
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Enstrom and Sons, Inc.	)	Petition No.:	64-016-06-1-4-00204
	)	Parcel:	06-08-200-029.000
Petitioner,)		
)		
v.)		
	)	County:	Porter
John R. Scott,	)	Township:	Portage
Porter County Assessor)		
)		
Respondent.	)	Assessment Year:	2006

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

October 16, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the subject property's assessed value should be based on the lowest value calculated using the three approaches to value, the cost approach, the income approach, or the sales

comparison approach. Further, the Petitioner argues, the property should be valued the same for 2004, 2005, and 2006.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Charles T. Enstrom, on behalf of the Petitioner, filed a Form 130 Petition with the Porter County Tax Assessment Board of Appeals on April 27, 2007. The Porter County Board failed to hold a hearing within the required 180 day deadline. The Petitioner then filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on December 18, 2007.¹

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on July 29, 2008, in Valparaiso, Indiana.
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Charles T. Enstrom, President of Enstrom and Sons, Inc.
 - For the Respondent:
 - John R. Scott, Porter County Assessor.
5. The Petitioner presented the following exhibits:
 - Petitioner Exhibit A – Financial documents for 2006, including financial statistics, corporate spreadsheet, storage records, and federal tax forms,

¹ Pursuant to Ind. Code 6-1.1-15-1(g), “The county board shall hold a hearing on a review under this subsection not later than 180 days after the date of notice for review filed by the taxpayer.” If the maximum time elapses for the county board to hold a hearing, the taxpayer may initiate a proceeding for review before the Indiana board.

Petitioner Exhibit B – Financial documents for 2005, including financial statistics, corporate spreadsheet, storage records, and federal tax forms,

Petitioner Exhibit C – Financial documents for 2004, including financial statistics, corporate spreadsheet, storage records, and federal tax forms.

6. The Respondent did not present any exhibits.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 131 Petition,

Board Exhibit B – Notice of Hearing dated June 24, 2008,

Board Exhibit C – Hearing Sign-in sheet.

8. The subject property is a 60-unit storage facility located at 2178 N. State Road 149, Chesterton, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the Portage Township Assessor determined the assessed value of the property to be \$37,700 for the land and \$152,000 for the improvements for a total assessed value of \$189,700.²
11. The Petitioner failed to request a specific value.

² The Respondent argued that the Petitioner signed the Form 130 “Results of Township Assessor/Petitioner Conference”, but did not argue that the Petitioner waived its right to appeal to the state. The Petitioner’s representative admitted he signed the Form 130 but Mr. Enstrom testified that he understood only that the assessor had done all it would do for the Petitioner. Without further evidence or argument, the Board will not consider the Petitioner’s signature on the Form 130 a bar to seeking review of its assessment by the state.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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).
14. 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. Wash. 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”).
15. 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.

PARTIES' CONTENTIONS

16. The Petitioner contends that Indiana law requires that the subject property's assessed value be based on the lowest value calculated using the three approaches to value – the cost approach, the income approach, or the sales comparison approach. *Enstrom testimony*. Additionally, the Petitioner requests the same value for 2004, 2005, and 2006. *Id.*

17. According to the Petitioner, the income approach yields a lower value than the cost approach used by the assessor. *Enstrom testimony*. In support of this contention, the Petitioner presented income information for 2004, 2005, and 2006. *Petitioner Exhibits A-C*. Mr. Enstrom calculated the Petitioner's net operating income for 2006 to be a negative \$4,460.46. *Petitioner Exhibit A*. According to the Petitioner, the net operating incomes for 2005 and 2004 were \$1,104.05 and \$387.96, respectively. *Petitioner Exhibits B and C*. In response to the Respondent's argument that the Petitioner's storage rates are too low, Mr. Enstrom contends he researched five similar facilities and the Petitioner's rates were not the lowest. *Id.* Further, Mr. Enstrom argues, it does not matter if he is a good businessman. *Id.*

18. Finally, the Petitioner contends the property is unique. *Enstrom testimony*. Thus, the Petitioner argues, it would be difficult to provide an accurate sales comparison valuation. *Id.* According to the Mr. Enstrom, however, he did not request property sales receipts from the township assessor. *Id.*

19. The Respondent contends that, as a result of the Petitioner's conference with the township assessor, the assessor made an adjustment for the property's lack of heat, water, lighting, and sewer. *Scott testimony*. According to the Respondent, the Petitioner agreed to those values and, therefore, the PTABOA did not hold a hearing on the petition. *Id.*

20. The Respondent also contends the Petitioner's rates are lower than comparable facilities, which accounts for his low income. *Scott testimony*.

ANALYSIS

21. The 2002 Real Property Assessment Manual (hereinafter MANUAL) defines the "true tax value" of real estate 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 – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach and the income approach. *Id.* The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach.
22. Here, the Petitioner contends that the assessor must value its property using the lowest value determined by applying each of the three approaches to value. The Petitioner, however, pointed to no legal authority to support such a contention. Nor is the Board aware of any.³ According to the Manual, the primary method for assessing officials to value property is by the cost approach. MANUAL at 3. Thus, there is no evidence that the assessor erred when it only applied the cost approach to the Petitioner's property.
23. Further, Mr. Enstrom argues that the assessor failed to provide the Petitioner information on the sales comparison value and income approach value of its

³ The Board notes that pursuant to Ind. Code § 6-1.1-4-39, "the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each" of the three approaches to value. This statute, however, pertains only to residential accommodations not to commercial storage units. The Board is not aware of, nor has the Petitioner pointed the Board to any similar statute that applies to commercial storage facilities.

property.⁴ The Petitioner misunderstands its burden here. It is the Petitioner's burden to show that the assessed value as determined by the Guidelines does not reflect the property's market value-in-use. *See O'Donnell v. Dep't. of Local Gov't. Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006) (A property's assessed value, ascertained through an application of the Guidelines, is presumed to be accurate. That presumption is rebuttable if a taxpayer shows that the assessor's assessed value does not accurately reflect the property's market value-in-use).

24. The Petitioner also argues that its property is over-assessed. Mr. Enstrom testified that he did not look at sales to value the Petitioner's property. In fact, Mr. Enstrom admitted that he could probably sell the property for the property's assessed value. He argues, however, that the property's income does not support its tax burden.⁵ In support of this contention, the Petitioner presented tax and accounting documents for the property.
25. The income approach to value is a generally accepted method of appraising. *See MANUAL* at 14. It 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." *Id.* Under the income approach to value, fair market value can be determined by capitalizing the net income that the property produces, more specifically by converting the net income at a reasonable rate of return to give an indication of value. *See Lacy Diversified Indus., Ltd. v. Dep't Local Gov't. Fin.*, 799 N.E.2d 1215, 1223 (Ind. Tax Ct. 2003). *See also Lucre Corp. v. County of Gibson*, 657 N.E.2d 150, 153 (Ind. Ct. App. 1995), *trans. denied*.

⁴ The Board notes that the Petitioner did not contend that the assessor refused to provide assessment information on the subject property or other properties in the township. Instead, the Petitioner appears to be arguing again that the assessor had an obligation to value the property under all three valuation methods and also had an obligation to provide that valuation information to the taxpayer.

⁵ Pursuant to Ind. Code § 6-1.5-4-1, the Board conducts an impartial review of all appeals concerning the assessed value of tangible property; property tax deductions; and property tax exemptions. Thus, the Board may consider any claims that the Respondent erred in assessing the subject property. The tax rate applied to that assessment, however, is not properly before the Board.

26. Here, the Petitioner's income approach arguments fail to raise a prima facie case for several reasons. First, it is not clear that the Petitioner determined a value for the property under the income approach for 2006. According to Mr. Enstrom, he calculated the Petitioner's net operating income to be -\$4,640.46 for 2006. *Enstrom testimony*. He testified, however, that the value of the Petitioner's property was not negative. *Id.* "The property and the building [are] going to have a value but the income that the property produces doesn't support the tax." *Id.* The Petitioner's Exhibit A contends that "capitalization rate = NOI ÷ sales" but the Petitioner appears not to have performed the calculation to determine the capitalization rate for 2006 or provided any numbers related to the calculation. *Petitioner Exhibit A*. Similarly, Exhibit A states "Capitalization Rate x NOI = Tax Burden," but again there are no numbers attached to this purported calculation. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis". *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). The Board cannot discern from the Petitioner's evidence what it contends the property's value should be for 2006. Thus, the Petitioner failed to "walk the Indiana Board" through every element of its income approach valuation.
27. Second, the income approach focuses on the intrinsic value of the property, not upon the Petitioners' operation of the property. Property-specific rent or expenses may reflect elements other than the value of the property "such as quality of management, skill of the work force, competition and the like." *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). *See also* MANUAL at 5 ("[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. . . . [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data"). Here, in determining its net operating income, the Petitioner presented a spreadsheet showing that interest, taxes, personal expenses, and medical expenses were included in the calculation. The Petitioner, however, failed to show it was a generally accepted appraisal

practice to include these types of expenses in the income approach valuation of a commercial property. Further, the Petitioner presented no evidence to demonstrate whether the rate of income and expenses it presented were typical for comparable properties in the market. *See Thornton Telephone Company*, 588 N.E.2d at 619; *Lake County Trust Co., No.1163 v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). Thus, the Petitioner failed to raise a prima facie case that its property is over-valued on the basis of an income approach calculation.⁶

25. When a taxpayer fails to provide probative evidence supporting his 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., Ltd. v. Dep't Local Gov't Fin.*, 799 N.E.2d 1215, 1223 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

26. The Petitioner failed to raise a prima facie case. The Board finds for the Respondent. No change in the assessment is warranted.

⁶ The Petitioner requested that the Board consider the petition for the 2004, 2005, and 2006 assessment years. The Petitioner, however, only filed a Form 131 petition for the 2006 assessment year. The Board has no jurisdiction to review the Petitioner's previous assessments.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>