

REPRESENTATIVE FOR PETITIONER:
Alfred M. Plummer III, Secretary/Treasurer

REPRESENTATIVE FOR RESPONDENT:
Kelly Schenkel, Wabash County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

PILLAR CORPORATION,)	Petition Nos.: 85-009-07-1-4-00001
)	85-009-07-1-4-00002
Petitioner,)	
)	Parcel Nos.: 85-14-14-102-019.000-009
v.)	85-14-14-102-018.000-009
)	
WABASH COUNTY ASSESSOR,)	County: Wabash
)	Township: Noble
Respondent.)	Assessment Year: 2007

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

September 14, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (“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

Introduction

1. The Petitioner, Pillar Corporation, relied on an appraisal that estimated the subject property's value as of January 1, 2007. But the relevant valuation date for the March 1, 2007, assessment that Pillar appealed was January 1, 2006. Because Pillar did not sufficiently explain how the appraisal related to the subject property's market value-in-use as of January 1, 2006, Pillar's appraisal lacked probative value and Pillar failed to make a prima facie case for changing the property's assessment.

Procedural History

2. Pillar filed notice with the Wabash County Assessor contesting the March 1, 2007, assessments for the two parcels that comprise the subject property.¹ On July 22, 2008, the Wabash County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations lowering those assessments, but not to the level Pillar requested. As a result, on August 20, 2008, Pillar filed Form 131 petitions with the Board. The Board has jurisdiction over Pillar's appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On June 16, 2009, the Board's designated Administrative Law Judge, Joseph Stanford ("ALJ"), held a consolidated administrative hearing on Pillar's appeals. Neither the Board nor the ALJ inspected the subject parcels.

4. The following people were sworn in as witnesses:

For Pillar:

Alfred H. Plummer III, Secretary/Treasurer

David R. Metz, Indiana Certified General Appraiser

¹ Unless otherwise indicated, the Board refers to the two parcels together as the "subject property."

For the Assessor:

Kelly Schenkel, Wabash County Assessor
Brenda Conner, Wabash County Deputy Assessor
William Schultz, Technical advisor to Wabash County Assessor

5. Pillar submitted the following exhibits:
 - Petitioner Exhibit 1 – Appraisal of the appealed properties by David R. Metz,
 - Petitioner Exhibit 2 – Valuation opinion included within appraisal, and attached cover letter.

6. The Assessor submitted the following exhibits:
 - Respondent Exhibit 1 – Property record card for 99 West Canal Street,
 - Respondent Exhibit 2 – Property record card for 82-84 West Market Street,
 - Respondent Exhibit 3 – Property record card for 162 West Market Street.

7. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A – The Form 131 petitions,
 - Board Exhibit B – Notices of hearing,
 - Board Exhibit C – Hearing sign-in sheet.

8. The subject property contains an office building located at 27 West Canal Street in downtown Wabash.

9. The PTABOA fixed the subject property’s total assessment at \$115,100, broken down as follows:

<u>Parcel 85-14-14-102-019.000-009</u>		
Land: \$4,400	Improvements: \$37,900	Total: \$42,300
<u>Parcel 85-14-14-102-018.000-009</u>		
Land: \$7,800	Improvements: \$65,000	Total: \$72,800

10. Pillar requests a total assessment of \$91,700.

Administrative Review and the Parties' Burdens

11. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect 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).
12. In making its case, the taxpayer 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").
13. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *See also, Meridian Towers*, 805 N.E.2d at 479.

Analysis

Parties' Contentions

A. Pillar's Contentions

14. Pillar contends that the subject property was assessed too high in light of the value estimated by David R. Metz, a certified appraiser. *Plummer argument*. Mr. Metz certified that he appraised the subject property in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. 1 at 5*. Based on that appraisal, Mr. Metz estimated the subject property's market value at \$91,700 as of January 1, 2007. *Id. at 1*.
15. Mr. Metz used an approach that he alternately described as a unit-of-comparison analysis, a weighted-average analysis, and a direct-sales-comparison approach. *Metz testimony*;

Pet'r Ex. 1 at 15, Addendum. Mr. Metz collected data from 15 properties that sold in downtown Wabash between September 1, 2000, and April 2, 2008. *Metz testimony; Pet'r Ex. 1 at Addendum; Pet'r Ex. 2.* For his analysis, he selected two of those properties—one located at 30 West Canal Street and another located at 84 West Market Street. *Id.* He also selected a third property—99 West Canal Street—that did not sell. *Id.* Mr. Metz next calculated the per-square-foot sale price for the first two selected properties and the per-square-foot assessment for the third. *Id.* From there, Mr. Metz calculated a weighted-average. He assigned a weight of 40% to each of the first two properties and 20% to the third. *Id.* Based on that weighted average, Mr. Metz concluded that the subject property should be valued at \$18.15 per square foot, or \$91,700. *Id.*

16. While the Assessor took issue with Mr. Metz's decision to use retail properties in his analysis, a business building is a business building. *Plummer argument.* According to Mr. Metz, the concept of value-in-use does not apply to downtown business buildings, because they change uses all the time. Mr. Metz estimated that market value equates to market value-in-use about 90% of the time. *Metz testimony.* Similarly, although the Assessor questioned the validity of Mr. Metz using sales from 2003 in his weighted-average analysis, Mr. Metz testified that, when valuing commercial properties, he often uses older sales if he concludes that they are representative of the market. He adjusts and weighs those sales accordingly. *Metz testimony.*
17. To further support Pillar's requested assessment, Mr. Metz pointed to the sale of a property located at 33 West Canal Street. *Id.* On April 2, 2008, that property sold for \$25,000, or \$17.86 per square foot. *Id.* That property was also owned by Pillar, and was once part of the subject property. *Plummer testimony.* It is therefore comparable to the subject property. *Id.*
18. Mr. Metz also compared the subject property's assessment to the assessments of three properties located at 99 West Canal Street, 82-84 West Market Street, and 162 West Market Street. *Metz testimony; Pet'r Ex. 1 at 15, Addendum.* Those properties were

assessed at \$26.75 per square foot, \$14.14 per square foot, and \$19.54 per square foot, respectively. *Id.* The subject property was assessed at \$22.79 per square foot. *Id.*

19. Finally, Mr. Metz prepared a site analysis of the subject land. He looked at six sales of vacant parcels of land to arrive at a weighted average \$1.16 per square foot, which translated to a total value of \$5,800 for the subject site. *Pet'r Ex. 1 at 15, Addendum.*

B. The Assessor's Contentions

20. Given that Mr. Metz relied on sales from 2003, the Assessor questioned the validity of his appraisal. The Assessor also argued that Mr. Metz ignored the concept of market value-in-use. While the subject property was used for offices, Mr. Metz compared it to properties used for retail purposes. Indiana's assessing guidelines, however, require a property to be assessed based on its current use. *Shultz argument.*
21. Accordingly, the Assessor's witness, Mr. Schultz, took the three properties that Mr. Metz used in his assessment-comparison analysis and recalculated each property's per-square-foot price using the schedules for office buildings contained in the Real Property Assessment Guidelines for 2002-Version A. *Schultz testimony; Resp't Exs. 1-3.* Mr. Schultz computed an average price of \$23.66 per square foot. *Schultz testimony; Resp't Ex. 3.*

Discussion

22. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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 value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana

assessing officials generally use the mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

23. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *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 USPAP often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
24. Regardless of the method used to rebut the 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. 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). Otherwise, that evidence lacks probative value. *See id.* For March 1, 2007, assessments, the relevant valuation date was January 1, 2006. 50 IAC 21-3-3.
25. Pillar relied primarily on Mr. Metz's appraisal. As explained above, a market value-in-use appraisal performed in accordance with USPAP often will suffice to make a prima facie case. But Mr. Metz estimated the subject property's value as of January 1, 2007, a full year removed from the relevant January 1, 2006, valuation date. Thus either Pillar or Mr. Metz needed to explain how the appraisal demonstrated or was relevant to the subject property's value as of January 1, 2006.
26. They did not provide that explanation. Mr. Metz did testify that "in commercial property I use older sales all the time. Now I adjust for them and weight them accordingly. If I don't believe that it is appropriate or . . . it is a true reflection of the market, I put little

weight on it or I'll make adjustments based on market conditions to bring it up or bring it down." *Metz testimony*. But nowhere in Mr. Metz's testimony or appraisal report did he explain how he adjusted the sale prices from his comparable properties to account for time-related value differences. In fact, Mr. Metz offered very little information about any of the comparable properties in his analysis, much less about his decisions on how to weigh or adjust their sale prices. In any event, Mr. Metz did not adjust the comparable properties' sale prices to reflect January 1, 2006, values. While Mr. Metz did make time-related adjustments to the sale prices for the comparable properties that he used to estimate a site value for the subject property, those adjustments related solely to vacant-land sales. And again, they reflect adjustments to January 1, 2007, rather than to January 1, 2006.

27. Pillar also relied on the April 2, 2008, sale of a neighboring property that it had previously owned. Once again, Pillar did not explain how that sale price related to the relevant January 1, 2006, valuation date. Thus, like Mr. Metz's appraisal, that sale price lacks probative value.

Summary of Final Determination

28. Because Pillar did not adequately explain how its evidence related to the subject property's value as of the relevant January 1, 2006, valuation date, it failed to make a prima facie case that the subject property's assessment was wrong. The Board therefore finds for the Assessor.

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>>