

REPRESENTATIVE FOR PETITIONERS: Bruce A. Smith, Attorney

REPRESENTATIVE FOR RESPONDENT: Catherine Lane, County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Terry M. Brown, Sr. and)	
Valerie Brown,)	
)	Petition No. 42-022-08-1-4-00001
Petitioners,)	
)	Parcel No. 42-12-21-303-044.000-022
v.)	
)	Knox County
Knox County Assessor,)	Vincennes Township
)	2008 Assessment
Respondent.)	

Appeal from the Final Determination of the
Knox County Property Tax Assessment Board of Appeals

May 18, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

This case is an appeal of the 2008 assessment for an older retail building in Vincennes assessed at \$212,200. Did the Petitioners prove this value is too high and did they prove what a more accurate assessed value would be?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a retail store located at 102 North 4th Street in Vincennes.
2. The Petitioner initiated an assessment appeal by filing a Form 130. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decision on April 19, 2010. The Petitioners filed a Form 131 with the Board on April 27, 2010. At that point they elected to opt out of small claims procedures.
3. The PTABOA determined the assessed value was \$21,100 for land and \$191,100 for improvements (\$212,200 total).
4. The Petitioner contends the total assessed value should be \$80,000.
5. Administrative Law Judge Kay Schwade held this hearing on March 1, 2011. There was no on-site inspection by the Administrative Law Judge or the Board.
6. Valerie Brown and County Assessor Catherine Lane were sworn as witnesses.
7. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 – Appraisal of the subject property by G. Jeffrey Palmer,
 - Petitioner Exhibit 2 – Email to Bruce Smith dated February 27, 2011,
 - Petitioner Exhibit 3 – Form 115 for the assessment as of March 1, 2005.
8. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Form 130,
 - Respondent Exhibit 2 – Form 115,
 - Respondent Exhibit 3 – Form 131,
 - Respondent Exhibit 4 – Property record card (PRC) and photograph of the subject property,
 - Respondent Exhibit 5 – PRC and market data for 202 Broadway,

Respondent Exhibit 6 – PRC and market data for 218 Main Street,
Respondent Exhibit 7 – PRC and market data for 17 North 1st Street.

9. The following items are recognized as part of the record:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet.

**OBJECTIONS TO PETITIONER EXHIBIT 2, PETITIONER EXHIBIT 3,
RESPONDENT EXHIBIT 5, RESPONDENT EXHIBIT 6, AND RESPONDENT EXHIBIT 7**

10. Because the Petitioners opted out of small claims procedures, copies of documentary evidence were required to be provided to the other parties at least 5 business days before the hearing. 52 IAC 2-7-1(b)(1). Failure to comply may serve as grounds to exclude evidence. 52 IAC 2-7-1(f). Both parties raised objections based on these provisions.
11. The Respondent objected to Petitioner Exhibit 2 because the Petitioners did not provide a copy prior to the hearing. The Petitioners' counsel responded that Exhibit 2 summarizes testimony G. Jeffrey Palmer would have given—Mr. Palmer was unable to attend the hearing so the email was offered instead of asking for a continuance. Counsel did not dispute the fact that no copy was provided before the hearing. He did not address the obvious hearsay nature of the email, nor the fact that the document itself indicates it is from Vickie Palmer. The Petitioners' counsel offered no substantial reason for allowing the document in spite of the applicable provisions in 52 IAC 2-7-1. Nevertheless, shortly after making this objection, the Respondent relied on Petitioner Exhibit 2 to support part of her own case. Therefore, the objection to Petitioner Exhibit 2 is overruled.
12. The Respondent also objected to Petitioner Exhibit 3 because they did not provide a copy prior to the hearing. Again the Petitioners' counsel did not dispute the fact that no copy was provided before the hearing. He simply responded that Exhibit 3, a Form 115 for 2005, is a public record. He offered no reason why such evidence might be relevant or

probative in regard to the 2008 assessment.¹ The Petitioners' counsel again offered no substantial reason for allowing the document in spite of the applicable provisions in 52 IAC 2-7-1. Therefore, the objection to Petitioner Exhibit 3 is sustained.

13. The Petitioners objected to Respondent Exhibits 5, 6, and 7 for a similar reason, claiming that only the property record cards for those purported comparables were provided prior to the hearing. Specifically, the Petitioners objected to the market data pages with MLS information in each of these exhibits. Ms. Brown and her counsel both said copies of the MLS information was not provided before the hearing. Ms. Lane, however, testified that MLS information was provided and she argued the Petitioners must have had it because the email from their appraiser indicates he had the data for the Respondent's three comparables. The Petitioners' counsel correctly noted that the email does not support that conclusion—it only indicates the appraiser had the property addresses for the Respondent's comparable properties. The email does not confirm that the Petitioners or their appraiser got those parts of Exhibits 5, 6, or 7 prior to the hearing. After carefully considering the evidence and arguments offered by both sides, we conclude that the Respondent failed to provide copies of the MLS information prior to this hearing. Furthermore, the Respondent offered no substantial reason for allowing the documents in spite of the applicable provisions in 52 IAC 2-7-1. Therefore, the Board sustains the objection to the pages with MLS information in these exhibits.²

¹ A 2005 assessment would be based on a valuation as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). A 2008 assessment, however, must be based on a valuation date of January 1, 2007. 50 IAC 21-3-3 (2009). Furthermore, it is well-settled that each tax year stands on its own. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, even if this Form 115 were considered to be part of the evidence, it would not make any difference to the outcome of this case.

² The exclusion of this part of the Respondent's evidence makes no difference to the final outcome of the assessment appeal because the Petitioners failed to make a prima facie case for any assessment change.

SUMMARY OF THE PETITIONERS' CASE

14. This building is probably about 90 years old. It is used as a furniture store. The majority of its approximately 20,000 square feet is open retail space, but there is some office and storage space. *Brown testimony.*
15. The Petitioners purchased the subject property in September 2005 for \$85,000 at public auction. When the Petitioners appealed the 2005 assessment the value was reduced to \$96,900. *Brown testimony.*
16. The Petitioners wanted to help improve the downtown area by renovating the subject property and should not be punished for doing so. The renovation was limited to the exterior, including a new awning and painting. The new awning was put on in 2006. The approximate cost for those renovations was \$100,000. They were just things to clean up the property and make it look better. They did not add any additional square footage or make any structural improvements. The renovations did not add any value. *Brown testimony.*
17. Downtown business was declining in 2007 and has continued getting worse every year since then. Profitability is not as good. The traffic is not what it used to be. It is a struggle to lure shoppers to the downtown area. *Brown testimony.*
18. The assessed value should be fair in light of the downtown sales. In the past 10 years, no building in downtown Vincennes has sold for anything near what the disputed assessed value is. The assessed value should be \$80,000 as of 2008. That amount would be fair, although this property might not sell for even that much. *Brown testimony.*
19. The property at 218 Main Street is used both by the appraiser as his Comp #2 and the assessor as her Sale #2. This property sold in September 2008 for \$142,000. It is most comparable to the subject property although it has more square footage and is in a better location. It is the old Montgomery Ward building and is now used as a church. 218

Main Street has 21,870 square feet of floor area and 2,862 square feet of mezzanine area for a total of 24,732 square feet, which is larger than the subject property. 218 Main Street is a brick structure. The subject property is a concrete block structure with brick veneer and stucco. The assessed value for 218 Main Street was \$118,000 in 2002 and the current assessed value is only \$102,700. *Brown testimony; Pet'r Ex. 1.*

20. Comp #1 in the appraisal is 102 N. 3rd Street. It is a recent sale located one block from the subject property. The building used to be a bank. It was built in the 1960's. It is in better condition and has a better location than the subject property. It sold at auction for \$42,000 in March 2010. *Brown testimony; Pet'r Ex. 1.*
21. Comp #3 from the appraisal is the 522 Main Street property. It has 12,840 square feet and also is used for retail purposes. It sold in September 2009 for \$63,000. *Brown testimony; Pet'r Ex. 1.*
22. The property at 202 Broadway is the Respondent's Sale #1. With 3,540 square feet, it is much smaller than the subject property. It sold for \$125,000 in 2008 and its current assessed value is \$80,200. It has had substantial improvement since its purchase. It is used for a podiatrist's office. *Brown testimony; Resp't Ex. 5.*
23. The Respondent's Sale #3 is located at 17 N. 1st Street. It is a small, shotgun style building used as a restaurant that is "not at all" similar to the subject property. It initially sold for \$45,000. It sold again for \$75,000 after remodeling. *Brown testimony.*
24. Since 2005 the assessments on other downtown properties have gone down, but the assessment on the subject property has gone up substantially. That is not fair. *Brown testimony.*
25. The appraisal values the subject property at \$145,000 as of December 2010, but even that value is too high because the subject property would not sell for that much. Considering all the comparable sales, both the appraiser's and the assessor's, the subject property

would sell for \$85,000 due to the depressed nature of the economy. *Brown testimony; Pet'r Ex. 1.*

SUMMARY OF THE RESPONDENT'S CASE

26. The PTABOA determination includes a freight elevator that previously had been omitted from the assessment. The remodel year, condition, and grade were changed to reflect the new awnings, painting and brick veneer. The things the Petitioners did were only cosmetic. They did not change anything structurally. *Lane testimony; Resp't Ex. 2.*
27. The purchase price and the remodeling or rehab costs are a total investment that is more than the requested assessed value. *Lane testimony.*
28. Property sales close to the downtown area were selected as sales comparables. The 218 Main Street property is used by both the appraiser and the assessor as a comparable property. It is most similar, but the construction type is inferior to the subject property. The subject property is a concrete block building with brick veneer and 218 Main Street is a brick building. The appraisal and MLS information have the wrong square footage for this comparable. The 218 Main Street property was purchased for \$100,000 in 2006. After remodeling, it sold for \$142,000 in 2008. *Lane testimony; Resp't Ex. 6.*
29. The old Market Street property is less than a half a mile from the subject property. It is smaller than the subject property. It sold in a sheriff's sale for \$36,000. It was remodeled and sold in June 2007 for \$75,000. It is not comparable to the subject property in size or age. It was selected only for its location and sale date. *Lane testimony; Resp't Ex. 7.*
30. Similarly, the 202 Broadway property is not comparable to the subject property in size or age. It was selected as a comparable simply for its location and sale date. *Lane testimony.*

31. The effective date of the Petitioners' appraisal is 2010. It was not adjusted to reflect sales data for 2008 as it should have been. *Lane testimony*.

ADMINISTRATIVE REVIEW AND BURDEN

32. 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).
33. 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”).
34. Once the Petitioner establishes a prima facie case, the burden of going forward 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). Then the assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

35. Real property is assessed on the basis of its “true tax value,” which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner of a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use.

36. The primary method for assessing officials is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. A value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. Other evidence relevant to market value-in-use can rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
37. Although they presented an appraisal that is much lower than the disputed assessment, the Petitioners sought a much lower valuation.³ In doing so, they relied on conclusory testimony from Valerie Brown attempting to compare the subject property with the selling prices and assessments of other properties. Drawing any legitimate conclusions about the value of a property by using a comparison approach, however, is not a simple matter. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). One must walk the Board through every step in such an analysis. *See Indianapolis Racquet Club*, 802 N.E.2d 1022.
38. The Petitioners failed to do so. There is no indication that Ms. Brown’s conclusion of \$80,000 accords with generally accepted appraisal principles. The record contains virtually no step by step analysis to support Ms. Brown’s conclusions about comparability and value. Consequently, they lack probative value and do not help to make a case for changing the assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
39. Even though the Petitioners disputed its value conclusion, the appraisal might have made a case for a substantial reduction to the assessed value of the subject property. The appraiser, Mr. Palmer, appears to be a qualified professional and his work, at least on a

³ Curiously, the Petitioners failed to explain why they offered the appraisal and then tried to prove its conclusion about value was too high.

surface level, appears to conform to generally accepted appraisal principles.⁴ His “Reconciliation” of the various approaches to value (on page 23) ultimately concludes as follows:

More weight is placed on the Market and Income Approaches. Having given the approaches to value used very careful consideration, and after analyzing all of the information and data that has been developed throughout this report, it is the opinion of this appraiser that the Fair Market Value of the subject property as of the effective date of the appraisal is \$145,000.00.

But the effective date of the appraisal was December 1, 2010, which is problematic for a 2008 assessment.

40. For a 2008 assessment, the required valuation date was January 1, 2007. 50 IAC 21-3-3. (The required valuation date changes for every assessment year.) To be relevant, the record must somehow establish how evidence relates to market value-in-use as of the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 864 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long*, 821 N.E.2d at 472.
41. The appraisal indicates a value that is almost 3 years after the required valuation date. This time difference is particularly significant when coupled with the testimony about how downtown business and property values were declining during that time. Therefore, because nothing relates the appraised value to the required valuation date, the appraisal is not probative and does not help determine the subject property's market value-in-use.
42. When a taxpayer fails to provide probative evidence supporting the position that an assessment 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); *Whitley*, 704 N.E.2d at 1119.

⁴ That being said, the parties did not address Mr. Palmer's qualifications or the quality and credibility of his work in any substantial way—apparently because neither of them relied on his value conclusion. Similarly, our determination draws no conclusions about those points.

SUMMARY OF FINAL DETERMINATION

43. The Petitioners did not make a prima facie case. The Board finds in favor of the Respondent.

This Final Determination for the above captioned matter is issued on the date first written above.

Commissioner, 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>>