

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

Petition: 21-008-09-1-4-00001
Petitioner: Palm Investment, Inc.
Respondent: Fayette County Assessor
Parcel: 21-05-12-515-501.000-008
Assessment Year: 2009

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

Procedural History

1. The Petitioner initiated the assessment appeals process with the Fayette County Property Tax Assessment Board of Appeals (PTABOA) by filing a written document dated April 22, 2010.
2. The PTABOA issued its decision on August 9, 2010.
3. The Petitioner appealed to the Board by filing a Form 131 on August 31, 2010. The Petitioner elected to have this case heard according to small claims procedures. While typically small claims procedures are reserved for appeals of parcels with an assessed value not exceeding one million dollars, the Respondent did not object to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing in Connersville on June 1, 2011. He did not inspect the property.
5. Certified Tax Representative Duane R. Zishka was sworn as a witness for Petitioner. PTABOA President Jeffery Coleman was sworn as a witness for the Respondent. County Assessor Kathleen Rhodes and Warren Taylor were sworn as witnesses, but they did not testify.

Facts

6. The Petitioner owns and operates The Woodridge Inn, which is a motel located at 3700 North Western Avenue in Connersville.

7. The PTABOA determined the assessed value is \$213,300 for land and \$1,178,100 for improvements (total \$1,391,400).
8. The Petitioner requested a total assessed value of \$1,161,200.

Record

9. The official record for this matter contains the following:
 - a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Fayette County statistics,
Petitioner Exhibit 2 – Fayette County unemployment rates,
Petitioner Exhibit 3 – Palm Investments’ 2007 federal income tax return,
Petitioner Exhibit 4 – Palm Investments’ 2008 federal income tax return,
Petitioner Exhibit 5 – Palm Investments’ 2009 federal income tax return,
Petitioner Exhibit 6 – Zishka’s income approach to value analysis (version 2),
Petitioner Exhibit 7 – Two realtor listings of motels for sale,
Respondent Exhibit 1a – Subject property record card, page 1 of 2,
Respondent Exhibit 1b – Subject property record card, page 2 of 2,
Respondent Exhibit 2a – Cover sheet for an appraisal of the subject property,
Respondent Exhibit 2b – Page 41 from an appraisal of the subject property,
Respondent Exhibit 3 – Zishka’s income approach to value analysis (version 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.

Objection

10. The Respondent objected to Petitioner Exhibit 7, the two listings of other motels offered for sale, claiming they are not relevant because they relate to asking prices and because those properties are located in other cities. The Petitioner argued that the asking prices establish an upper limit of their market value, but how those asking prices help to prove actual market value-in-use of those motels or the subject property is not readily apparent. No legitimate conclusions about the relative values of those motels and the subject property can be made without specific, detailed facts and analysis. Nevertheless, the objection primarily goes to the weight of this evidence, not its admissibility. Accordingly, Petitioner Exhibit 7 is admitted into the record. It remains to be established how those listings help to prove a more accurate valuation for the subject property.

Contentions

11. Summary of the Petitioner's case:

- a) The subject property is an independent motel with “about” 56 rooms. It is on the north side of town in a mixed residential/commercial neighborhood. Mr. Zishka “thinks” it is located on highway 1. The location is about a half hour or so from the interstate. Consequently this motel depends more on local business and less on travelers just looking for a place to stay the night. This motel is very dependent on the local economy and what is happening in the local town—and Fayette County has a decreasing population and increasing unemployment. *Zishka testimony; Pet'r Ex. 1, 2.*
- b) The subject property is not comparable to chain motels. It does not have a franchise reservation system comparable to what chain motels have, although people may be able to go to a web page to make a reservation. *Zishka testimony.*
- c) Although realtors claim chain motels sell for 2.5 to 3 times their annual income, independent motels sell for only around twice their annual income. *Zishka testimony.*
- d) Using the income approach to value, the 2009 market value-in-use of the property was \$1,161,200. The averages of the Petitioner's actual revenues and expenses for 2007, 2008, and 2009 were used. Those numbers were obtained from the Petitioner's federal income tax returns.¹ In his concluding remarks, Mr. Zishka admitted that with more data he probably could determine whether the subject property was being run properly with good management, but his access to information was limited. *Zishka testimony; Pet'r Ex. 3, 4, 5, 6.*
- e) The selected capitalization rate of 11.2620% is the national average for this type of property taken from RealtyRates.com investor survey. *Zishka testimony; Pet'r Ex. 6.*
- f) No motels are for sale in Fayette County. No independent motels were found to be for sale anywhere in Indiana. Throughout Indiana only two motels were found to be currently for sale.² The asking price for one is \$775,000 and the asking price for the other is \$975,000. They are the only similar sized motels for sale in Indiana. *Zishka testimony; Pet'r Ex. 7.* Mr. Zishka could not answer specific questions about their locations and admitted that he did “very limited” research about these other two motels. *Zishka cross.*

¹ Mr. Zishka testified that in a telephone conversation he was told the Palm Investment tax returns represented only the subject property.

² “Currently” appears to refer to the time of the hearing, June 1, 2011.

12. Summary of the Respondent's case:
- a) There is no dispute about the fact that Fayette County has some economic troubles. The 2009 assessment of \$1,391,400 is based on trended values of local commercial properties and has lowered the assessment of the subject property. *Coleman testimony; Resp't Ex. 1a, 1b.*
 - b) Barton Barker, an appraiser employed by the Petitioner, concluded the value of the subject property was \$1,350,000 as of March 1, 2008. His valuation varies from the current assessment by only three percent and confirms the accuracy of the current assessment. Exhibits 2a and 2b are two pages from Barker's full appraisal. *Coleman testimony; Resp't Ex. 2a, 2b.*
 - c) The Petitioner previously presented the PTABOA with a calculation based on the income approach that purportedly used its income and expenses for 2007, 2008, and 2009. *Coleman testimony; Resp't Ex. 3.* The previous calculation differs from the calculation presented during this hearing. The inconsistencies in Mr. Zishka's calculations are red-flags. Furthermore, a capitalization rate that is based on national data is not as relevant to this region. *Coleman testimony; Pet'r Ex. 6.*
 - d) The Petitioner also owns a second motel that is adjacent to the subject property. Although the Petitioner has asserted that its income tax returns reflect the income and expenses of only the property under appeal, nothing on the returns indicates that to be the case. *Coleman testimony.*
 - e) The two realtor's listings presented by the Petitioner's representative are not relevant and do not help establish the value of the subject property for several reasons. Not enough data was presented about them to draw any conclusions. The list price of a property is not an indicator of its value. Further, these listed properties are located in Warren and La Porte. They are not representative of local Connersville market conditions. Additionally, both listings are for chain motels and the Petitioner's representative has testified that the property under appeal is not comparable to chain type motels. *Coleman testimony, referring to Pet'r Ex. 7.*

Analysis

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 a case, one 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) (a party has the duty to walk the Board through every element of the analysis supporting its case).

15. If 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). Then the assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. 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); MANUAL at 2. The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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. MANUAL at 5.
17. The valuation date for a 2009 assessment is January 1, 2008. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
18. The Petitioner did not make a case for any assessment change based on income capitalization.
 - a) Appraisals and comparable sales are the most common and often the most persuasive types of evidence to prove what a more accurate valuation is, but other evidence compiled in accordance with generally accepted appraisal principles also may be used. Specifically income and expense data presented in the context of a proper income capitalization approach can be an acceptable way for someone to prove a case. MANUAL at 5.
 - b) The Petitioner offered a calculation based on the income capitalization approach that is the main focus of its case. Although this kind of approach to valuation is one of the three generally accepted appraisal techniques, the Petitioner relied on evidence that is not contained within a professional, certified appraisal. Assuming that Mr. Zishka collected the data and did the income capitalization analysis, the record does nothing to establish his professional qualifications and it does nothing to establish that he complied with generally accepted appraisal

principles. These points diminish the credibility and reliability of his income capitalization approach.

- c) The income capitalization calculation that was presented relies solely on Palm Investment, Inc.'s income and expense data.³ In properly applying the income approach to determine the value of a property, it is appropriate to consider the historic and projected income and expense data of the property in question, but it is also necessary to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property is out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expense data helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) having nothing to do with the inherent value of a property. The Petitioner, however, provided no broader-based evidence or substantial analysis upon which to gauge the income and expense data that was used.
- d) In fact, the Petitioner emphasized how being an independent motel meant it did not have the kind of nationwide reservations system that chain motels would have. The Petitioner failed to present any evidence indicating how much this situation reduces its business. But whatever that reduction might be, it is the result of business decisions specific to the subject property. It is exactly the kind of thing that must be considered in the context of broader market data before any legitimate conclusions about the subject property can be reached. Apparently Mr. Zishka recognized this problem with his calculations because he acknowledged having limited access to information and admitted that with more data he probably could determine whether the subject property was being run properly with good management. Even though he attempted to diminish the importance of this point, the credibility of his proposed valuation depends on such a determination. Thus, the Petitioner failed to establish that the income capitalization analysis it relied on was compiled according to generally accepted appraisal principles.
- e) In addition, Mr. Zishka failed to explain how a national capitalization rate of 11.262% from RealtyRates.com relates to the market conditions in the Connersville area, even though he stressed the significance of the area's declining population and high unemployment. His testimony added nothing meaningful to the "cap rate derivation" shown on Petitioner Exhibit 6. Nothing in the record

³ The evidence about what the income tax returns actually represent is ambiguous. Mr. Zishka testified that he was *told* it was only from the subject property. His statement on that point is obviously hearsay. He did not identify who told him and he presented no other evidence to verify that fact. The tax returns do not indicate any particular motel or source of income. Testimony that the Petitioner operates another motel was undisputed. Therefore, it seems doubtful that the Petitioner's tax returns actually represent only the subject property.

explains the mortgage/equity ratio used to derive the cap rate. The Board is not convinced that the cap rate Mr. Zishka used for his calculation actually conforms to generally accepted appraisal practices.

- f) The computation offered in this case is based on unsubstantiated conclusions that do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - g) Although the Petitioner presented a calculation that was characterized as an income approach to determine the value of the subject property, the Petitioner failed to establish that it is accurate, reliable, or that it actually satisfies generally accepted appraisal principles. More specifically, the serious flaws in the analysis render the calculations meaningless and lacking in probative value. This evidence does not make a case for any assessment change.
19. The Petitioner did not make a case for any assessment change based on comparables.
- a) Mr. Zishka baldly testified that independent motels sell for only around twice their annual income. No sales or income evidence was provided to support that statement. Nor was the statement attributed to any particular source or a recognized authority. His statement on this point exemplifies an unsubstantiated conclusion. It does not constitute probative evidence and it does not help to prove a more accurate valuation. *Whitley Products*, 704 N.E.2d at 1119.
 - b) In bringing up the asking prices for the other two motels, the Petitioner apparently was attempting to use a comparison approach to prove the value of the subject property. *See* MANUAL at 3 (stating that a 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). But that attempt failed.
 - c) In order to support any legitimate conclusion about value from any comparison of properties, 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. The proponent also must explain how any differences between the properties affect their relative market values-in-use. *Id.* at 471; *see also Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels where, among other things, taxpayer did not compare the locations of purportedly comparable apartments).
 - d) The record provides very little basis for comparing the subject property with the other two motels. The subject property has “about” 56 rooms, while the Motel 6

in Warren has 47 rooms and the Super 8 Motel in LaPorte has 51 rooms. The property record card shows the subject property was built in 1990 and is on 1.422 acres. According to its listing, the Motel 6 was built in 1999 and is on 1.6 acres. According to its listing, the Super 8 Motel was built in 1985 and is on 0.53 acres. No evidence was presented about the types of rooms or other amenities these motels might have. Other than street address, no evidence was presented about what kind of locations the other properties might have. (For this type of business, things such as neighborhood, visibility, access, traffic patterns are probably significant.) Assuming that the three locations have no substantial differences would be sheer speculation. And the Petitioner did absolutely nothing to recognize where there are differences among these three properties or to establish what such differences do to their relative values.

- e) Therefore, even if it were true that the asking prices for those properties indicate maximum potential selling prices, the record provides no way to meaningfully relate that information to a more accurate valuation of the subject property.⁴ Consequently, the Petitioner's evidence concerning the listing of these motel properties lacks probative value. *See Long*, 821 N.E.2d at 471 (stating that it was not the Indiana Board's responsibility to review all the documentation submitted by a taxpayer to determine whether properties were indeed comparable—the taxpayer had that duty.)
 - f) In addition, the Petitioner failed to establish any basis for relating the May 2011 asking prices to the required valuation date of January 1, 2008. This failure is another reason that those listings have no probative value. *Long*, 821 N.E.2d at 471.
20. When a taxpayer fails to provide probative evidence supporting the 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. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley*, 704 N.E.2d at 1119.
21. Although having no duty to support the assessment, the Respondent introduced evidence that an appraisal had valued the property at \$1,350,000 as of March 1, 2008. But neither party requested the assessed value be changed to the appraised value. Furthermore, the appraisal itself is not in evidence. (The record contains only two pages from what was apparently a 41-page appraisal.) Under these circumstances the Board will not change the assessment to correspond with the appraised value.

Conclusion

22. The Petitioner failed to prove its case for any change in the assessment. The Board finds in favor of the Respondent.

⁴ There might be circumstances where his statement is accurate, but Mr. Zishka's conclusory testimony about asking prices indicating maximum potential selling price was not sufficient to convince us it's true in this case.

Final Determination

In accordance with the above findings and conclusions, there will be no change in the assessment.

ISSUED: _____

Commissioner, 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>