rate of 8.25% and determined the value of the subject property to be \$913,800 for the March 1, 2009, assessment date. *Spiker testimony*. Thus, the Respondent's witness concludes, the Petitioner's property is not over-valued. *Id.*

- c. Finally, the Respondent argues that the Petitioner's property is not over-valued based on the property's listing price. *Respondent Exhibit 4*. In support of this contention, the Respondent submitted a copy of multiple listing sheet (MLS) showing the Petitioner's property was listed for sale on March 7, 2008, for \$1,250,000. *Respondent Exhibit 4*. The MLS sheet also showed the property was 100% leased with a net operating income of \$87,179 and the property was valued based on a 7% capitalization rate. *Id.*

Record

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

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

Petitioner Exhibit 1 – Email from Jim Knighton to Ronald Wessel,
Petitioner Exhibit 2 – Petitioner's sales analysis,
Petitioner Exhibit 3 – Sales disclosure form and property record card for
206 East Main Street, Thorntown,
Petitioner Exhibit 4 – Sales disclosure form and property record card for
222 East Main Street, Lebanon,
Petitioner Exhibit 5 – Sales disclosure form and property record card for
1102 South Lebanon Street, Lebanon,
Petitioner Exhibit 6 – Sales disclosure form and property record card for
3358 Indianapolis Road, Lebanon,
Petitioner Exhibit 7 – Sales disclosure form and property record card for
1016 West Main Street, Lebanon,
Petitioner Exhibit 8 – Sales disclosure form and property record card for
9 North High Street, Jamestown,
Petitioner Exhibit 9 – Sales disclosure form and property record card for
905 West Oak Street, Zionsville,
Petitioner Exhibit 10 – Sales disclosure form and property record card for
1455 West Oak Street, Zionsville,

Petitioner Exhibit 11 – Sales disclosure form and property record card for 5340 East County Road 650 South, Lebanon,

Petitioner Exhibit 12 – Sales disclosure form and property record card for 1020 West Oak Street, Zionsville,

Petitioner Exhibit 13 – Sales disclosure form and property record card for 6220 South Indianapolis Road, Whitestown,

Respondent Exhibit 1 – Boone County appeal worksheet,

Respondent Exhibit 2 – Property record card for the subject property,

Respondent Exhibit 3 – Exterior photograph of the subject property,

Respondent Exhibit 4 – Multiple listing sheet for the subject property,

Respondent Exhibit 5 – Terminal capitalization rate definition,

Respondent Exhibit 6 – Respondent’s capitalization rate and supporting documentation from Real Estate Research Corporation and Integra Realty Resources, Inc.,

Respondent Exhibit 7 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114,

Respondent Exhibit 8 – Notification of Final Assessment Determination – Form 115,

Respondent Exhibit 9 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Respondent Exhibit 10 – Indiana Board of Tax Review Notice of Hearing on Petition,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit – Notice of Hearing,

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 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 case. *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 the assessed value of its property. The Board reached this decision for the following reasons:
- 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has 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 use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).
 - 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 Township 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 the 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 505, 506 n.1. A taxpayer 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, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3.

- d. The Petitioner first contends that its property is over-valued based on the assessed values and sales prices of comparable properties. *Petitioner Exhibits 1 – 13*. In support of this contention, Mr. Knighton submitted a comparable analysis, sales disclosure forms and property record cards for other office properties located in Boone County. *Id.* In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the 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.* Here, the Petitioner’s witness merely highlighted the differences in the properties’ sale prices and the assessed values of each property. The Petitioner’s witness made no attempt to show that the properties were comparable to the subject property other than to testify that all of the properties were one or two story office buildings located in Boone County. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See e.g. Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Thus, the Petitioner failed to raise a prima facie case that its property was over-valued based on the sale prices or assessed values of other properties in Boone County.
- e. To the extent that the Petitioner’s witness can be seen as arguing that other office buildings were assessed differently than the property under appeal, this argument also fails to show an error in the property’s assessment. In *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property’s assessed value does not accurately reflect the property’s market value-in-use. *Id. See also P/A Builders & Developers*, 842 N.E.2d at 899, 900 (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing the assessor’s technical failure to comply strictly with the Guidelines).
- f. Alternatively, the Petitioner’s witness argued that the Respondent erred in its income valuation of the subject property. *Knighton testimony*. “The income approach to value is based on the assumption that potential buyers will pay no

more for the subject property ... than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” MANUAL at 14. “Under the income capitalization approach, the income expected to be earned by the subject property is estimated, allowing for reasonable expenses, vacancy, and/or collection loss, to arrive at net operating income (NOI). The NOI is subsequently converted to a present value by dividing it by a capitalization rate.” See *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003).

- g. Here, the Petitioner’s witness failed to offer any income approach valuation of the Petitioner’s property; instead he merely argued that the Respondent’s analysis was flawed. According to the Petitioner’s witness, the Assessor should have used a capitalization rate of 10% or higher because of the nature of the Petitioner’s property. A capitalization rate “reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters.” See *Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Mr. Knighton testified that he based his 10% capitalization rate on the opinion of other commercial appraisers that he spoke with. However, none of these “other” commercial appraisers appeared at the hearing to testify; none provided an affidavit supporting a 10% capitalization rate; and, in fact, none of the appraisers were even identified. 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 no 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). Moreover, the Petitioner’s own evidence contradicts its witness’ testimony. The Petitioner’s MLS sheet shows that it valued its property based on a capitalization rate of 7%. *Respondent Exhibit 4*. Thus, the Board finds that the Petitioner’s argument fails to raise a prima facie case.
- h. Finally, the Petitioner’s witness contends that the assessed value of the Petitioner’s property should be reduced because the Petitioner has been unable to sell the property for its listing price of \$1,250,000. *Knighton testimony*. While the inability to sell a property for a given asking price might show that its market value-in-use is something less than its asking price in some circumstances, here the Petitioner failed to show how its inability to sell the property for \$1.25 million proves that the property is not worth its \$913,500 assessed value. This is particularly true given that the Petitioner rejected a tentative offer to purchase the

building for \$800,000 because the offer was too low for it to be interested in pursuing.

- i. The Petitioner failed to raise a prima facie case that its property was over-valued for the March 1, 2009, assessment. Where the Petitioner fails to provide probative evidence that a property's assessed value should be changed, the Respondent's duty to support the assessment with substantial evidence 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).

Conclusion

15. The Petitioner failed to establish a prima facie case that its property was over-assessed for the March 1, 2009, assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the Petitioner's property's assessed value 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 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>.