

**Small Claims
Final Determination
Findings and Conclusions**

Petition Numbers: 77-012-07-1-4-00001
77-012-07-1-4-00002
77-012-07-1-4-00003
Petitioner: Thomas F. McCracken
Respondent: Sullivan County Assessor
Parcel Nos.: 77-07-34-222-079.000-012
77-07-34-222-064.000-012
77-07-34-222-080.000-012
Assessment Year: 2007

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

PROCEDURAL HISTORY

1. The Petitioner initiated assessment appeals with the Sullivan County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated August 8, 2008.
2. The PTABOA issued notices of its decisions on October 17, 2008.
3. The Petitioner initiated appeals to the Board by filing Form 131 petitions on November 13, 2008. The Petitioner elected to have his cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated May 14, 2010.
5. The Board held an administrative hearing on July 7, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Thomas F. McCracken, Petitioner
Judith M. Bengochea, Petitioner's Witness
 - b. For Respondent: Vicki Talpas, Sullivan County Assessor

FACTS

7. The properties at issue in this appeal are three improved commercial parcels located on the Sullivan town square at 16 West Washington Street, 18 West Washington Street, and 20 West Washington Street, in Hamilton Township, Sullivan County, Sullivan, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of 18 West Washington to be \$6,000 for land and \$35,100 for improvements, for a total assessed value of \$41,100; the value of 16 West Washington to be \$11,900 for land and \$12,800 for improvements, for a total assessed value of \$24,700; and the value of 20 West Washington to be \$6,000 for land and \$25,300 for improvements for a total assessed value of \$31,300.
10. For 2007, the Petitioner requested the assessed value of the three parcels total \$3,004.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his properties' assessment:
 - a. The Petitioner contends that the properties at issue in this appeal are over-valued based on their purchase price. *McCracken argument*. According to Mr. McCracken, the buildings had been unused since the YMCA of Sullivan abandoned them in 2003. *McCracken testimony*. In December 2005, a buyer paid \$7,950 for the three parcels, but after being unable to sell them, the buyer donated them to the county. *Id.* Mr. McCracken testified that the county began advertising in December of 2006 that the parcels would be sold at public auction in January 2007. *Id.* According to Mr. McCracken, he was the sole bidder, but the county chose not to sell the property. *Id.* After being the sole bidder in two additional auctions, the county accepted the Petitioner's bid of \$3,004 in April of 2008. *Id.* Mr. McCracken testified that his purchase of the properties was closed and the properties transferred on April 11, 2008, after an appraiser hired by the county valued them at \$3,000.¹ *Id.*
 - b. The Petitioner also contends that the properties' 2007 assessments are over-stated based on the sales prices of other properties in downtown Sullivan. *McCracken argument*. In support of his argument, the Petitioner presented sales and assessment information for several comparable properties. *Petitioner Exhibit 3*. According to Mr. McCracken, the three properties under appeal are assessed between \$6.10 per square foot and \$8.01 per square foot, while a 7,750-square foot building at 22 East Washington sold April 4, 2006, for \$10,000 or \$1.29 per square foot, a 6,000 square

¹ Mr. McCracken also argues that the county recorded his purchase price in error because each property is listed as having been purchased for \$3004, rather than all three buildings purchased for that price. *McCracken argument*. In addition, Mr. McCracken contends, the frontage on 16 West Washington is identified as 38 feet on the property record card; whereas the building only has 17 foot of frontage. *Id.;Petitioner Exhibit 1*.

foot commercial building at 14 West Court Street sold for \$1.67 square foot, a commercial building at 8 East Washington sold July 14, 2008, for \$3.10 per square foot, and a building at 809 East Dorothy sold on July 3, 2008, for \$2.40 per square foot. *McCracken testimony; Petitioner Exhibit 3.*

- c. Finally, the Petitioner contends that the poor condition of the subject properties supports his argument that his purchase price of \$3,004 reflects the market value of the parcels for the 2007 tax year. *McCracken argument.* In support of his argument, the Petitioner presented photographs of the properties. *Petitioner Exhibit 5.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the properties' assessments are correct. *Talpas argument.* According to Ms. Talpas, the PTABOA changed the properties' assessments to correct some measurement errors and lowered the grades and conditions to coincide with the use and condition of the properties. *Talpas testimony.* Ms. Talpas contends, however, that the county could not change the land values because land rates are approved by the state and all taxpayers are charged the same rate for similar properties. *Talpas argument.*
- b. The Respondent also argues that the Petitioner's purchase was not an arm's length transaction. *Talpas argument.* According to Ms. Talpas, the PTABOA would not accept the Petitioner's \$3004 purchase price as representative of the market value of the properties. *Id.*

RECORD

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The compact disk recording of the hearing labeled 77-012-07-1-4-McCracken,
- c. Exhibits:

Petitioner Exhibit 1 – Property record cards for the subject properties,
Petitioner Exhibit 2 – Narrative and documents supporting the Petitioner's purchase of the subject properties,
Petitioner Exhibit 3 – Spreadsheet of data and property record cards for comparable properties,
Petitioner Exhibit 4 – Excerpt of the county's appraisal,
Petitioner Exhibit 5 – Photographs of the subject properties,

The Respondent submitted no exhibits,

Board Exhibit A – Form 131 Petitions and related attachments,

Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

ANALYSIS

14. 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 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).
 - 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 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”).
 - 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner raised a prima facie case for a reduction in the property's assessed value. 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). 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 property or comparable properties and any other information compiled according to generally accepted appraisal principles. 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. The Petitioner first contends the properties are over-valued based on his purchase price. *McCracken argument*. Generally, the sale of a property provides the best evidence of its market value-in-use. Here, the undisputed evidence shows that Mr. McCracken bought the properties for a total of \$3,004 after three well-advertised public auctions. Further, the sale was not consummated until an appraiser valued the three parcels below the Petitioner's purchase price. The International Association of Assessing Officers in its Standard on Ratio Studies holds that when a property sells at an auction that is well-advertised and well-attended, the sale price may be taken as a valid indication of market value. Thus, to the extent that the Petitioner argues his properties are over-assessed based on their sale price, his evidence provides at least some indication of value. The Petitioner, however, failed in his efforts to raise a prima facie case to lower the assessments for 2007 to his auction price because he failed to relate his April 11, 2008, purchase price to the January 1, 2006, valuation date for the March 1, 2007, assessment date.²
 - e. The Petitioner also contends his property is over-valued based on the sales prices of comparable properties. *McCracken argument*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In order to effectively use the

² The Petitioner also testified that the properties are in disrepair and will require large expenditures to be brought to a usable standard. To the extent the Petitioner is attempting to argue that the condition of the structures was improperly assessed, the Petitioner failed to raise a prima facie case. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See* GUIDELINES, app. B, at 5. The ratings range from "excellent" to "very poor" and are determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* at 7. While the Petitioner presented some evidence that the buildings are in "very poor" condition, there is no evidence of how the buildings are currently assessed. The Petitioner's evidence only included the land valuation portion of the property record card. *Petitioner Exhibit 1*. Thus, the Board cannot determine that the assessment was in error. Even if the Petitioner had proven that the condition of the buildings was assessed in error, an assessor's failure to comply with the Guidelines alone does not show that the assessment is not a reasonable measure of a property's market value-in-use. 50 IAC 2.3-1-1(d); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.")

sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioner made no attempt to compare the properties to his own properties. He merely alleged that the properties sold for \$1.29 to \$3.10 per square foot, while his properties were assessed for \$6.10 to \$8.01 per square foot. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

- f. Despite this, the Petitioner’s evidence shows that the properties were purchased in December of 2005 for \$7,950. This prior sale is within days of the January 1, 2006, valuation date and, therefore, raises a prima facie case that the properties’ current assessments are over-valued.
- g. Once the Petitioner raises a prima facie case, the burden shifts to the Respondent to impeach or rebut the Petitioner’s case. Here, Ms. Talpas argued that the properties’ 2007 assessments had been lowered as far as they could be lowered because the values are set by the state and the appropriate procedures had been followed. In order to carry its burden, however, the Respondent must do more than simply assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.d2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).
- h. The Respondent also contends that the Petitioner’s purchase of the properties was not an “arm’s length transaction.”³ The Board disagrees, however, that a real estate auction can never be evidence of market value. Thus, to rebut or impeach the Petitioner’s case, it is not sufficient for the Respondent to simply allege that the auction price is not evidence of the property’s true tax value. The Respondent must present evidence that the auction was not advertised in a commercially reasonable manner or there were special financing arrangements. Further, the Respondent could show that the purchaser has a relationship with the seller or that, for the particular property at issue, an auction was not a commercially reasonable method of sale. No such evidence was offered by the Respondent.

³ Implicit in the definition of market value “is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby the buyer and seller are typically motivated; both parties are well informed or advised and act in what they consider their best interests; a reasonable time is allowed for exposure in the open market; payment is made in terms of cash or in terms of financial arrangements comparable thereto; [and] the price is unaffected by special financing or concessions.” MANUAL at 10.

- i. More importantly, while the Petitioner's April 11, 2008, purchase of the property was at an auction, there is no evidence that the December 9, 2005, sale was anything other than a market transaction. Thus, the Respondent failed to offer any evidence that the \$7,950 purchase price by the prior owner did not reflect the market value-in-use of the three buildings at issue. Further, the Respondent failed to present any market value evidence of her own, such as an appraisal or an income approach calculation.⁴ Therefore the Respondent failed to rebut the Petitioner's case.

Conclusion

16. The Petitioner raised a prima facie case that the subject properties were over-valued for the March 1, 2007, assessment date. The Respondent failed to impeach or rebut Petitioner's evidence. The Board therefore finds in favor of the Petitioner and holds that the value of the three buildings together is \$7,950.

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

⁴ The evidence suggests that an earlier appraisal had been prepared that valued the buildings substantially higher than the Petitioner's purchase price. While this may have been sufficient to rebut the Petitioner's evidence, the Respondent failed to offer the appraisal documents or even argue that the higher appraised value represented a better indication of the properties' values than any purchase price.

- 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>.