

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

Petition No.: 64-016-11-1-4-00017
Petitioner: JY Properties, LLC
Respondent: Porter County Assessor
Parcel No.: 64-05-25-202-001.000-016
Assessment Year: 2011

The Indiana Board of Tax Review (the Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition on November 9, 2011.
2. The PTABOA issued notice of its decision on August 21, 2012.
3. On October 2, 2012, the Petitioner filed the Form 131 petition with the Board, electing to have the matter heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing dated August 2, 2013.
5. Administrative Law Judge Ellen Yuhan (the ALJ) held the administrative hearing on September 4, 2013. Neither she nor the Board inspected the property.
6. The Petitioner's tax representative Jamie Ruiz and Porter County Appeals Director John Yanek were sworn as witnesses at the hearing.

Facts

7. This property is a commercial retail building located at 6283 U. S. Highway 6 in Portage.
8. The PTABOA determined the 2011 assessed value is \$438,860 for land and \$242,540 for improvements (total assessed value of \$681,400).
9. The Petitioner requested a total assessed value of \$504,000.

Contentions

10. Summary of the Petitioner's case:

- a. A comparative market analysis (CMA) prepared by Steve Nicksic of Coldwell Banker Commercial NRT valued the property at \$576,200. Mr. Nicksic rated the neighborhood desirability, area income, building vacancy, area rents for apartment and offices, housing prices, and urban versus suburban location. He rated the subject property as average on desirability, but noted the building and the parking lot need work. *Ruiz testimony; Pet'r Ex. 1.*
- b. Mr. Nicksic also compared the subject property to four other properties. 6100 Central Avenue is an outparcel to a grocery-anchored shopping center that he deemed to be superior in location, quality of construction, and the potential for higher quality tenants. It sold for \$675,000 (\$112.50 per square foot). 6346-6356 Central is a strip center with local non-credit tenants that is comparable to the subject property. It has 6,850 square feet and sold for \$500,000 (\$73 per square foot). 3349 Willowcreek has 4,140 square feet and sold for \$325,000 (\$78.50 per square foot). The last comparable is 792 McCool Road in Portage. It is inferior, but does have some warehouse properties that are similar to the subject property. It sold for \$276,000 (\$38.42 a square foot). *Ruiz testimony; Pet'r Ex. 1.*
- c. Ms. Ruiz added another property, 2502 Calumet in Valparaiso, that she thought was appropriate. While it is not located in Portage, it is a former Blockbuster Video. It has 16,200 square feet and sold for \$550,312 (\$33.97 per square foot). *Ruiz testimony; Pet'r Ex. 2.*
- d. Ms. Ruiz prepared an income approach to value using information from RealtyRates because the subject property has been vacant for several years and has no income. It is a negative income producing property. She used first quarter 2011 information from RealtyRates for the West North Central district, which includes Chicago, Indianapolis, and Milwaukee. Not including real estate taxes, the average net operating income (NOI) for unanchored neighborhood community and strip centers was \$6.94 per square foot. She applied that figure to the 7,324 square feet of the subject property and determined net revenue of \$50,829. The subject property has a second floor, but the space is not leasable. The building has been vacant for so long that the second floor has been completely damaged due to a raccoon problem. Therefore, the square footage of the second floor was not included in her calculations. *Ruiz testimony.*

- e. Ms. Ruiz used a RealtyRates published capitalization rate of 8.4% plus an effective tax rate of 1.69% to arrive at a 10.09% capitalization rate. It results in a value of approximately \$504,000. *Ruiz testimony; Pet'r Ex. 3.*
- f. RealtyRates also states the average sale price for this type of property in this region is \$63 per square foot. If \$63 per square foot is applied for the square footage of the subject property, it produces a value of \$461,000. *Ruiz testimony; Pet'r Ex. 3.*
- g. Based on the CMA valuing the property at \$576,200, the income/expense summary valuation of \$504,000 and the average sale price per square foot value of \$461,000, the assessed value of this property should be the median value, which is \$504,000. *Ruiz testimony; Pet'r Ex. 1, 2, 3.*

11. Summary of the Respondent's case:

- a. The Respondent agrees that the improvement located at 6100 Central is superior in quality. Nevertheless, the locations of these two properties are comparable because the 6100 Central property is on a well-traveled commercial road with good exposure. The assessor's records show the sale price is correct and it was a valid sale. *Yanek testimony; Resp Ex. 1; Pet'r Ex. 1.*
- b. The Petitioner's analysis of the property at 6356 Central is correct. It is a small strip center and the square foot selling price was \$73. *Yanek testimony; Resp Ex. 1; Pet'r Ex. 1.*
- c. The 3349 Willowcreek property is a two-story office building. While its sale price per square foot is in line with other properties in the analysis, the sale was not an arm's-length transaction. That sale involved a business/family relationship. *Yanek testimony; Respondent Exhibit 1; Pet'r Ex. 1.*
- d. The 792 McCool Road sale also was not an arm's-length transaction. It was between two exempt entities. In addition, the location is inferior to the subject property because it is a less desirable commercial area that is not exposed to the main strip. *Yanek testimony; Resp Ex. 1; Pet'r Ex. 1.*
- e. The Respondent included the sale of a property at 3400 N. Central Avenue in Valparaiso. It sold for \$89 per square foot. That property is a small strip center built at approximately the same time as the subject property, but it is slightly superior in quality. Although it sold in July 2011, which is after the valuation date, it is a good indicator of market value. *Yanek testimony; Resp Ex. 1.*
- f. Even if the 3349 Willowcreek property is included, the mean selling price is \$88 per square foot. *Yanek testimony.*
- g. According to the assessor's records, this building has 2,120 square feet of upper floor that was not included in the Petitioner's analysis. (The township assessor changed

this area from a mezzanine to a second floor.) When it is included, the total gross building area is 9,500 square feet. The PTABOA determination of \$681,400 is about \$72 per square foot, which is in line with the values of the comparables. *Yanek testimony; Resp Ex. 2.*

- h. The sale price for 2502 Calumet (one of the comparables considered by Ms. Ruiz) was actually \$700,000. The area shown for that property is divided between two buildings. The Blockbuster Video building alone was 6,000 square feet and sold for \$522,000. *Yanek testimony.*

Record

12. The official record contains the following:

- a. Petition for Review Assessment (Form 131),
- b. Digital recording of the hearing,
- c. Petitioner Exhibit 1 – Comparative Market Analysis,
Petitioner Exhibit 2 – Sales information for 2502 Calumet Avenue,
Petitioner Exhibit 3 – Income capitalization approach,

Respondent Exhibit 1 – Property record cards for 6100 Central, 6356 Central,
3349 Willowcreek, 3400 N. Calumet, and 792 McCool,
Respondent Exhibit 2 – Property record card for the subject property,¹

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Burden of Proof

- 13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

¹ Ms. Ruiz objected to Respondent Exhibit 2 because she contends the mezzanine/second-story is not leasable space. The Petitioner's objection goes to the weight of the evidence, not the admissibility. The ALJ admitted the exhibit over the Petitioner's objection.

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

14. In this case, the assessed value decreased from 2010 to 2011. Therefore, Ind. Code § 6-1.1-15-17.2 does not apply and the Petitioner has the burden of proof.

Analysis

15. The Petitioner failed to establish a case that the 2011 assessed value is incorrect.
 - a. Real property is assessed based on 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 or a similar user, from the property. Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to 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.
 - b. Regardless of the method used to prove a case, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2011 assessment, the valuation date was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f).
 - c. The Petitioner relied on a comparative market analysis (CMA) that compared four commercial property sales from the relevant time frame and estimated a value of \$576,200 for the subject property. In order to compare sales effectively, the proponent must establish the comparability of the properties being examined. Simple conclusory statements that property is "similar" or "comparable" are not probative evidence. *Long*, 821 N.E.2d at 470. The Petitioner needed to establish the characteristics of its property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the market value-in-use. *Id.* at 471.

- d. The Petitioner, however, did little to compare the properties in the analysis other than to make some very basic observations on quality of construction and location. The Petitioner failed to adjust the sale prices to account for differences. Furthermore, it is not clear how the Petitioner arrived at a \$576,200 value. Because the Petitioner failed to show that this methodology complied with generally accepted appraisal principles, the CMA carries little or no weight.
- e. The same observations apply to the evidence relating to the 2502 Calumet property. The Petitioner again presented no meaningful comparison of the similarities and differences of the properties. Consequently, the selling price does not help to prove an accurate valuation for the Petitioner's property.
- f. The Petitioner also presented an income capitalization approach to value for the subject property. Ms. Ruiz made those income capitalization calculations. Therefore, the credibility of her work and valuation opinion is critical. Several things, however, negatively impact that credibility. More specifically, Ms. Ruiz has an interest in the outcome of this appeal because she is compensated on a contingency basis. She is not an appraiser and her calculations do not purport to be a certified appraisal. Even though her testimony and income capitalization calculations resemble the kind of thing appraisers commonly do, under these circumstances, her opinion does not have the kind of impact an independent, professional, certified appraiser/appraisal might have. Her income capitalization calculations merely relied on income and expense numbers from RealtyRates market survey to get an average NOI of \$6.94 per square foot. She then calculated a total NOI on 7,324 square feet of space, even though the building has 9,500 square feet with the second floor area. Although she testified that the second floor is not leasable space due to damage, she presented only minimal, conclusory evidence of that fact. This kind of methodology to determine NOI for the subject property at \$50,829 is not credible. Perhaps more significantly, the Petitioner failed to establish that the income capitalization evidence it offered conforms to the requirements of generally accepted appraisal principles. Therefore, the purported value based on that approach lacks credibility and is not probative evidence for this case.
- g. The Petitioner did not make a case for an assessment change. Where the Petitioner has not supported its claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Board finds for the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2011 assessed value will remain unchanged.

ISSUED: October 22, 2013

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.