

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

Petition: 41-009-02-1-4-00009
Petitioner: Franchise Realty
Respondent: Franklin Township Assessor (Johnson County)
Parcel: 5100-14-10-043/00
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (the PTABOA) by filing a Form 130 dated July 10, 2003.
2. The PTABOA mailed notice of its decision to Petitioner on October 10, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on November 7, 2003, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated December 15, 2005.
5. Administrative Law Judge Paul Stultz held the hearing in Franklin on January 31, 2006.
6. Persons present and sworn as witnesses at the hearing:
For Petitioner – Milo Smith,
For Respondent – Mark Alexander.

Facts

7. The property is a 3,390 square foot commercial fast food restaurant in Franklin.
8. The Administrative Law Judge (the ALJ) did not conduct an inspection of the property.
9. The assessed value as determined by the Johnson County PTABOA is:
Land \$85,400 Improvements \$472,400 Total \$557,800.

10. The assessed value requested by Petitioner is:
- | | | |
|---------------|-------------------------------------|------------------|
| Land \$85,400 | Improvements \$150,200 ¹ | Total \$235,600. |
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Issues

11. Summary of the Petitioner's contentions in support of the alleged error in assessment:
- After February 28, 2002, all real property must be assessed according to the 2002 Real Property Assessment Manual. Johnson County assessing officials applied the 2002 Real Property Assessment Guidelines, Version A to determine true tax value. *Smith testimony; Petitioner Exhibit 10.*
 - The purpose of the assessment rule is to determine a true tax value of property accurately, not to mandate that any specific assessment method be followed. *Smith testimony; Petitioner Exhibit 10.* When properly implemented, the mass appraisal method outlined by the rule will produce accurate and uniform values throughout an assessment jurisdiction. *Smith testimony; Petitioner Exhibit 10.*
 - The effective age assigned to the subject building is incorrect. For structures with additions built subsequent to the construction of the original structure, the age of the structure must be determined using a weighted age in place of the actual age of the original structure. *Smith testimony; Petitioner Exhibit 10.*
 - The weighted age of the subject building should be calculated by weighing the age attributable to the original structure and the age attributable to the addition based on the square footage of each part of the subject building. *Smith testimony; Petitioner Exhibit 1, 10.*
 - The original structure is 86 percent of the total square footage and the addition is 14 percent of the total square footage². The actual age of 1974 for the original structure multiplied by 86 percent is 1698 and the actual age of 1996 for the addition multiplied by 14 percent is 279. The sum of weighted ages is 1977, which is the weighted age for the subject property. *Smith testimony; Petitioner Exhibit 10.* The data used for this calculation is on the property record card. *Smith testimony; Petitioner Exhibit 10.*
 - The current effective age or weighted age, 1997, is not quantified on the property record card. The assessment guidelines must be followed. *Smith testimony.*

¹ The Petitioner requested \$350,000 assessed value for improvements on the Form 131. This amount differed from the request on the Form 130 (\$370,000). Both of these numbers differed from the request on Petitioner's Exhibit 11, where the Petitioner claimed the value should be \$150,200 for improvements.

² The total square footage for the subject building is 3,390. The original structure has 2,923 square feet. The addition has 467 square feet.

- g. The B+2 grade assigned to the subject property is incorrect. *Smith testimony*. The grade for typical McDonald's properties is B as reflected in the Guidelines, Appendix E. *Smith testimony; Petitioner Exhibit 3, 10*.
 - h. The Guidelines instruct assessing officials to steer away from using intermediate grades if possible. *Smith testimony; Petitioner Exhibit 4, 10*.
 - i. Photographs of four comparable McDonald's properties show that the subject property is almost identical to the other four. *Smith testimony; Petitioner Exhibit 5, 6, 7, 8*. Photographs show no distinctions between the subject property and the other McDonald's located in Franklin. *Smith testimony*.
 - j. The assessments are to be uniform and equal. If two like properties are assigned differing grade factors, then there will be no equity or uniformity in their assessments. *Smith testimony*.
12. Summary of the Respondent's contentions in support of the assessment:
- a. A failure to comply technically with the procedures of a specific assessing method does not violate the assessing rule so long as the individual assessment is a reasonable measure of true tax value. Failure to comply with the 2002 Real Property Assessment Guidelines, Version A, or other approved guidelines does not itself show that the assessment is not a reasonable measure of true tax value. *Alexander testimony*.
 - b. The Petitioner failed to make a prima facie case because it did not present probative evidence establishing an error in the current assessment or the correct assessment. *Alexander testimony*.

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Appendix F, page 5, from the Real Property Assessment Guidelines,
 - Petitioner Exhibit 2 – The subject property record card (PRC),
 - Petitioner Exhibit 3 – Appendix E, page 55, from the Real Property Assessment Guidelines,
 - Petitioner Exhibit 4 – Appendix E, page 5, from the Real Property Assessment Guidelines,

Petitioner Exhibit 5 – A photograph and PRC for the property located at 2005 Jonathan Moore in Columbus,
Petitioner Exhibit 6 – A photograph and PRC for the property located at 1435 East State Road 44 in Shelbyville,
Petitioner Exhibit 7 – A photograph and PRC for the property located at 102 Enterprise Way in Sellersburg,
Petitioner Exhibit 8 – Photographs and PRC for the property located at 2080 East King Street in Franklin,
Petitioner Exhibit 9 – Photographs and PRC for the subject property at 1139 North Morton Street, Franklin,
Petitioner Exhibit 10 – Summary of contentions,
Petitioner Exhibit 11 – Proposed requested assessed value noted on PRC,
Respondent Exhibit 1 – Subject PRC,
Respondent Exhibit 2 – Notice of appearance,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – 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 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.

15. The Petitioner failed to make its case regarding weighted age.
- a. A claim based entirely on evidence and argument that the Guidelines were not properly applied is not sufficient to require an assessment change. The Guidelines are only a starting point. Even if an assessor has not strictly followed the Guidelines, the presumption that the assessment is correct remains. A taxpayer must present substantial evidence of market value-in-use to overcome the presumption in favor of the assessor's determination. While appraisals are the preferred method to establish value, other acceptable methods of establishing market value-in-use can be based on cost, comparisons, or an income approach to value so long as the method relied upon conforms to generally accepted appraisal principles. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006).
 - b. The calculation presented by the Petitioner follows the instructions provided by the Guidelines using the original construction date of 1974 and the addition construction date of 1996. It results in a weighted age of 1977. The current weighted age is 1997. *Smith testimony; Petitioner Exhibit 1, 2, 10*. The Petitioner offered this evidence to demonstrate that the methodology used by the township assessor to calculate the current weighted age does not comply with the Guidelines. Although the evidence may indicate that the township assessor did not strictly follow the calculation for weighted aged provided by the Guidelines, this point alone is not sufficient to rebut the presumption that the assessment is correct. To prevail, the Petitioner must present substantial, probative evidence regarding the subject property's market value-in-use to rebut the current assessment. *Eckerling*, 841 N.E.2d 674.
 - c. The Petitioner did not present substantial evidence establishing how or why the difference in weighted age affects the market value-in-use of the subject property. The Petitioner merely claimed that the true tax value would reflect the subject property's market value-in-use upon the implementation of the assessment changes sought by this appeal. Without evidence establishing the correct market value-in-use of the subject property, the Petitioner's claim that the change in the weighted age would adjust the current assessment to the correct market value-in-use does not make a prima facie case for any assessment change. *Id.*
16. The Petitioner failed to make its case regarding grade.
- a. The PRCs and photographs of the subject property, the comparable properties and the graded photograph of the fast food restaurant from the Guidelines were offered by the Petitioner in an attempt to establish that the current grade of B+2 is incorrect and that the correct grade should be B. *Smith testimony; Petitioner Exhibit 3, 4, 5, 6, 7, 8, 9, 10*.
 - b. The Petitioner failed to prove that the purported comparable properties are truly comparable to the subject property. Statements such as the comparables are

“almost identical” or that there is little difference between the properties are simply conclusory statements because they lack any substantial supporting evidence showing how or why the properties are “almost identical”. As such, this evidence has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005) (“The Petitioner’s unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence.”).

- c. The Petitioner failed to establish the market value-in-use of the property or that the B+2 grade does not produce a result that reflects its market value-in-use. Therefore, the Petitioner failed to make a prima facie case for any change based on the grade issue. *Eckerling*, 841 N.E.2d 674.

Conclusions

- 17. The Petitioner did not make a prima facie case. 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 assessment should not be changed.

ISSUED: _____

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.