

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

Petition #: 59-012-03-1-4-00001
Petitioner: Randall Cole d/b/a WRC Company
Respondent: Paoli Township Assessor (Orange County)
Parcel #: 012-002-098-001
Assessment Year: 2003

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Orange County Property Tax Assessment Board of Appeals (PTABOA) on January 18, 2005.
2. The PTABOA issued notice of its decision on November 7, 2005.
3. The Petitioner filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131) on December 2, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 24, 2006.
5. The Board held an administrative hearing on January 9, 2007, before the duly appointed Administrative Law Judge, Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Randall Cole, Taxpayer
 - b) For Respondent: Linda Reynolds, Orange County Assessor
Kirk Reller, Orange County Technical Advisor

Marilyn Meighen appeared as counsel for the Paoli Township Assessor and the PTABOA.

Facts

7. The subject property is classified as commercial, and it is located at 553 North Greenbriar Drive in Paoli, Indiana. The Petitioner leases the property to the Indiana Family and Social Services Administration (FSSA).
8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined that the assessed value of the subject property is \$22,800 for the land and \$267,600 for the improvements for a total assessed value of \$290,400.
10. The Petitioner requested a value of \$22,800 for the land and \$217,194 for the improvements for a total value of \$239,994.

Parties' Contentions

11. Summary of the Petitioner's contentions:
 - a) The Petitioner contends that the subject improvements should be assessed for \$217,194 based on the actual cost to construct those improvements. *Cole argument*. A willing buyer would not pay more for existing improvements than it would cost to construct them. *Id*
 - b) In support of his claim, the Petitioner submitted three invoices from Lindsey's Lumber and Builders Supply, Inc., a price quotation and two invoices from D.E.Q., Inc., a mechanical and electrical contractor, and an invoice from Calcar Quarries, Inc.
 - c) The invoices and price quotations total \$217,194: \$160,330 for materials and carpentry provided by Lindsey Lumber; \$34,919 for plumbing, electrical, and heating work by DEQ; and \$21,944.91 for Calcar Quarries' paving services.¹ *Cole testimony; Pet'r Exs. 2-4*.
 - d) The Respondent contends that the invoices and price quotes do not include indirect costs such as profit, or certain items such as flooring and original cabinetry. But Lindsey's Lumber and DEQ were contractors, and their overhead and profit were included in their contracts with the Petitioner. *See Cole testimony*. And although Lindsey Lumber's invoices do not specifically reference flooring or the original cabinetry work, those items are included under other headings. *Id*.
 - e) The Petitioner presented evidence that he insures the subject building for \$215,500 to further support his claim that the building's market value is \$217,194.. *Cole testimony; Pet'r Ex. 5*.

¹ The Calcar Quarries invoice lists additional charges totaling \$1,743.12. *Pet'r Ex. 4*. The Petitioner did not explain why he did not include those charges in his calculation.

- f) The Petitioner acknowledges that he paid \$82,000 for the subject land. But the Petitioner contends that he paid a premium. *Cole testimony*. The Petitioner had submitted a bid to enter into a lease with the FSSA. *Id.* When the Petitioner made his bid, he planned to buy a property containing a bank building and simply remodel that building. *Id.* After the FSSA accepted the Petitioner's bid, his attempt to purchase the bank property fell through. In order to maintain his business relationship with the State, the Petitioner needed to find another property in Paoli. *Id.* Because the subject property was the only available property in the area, the Petitioner paid approximately four times its market value. *Id.*
- g) The Petitioner does not believe that the Respondent should be able to manipulate land and improvement costs to arrive at a bottom-line value. *Cole argument*. If the Respondent thinks the subject property is worth \$82,000, it should have assessed other commercial properties in the area for equal values. *Id.*

12. Summary of the Respondent's contentions:

- a) The Real Property Assessment Guidelines for 2002 – Version A (Guidelines) provide that construction costs estimated by assessors must include indirect costs as well as direct labor-and-material costs. *Resp't Ex. B*. Indirect costs include permit fees, overhead and profit, and architectural fees. *Id.*; *Meighen argument*. The Respondent contends that the invoices and price quotes submitted by the Petitioner do not include indirect costs. *Reller testimony*; *see also Resp't Ex. B*; *Pet'r Exs. 2-4*.
- b) The Petitioner also appears to have omitted certain direct costs. *Id.* For example, the Petitioner's documents do not include entries for flooring. *Id.* Similarly, while the Lindsey's Lumber invoices show a change order for cabinetry, there is no entry for the cost of the original cabinetry work. *Id.* And while the invoices include an entry for rough carpentry, they do not included a similar entry for "finish" carpentry. *Id.*
- c) According to the Respondent, a taxpayer must show its property's bottom-line value, not just the value of its improvements. *Meighen argument* (citing *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006)). A sales disclosure indicates that the Petitioner bought the subject land for \$82,000. *Id.*; *Resp't Ex. C*. Thus, even if one were to accept the Petitioner's listing of construction costs as complete, the total value of the property would be \$299,194 (\$217,194 + \$82,000). *Meighen argument*. That amount exceeds the subject property's current assessment. *Id.*
- d) The Petitioner contends that the subject land cannot be valued at \$82,000 because other land within the township is not valued at the same rate. The Respondent, however, contends that the Indiana Tax Court rejected a similar argument in *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor* 859 N.E.2d 396 (Ind. Tax Ct. 2007).

Record

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

- a) The Form 131 petition,
- b) The digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Copy of Form 130 Petition,
Petitioner Exhibit 2: Lindsey's Lumber applications (three (3) sheets),
Petitioner Exhibit 3: DEQ quotation and three (3) invoices,
Petitioner Exhibit 4: Calcar Quarries invoice for parking lot,
Petitioner Exhibit 5: Building insurance limits.

Respondent Exhibit A: Construction cost information,
Respondent Exhibit B: Elements of Cost, Version A – Real Property Assessment Guidelines,
Respondent Exhibit C: Sales disclosure form.

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Notice of Appearance for Marilyn Meighen,
Board Exhibit D: Notice of County Assessor Representation,
Board Exhibit E: 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 276 (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 did not provide sufficient evidence to prove error in the subject property's assessment. The Board reached this decision for the following reasons:
- a. The Petitioner contends that the Respondent assessed the subject improvements for approximately \$50,000 more than it cost the Petitioner to construct them. The Petitioner contends that a willing buyer would never pay more for existing improvements than it would cost to build identical improvements.
 - b. Real property in Indiana is assessed based on its "true tax value." *See* Ind. Code § 6-1.1-31-6(c). The 2002 Real Property Assessment Manual (Manual) defines the true tax value of real property 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 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, 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. *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.
 - c. A property's market value-in-use, as ascertained through applying the Guidelines' cost approach, 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 2006). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. An appraisal prepared in accordance with the Manual's definition of true tax value generally will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 ("[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)."). A taxpayer may also rely upon actual construction costs, sales information regarding the subject or comparable properties, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - d. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. That is also true for succeeding assessment years between 2002 and 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002 through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the Department of Local Government Finance to adopt rules for annually adjusting assessments to account for changes to value in years since general

reassessment, with such adjustments to begin in 2006). Consequently, in order to present evidence probative of a property's true tax value for the 2002 through 2005 assessment years, a party must explain how that evidence relates to the property's market value-in-use as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment)

- e. Here, the Petitioner submitted itemized invoices and price quotes to show the cost of constructing the subject improvements. As explained above, the Manual recognizes that actual construction costs may be used to rebut the presumption that an assessment is correct. MANUAL at 5. Those costs, however, must include all direct and indirect costs associated with constructing an improvement:

The cost to be estimated by the assessor is made up of all the direct labor and material costs plus the indirect expenses required to construct an improvement. Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants, and attorneys. The cost tables contain both direct and indirect costs. When comparing the costs in this guideline to actual construction costs it is critical that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro. at 1.

- f. The Respondent argues that the Petitioner did not include all relevant costs in the itemized invoices and price quotes he submitted to the Board. Specifically, the Respondent contends that the Petitioner did not include indirect costs such as overhead, profit, building permits, and professional fees, or direct costs for flooring, cabinetry, and finish carpentry. *See Reller testimony; Meighen argument.*
- g. The Petitioner, however, testified that he assumed those items were covered under other headings in the invoices and price quotes. *Cole testimony.* According to the Petitioner, Lindsey's Lumber was responsible for constructing the entire building. *Id.* And the Petitioner assumed that Lindsey's Lumber incorporated profit and overhead into the price it charged him. *Id.* Indeed, the Lindsey's Lumber invoices contain broad entries, such as "masonry work," and "rough carpentry" without breaking-down the entries into costs for materials and labor. This supports the Petitioner's testimony that he did not incur costs separate from the invoices and price quotes he submitted, even if all cost components are not separately listed in those documents. Thus, the Board finds that the invoices and price quotes submitted by the Petitioner are probative of the subject improvements' actual construction costs.

- h. But the costs identified by the Petitioner are all from 2003. The Petitioner therefore was required to explain how those costs related to the subject property's value as of January 1, 1999. *See Long, supra*, 821 N.E.2d at 471. The Petitioner failed to do so.
- i. Moreover, the cost of improvements is only part of the equation for determining a property's market value under the cost approach. One must also determine the value of the land upon which those improvements are constructed. *MANUAL* at 13. The Petitioner bought the subject land for \$82,000. Thus, using the actual costs expended by the Petitioner, the overall market value of the subject property is \$299,194, or \$8,794 more than the subject property's 2003 assessment. Like the Petitioner with his construction costs, however, the Respondent did not relate the August 28, 2002, sale price for the subject land to the relevant valuation date of January 1, 1999. Nonetheless, to the extent the Board was to consider the Petitioner's 2003 construction costs, it would also consider the 2002 sale price for the subject land. The Board recognizes that the actual cost of \$299,194, if properly related to a value as of January 1, 1999, might well be less than the subject property's current assessment. But the Petitioner did not provide any evidence from which the Board can determine the property's value as of the relevant valuation date.
- j. The Petitioner, however, contends that the subject land's sale price does not reflect its market value. In that vein, the Petitioner testified that he paid a premium for the subject land after he was unable to purchase a property that he originally intended to remodel to house the FSSA. Thus, the Petitioner claims that the subject land was really worth roughly \$22,800 — the amount for which it is assessed. The Petitioner, however, did not provide any details concerning the negotiations leading his purchasing the land. Absent such evidence, the Board will not assume that the Petitioner paid approximately four times the land's market value.
- k. The Petitioner also contends that it would be improper to value the subject land for \$82,000 because similar commercial properties should be assessed for the same amounts. *Cole argument*. But the Petitioner did not present any evidence to show the amounts for which other commercial properties are assessed or the market values-in-use of those properties. Consequently, the Petitioner has not shown that assessing the subject property based, in part, upon the subject land's sale price would result in a lack of uniformity and equality. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (rejecting taxpayer's claim that its property was not assessed uniformly and equally, where the taxpayer focused on the disparity in the base rate used to assess its golf driving range as compared to the rates used to assess other driving ranges but did not present any evidence concerning the market values-in-use of the properties).
- l. Thus, although the Petitioner presented evidence concerning the actual construction costs for the subject improvements, he failed to demonstrate an error in the subject property's assessment.

Conclusion

16. The Petitioner failed to prove that the Respondent erred in assessing the property. 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 for the subject parcel should not be changed.

ISSUED: April 5, 2007

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>.