

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

Petition No.: 45-023-07-1-4-00001
Petitioner: DSMS, Inc.
Respondent: Lake County Assessor
Parcel No.: 45-07-09-402-001.000-023
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 an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 6, 2009.
2. The PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioner filed an appeal to the Board by filing a Form 131 on September 9, 2009. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 29, 2010.
5. The Board held an administrative hearing on March 19, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Dan Sapp, President, DSMS, Inc.
Mary Ann Sapp, Secretary, DSMS, Inc.

No one appeared to represent the Respondent.

Facts

7. The subject property is a commercial building, including a restaurant and an apartment, located at 7003 Kennedy Avenue, Hammond.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the North Township Assessor determined the assessed value of the subject property to be \$22,400 for the land and \$200,600 for the improvements, for a total assessed value of \$223,000.
10. The Petitioner requested an assessment of \$115,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its assessment:
 - a. The Petitioner contends that its property's assessment is too high based on the property's appraised value. *Sapp testimony*. In support of this contention, the Petitioner presented an appraisal report prepared by David R. Davies, a certified Indiana appraiser. *Petitioner Exhibit 1*. In Mr. Davies' report, he estimated the value of the Petitioner's property to be \$115,000 as of January 1, 2007. *Id.*
 - b. The Petitioner's representative, Mr. Sapp, testified that the Petitioner purchased the property on August 31, 2007, for \$265,000. *Sapp testimony; Petitioner Exhibit 2*. According to Mr. Sapp, however, the property's purchase price included personal property and the value of the business, in addition to the real estate, which the title company mistakenly included in the amount shown on the 2007 sales disclosure. *Id.* Thus, the Petitioner argues, the property's assessed value did not reflect its market value-in-use because the assessor used the sales disclosure as a basis for the property's value. *Sapp testimony*.

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-023-07-1-4-00001 DSMS, Inc.,
 - c. Exhibits:

Petitioner Exhibit 1 – Appraisal report prepared by David R. Davies,
Petitioner Exhibit 2 – Form 130 petition to the PTABOA,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated January 29, 2010,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

13. 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 Board of Tax Commissioners*, 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 478.
14. The Petitioner provided sufficient evidence to establish a prima facie case that its property is over-valued. 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 approach, the sales comparison approach, and the income approach to value. *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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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 Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Taxpayers 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here, the Petitioner offered an appraisal report prepared by David R. Davies that estimated the value of the Petitioner's property to be \$115,000 as of January 1, 2007. *Petitioner Exhibit 1*. Mr. Davies is an Indiana certified appraiser who attested that he prepared the Petitioner's appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* The report shows that the appraiser applied both the sales comparison approach to value, using properties that sold in 2006 and 2007, and the cost approach in estimating the property's value. *Id.*
- e. While generally the 2007 assessment is to reflect the value of a property as of January 1, 2006, pursuant to 50 IAC 21-3-3(a), "local assessing officials shall use the sale of properties occurring between January 1, 2004, and December 31, 2005, in performing ratio studies for the March 1, 2006, assessment date. For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date." The Board therefore finds that an appraisal using 2006 sales in its sales comparison analysis and valuing the property within a single day of the relevant sales dates has some probative value and holds that the Petitioner raised a prima facie case that its property is over-valued.
- e. 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). Here the Respondent failed to appear or present any evidence.¹

¹ The Board reminds the Assessor that to the extent that it believes its assessment is correct, the Assessor should appear at the hearing and vigorously defend its assessment. If the Assessor believed the assessment was in error, the Assessor should have stipulated or settled the matter prior to hearing. The Board does not appreciate wasting its resources or those of the Petitioner to hold a hearing where the Respondent does not even appear.

Conclusion

- 15. The Petitioner raised a prima facie case that its property is over-valued. The Respondent failed to appear at the hearing to rebut or impeach the Petitioner’s evidence. The Board finds for the Petitioner and determines the assessed value of the subject property to be \$115,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Chairman, 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>