

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

Petition #: 68-017-06-1-4-00076
Petitioner: Mark A. Marquis
Respondent: Randolph County Assessor
Parcel #: 018-00057-00
Assessment Year: 2006

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

Procedural History

1. On July 9, 2007, Mark A. Marquis appealed his property’s assessment to the Randolph County Property Tax Assessment Board of Appeals (“PTABOA”).
2. On January 15, 2008, the PTABOA issued its determination reducing the property’s assessment, although apparently not to the level that Mr. Marquis wanted.
3. On February 5, 2008, Mr. Marquis filed a Form 131 petition with the Board. He elected to have this case heard under the Board’s procedures for small claims.
4. The Board issued a notice of hearing to the parties dated March 6, 2008.
5. On April 10, 2008, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack (“ALJ”).
6. Persons present and sworn in at hearing:
 - a) For Mr. Marquis: Mark A. Marquis, *pro se*
 - b) For the Assessor: Beverly Fields, Randolph County Assessor
Charles E. Ward, witness

Facts

7. The subject property contains a two-story commercial building located at 110 North Main Street, Lynn, Indiana.
8. Neither the Board nor the ALJ inspected the property.

9. The PTABOA determined that the property's assessed value is \$6,900 for the land and \$27,400 for the improvements, for a total assessment of 34,300.
10. Mr. Marquis did not request a specific value.

Parties' Contentions

11. Mr. Marquis offered the following evidence and arguments:
 - a) Mr. Marquis believes that his building is assessed too high in light of its condition. He bought the subject property in 1996 for \$35,000. The building's previous owner had used the second story as an apartment. *Marquis testimony*. But a 1986 tornado damaged the roof. *Id.* The previous owner didn't repair it, and leaking water caused further damage, which left the apartment uninhabitable. *Id.*; *Pet'r Exs. 7-8*. Until 2007, Mr. Marquis's wife used the first story to operate an ice-cream shop. But water run-off from a neighboring property caused the building's floor joists to rot. *Marquis testimony*; *Pet'r Exs. 5, 6*. Mr. Marquis therefore removed the floor in 2007, and he hasn't used the building since. *Marquis testimony*.
 - b) Estimates to repair the building total approximately \$15,000, excluding labor. *Marquis testimony*; *Pet'r Exs. 10-12*. Those estimated repair costs should therefore be deducted from the building's assessment. *Marquis argument*.
 - c) Mr. Marquis also disagrees with the land portion of his property's assessment. While his land is assessed at \$1.93 per square foot, other commercial properties are assessed for amounts ranging from \$0.33 per square foot to \$1.29 per square foot. *Marquis testimony*; *Pet'r Exs. 13-16*.
 - d) According to Mr. Marquis, the properties that the Assessor relied upon in her sales-comparison analysis did not truly compare to his property because they were located in Winchester rather than Lynn. Lynn is a small town, and property values have not been increasing. *Marquis testimony*.
12. The Assessor offered the following evidence and arguments:
 - a) Based on Mr. Marquis's testimony about his building's condition, the PTABOA lowered the property's assessment from \$42,700 to \$34,300. *Fields testimony*.
 - b) The Assessor believes that the assessment, as reduced by the PTABOA, accurately reflects the subject property's market value-in-use. In support of that position, the Assessor analyzed the sales of four properties that she claimed were comparable to Mr. Marquis's property. *Fields testimony*; *Resp't Ex. 8*.

- c) Two of those properties actually sold in 2006. *Ward testimony*. A property owned by Thomas R. Myers and Suzan Dillon sold for \$32,000, or \$11.85 per square foot of building area, and another property sold for \$38,000, or \$10.36 per square foot of building area.¹ *Id.*; *Resp't Ex. 8*. Also, an "old barn" in Lynn sold for \$20,000, or \$14.20 per square foot of building area, in 2006. *Ward testimony*; *Resp't Ex. 9*. By contrast, Mr. Marquis's property is assessed for only \$8.77 per square foot of building area. *Id.*
- d) Given that Mr. Marquis's property is assessed for less than the sale prices of comparable properties and that Mr. Marquis bought it for \$35,000, the property is actually under-assessed. *Ward argument*.

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: Form 130 petition
 - Petitioner Exhibit 2: Form 115
 - Petitioner Exhibit 3: Form 131 petition
 - Petitioner Exhibit 4: Two pictures showing front of property
 - Petitioner Exhibit 5: Picture of first story interior
 - Petitioner Exhibit 6: Picture of first story interior
 - Petitioner Exhibit 7: Picture of second story interior
 - Petitioner Exhibit 8: Picture of second story interior
 - Petitioner Exhibit 9: Subject property record card (PRC)
 - Petitioner Exhibit 10: Estimate for plumbing and HVAC materials to rehabilitate property
 - Petitioner Exhibit 11: Estimate for electrical materials to rehabilitate property
 - Petitioner Exhibit 12: Estimate for building materials to rehabilitate property
 - Petitioner Exhibit 13: PRC for 101 North Main Street
 - Petitioner Exhibit 14: PRC for 424 North Main Street
 - Petitioner Exhibit 15: PRC for 112 West Sherman Street
 - Petitioner Exhibit 16: PRC for 406 North Main Street
 - Petitioner Exhibit 17: Conversion factor for acres to square feet
- Respondent Exhibit 1: Form 131 petition

¹ It appears that the Assessor offered the wrong property record card for the second property. While the summary sheet for *Resp't Ex. 8* lists the parcel number as 021-01291-00, the related property record card is for Parcel No. 021-00921-00, which sold for only \$27,000, not \$38,000.

Respondent Exhibit 2: Form 115
Respondent Exhibit 3: Associated Form 133 Petition for Correction of an Error
Respondent Exhibit 4: PRC after Form 133 adjustments
Respondent Exhibit 5: Form 130 petition
Respondent Exhibit 6: Subject PRC as of July 26, 2007
Respondent Exhibit 7: Photograph of subject property
Respondent Exhibit 8: Summary sheet, PRCs and photographs of subject and four comparable properties
Respondent Exhibit 9: PRC and sales disclosure for 204 West Grant Street

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-In sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

14. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically 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).
15. In making its case, the petitioner must explain how each piece of evidence relates to its 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”).
16. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Mr. Marquis's Case

17. Mr. Marquis did not provide sufficient evidence to support his contentions. The Board reaches this conclusion 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 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.*

at 3, 13-15. Indiana assessing officials generally value 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 assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *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 rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other any information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) By contrast, a taxpayer does not rebut the presumption that an assessment is correct simply by contesting the assessor's methodology in computing it. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.* And strictly applying the Guidelines is not enough to make that showing. *Id.*
- d) Mr. Marquis asked the Board to deduct estimated repair costs from his building's assessment. But he did not explain how simply deducting estimated repair expenses from a building's already depreciated cost comported with generally accepted appraisal principles for valuing property.
- e) His approach instead most closely resembles an attack on the methodology that the township assessor and PTABOA used to account for his building's depreciation. As explained above, however, a taxpayer cannot make a prima facie case by simply attacking an assessor's methodology.
- f) Mr. Marquis also claimed that other parcels of land that were comparable to his were burdened with significantly lower assessments. His instinct was partly right—one can indirectly estimate a given property's value by looking at the values of comparable properties. Indeed, that is what the sales-comparison approach does. But the sales-comparison approach requires one to look at the comparable properties' values as derived through market transactions. Mr. Marquis, by contrast, used the assessed values for his purportedly comparable properties. Those assessed values didn't come from market transactions; they were mass-appraisal estimates based on a completely separate valuation approach. Thus by relying on assessments, rather than sale prices, of purportedly comparable properties, Mr. Marquis improperly mixed otherwise accepted valuation methodologies.

- g) Even if the Board were to overlook Mr. Marquis' use of assessments rather than sale prices, he did not properly apply the basic principles underlying the sales-comparison approach. The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property that already exists in the market place. MANUAL at 13-14. A person applying the sales-comparison approach must first identify comparable properties that have sold. *Id.* He or she must then adjust those properties' sale prices to reflect the subject property's value. *Id.* The adjustments reflect differences between the subject and comparable properties that affect value. *Id.*
- h) Thus, to use the sales-comparison approach as evidence in a property assessment appeal, a party first must establish that the properties being examined are comparable to each other. Conclusory statements that two properties are "similar" or "comparable" do not suffice; instead, the party must compare the subject property's characteristics to the characteristics of each purportedly comparable property. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 470-71 (Ind. Tax Ct. 2005). He or she must also explain how any differences between the properties affect their relative market values-in-use. *Id.*
- i) Mr. Marquis did not sufficiently explain how the other parcels compared to his. While he calculated each parcel's assessed value per square foot, he neither compared relevant features such as size, use, and location, nor considered how those factors affected the properties' respective market values-in-use. And he didn't make any adjustments for significant differences between the properties. Indeed, he didn't even attempt to determine what his land should "correctly" be assessed at; he merely concluded that it was over-assessed.
- j) The only true market-based evidence that Mr. Marquis offered was his testimony that he bought the subject property for \$35,000. But that transaction occurred in 1996. And the relevant valuation date for the March 1, 2006 assessment is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3. Thus, Mr. Marquis needed to explain how that 1996 sale price related to his property's value as of January 1, 2005. *See Long* 821 N.E.2d at 466, 471; *see also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). He failed to do so, and the property's sale price therefore lacks any probative value.
- k) Because Mr. Marquis offered no probative market-based evidence to rebut his property's assessment, he failed to make a prima facie case for reducing that assessment.

Conclusion

- 18. Mr. Marquis failed to make a prima facie case of error. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: _____

Commissioner, Betsy Brand
Indiana Board of Tax Review

Commissioner, Terry Duga
Indiana Board of Tax Review

Chairman, Robert Wentz
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>