

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

Petition: 03-005-11-1-4-00005
Petitioner: SE Indiana Medical Holdings, Inc.
Respondent: Bartholomew County Assessor
Parcel: 03-96-20-310-000.103-005
Assessment Year: 2011

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

PROCEDURAL HISTORY

1. The Petitioner initiated the assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (the “PTABOA”) by filing a Form 130 dated March 2, 2012.
2. The PTABOA mailed its notice of final assessment determination (Form 115) on December 28, 2012, denying the Petitioner relief.
3. The Petitioner appealed to the Board by filing a Form 131 petition for review on February 8, 2013.
4. The Petitioner elected to have the administrative hearing conducted under the Board’s small claims procedures and the Respondent did not elect to have the proceeding removed from the Board’s small claims procedures.
5. Paul Stultz, the Board’s appointed Administrative Law Judge (the “ALJ”), held the administrative hearing on May 29, 2014. The ALJ did not inspect the subject property.
6. Tax Representative Milo Smith represented, and was sworn in as a witness for, the Petitioner. Bartholomew County Assessor Lew Wilson represented, and was sworn in as a witness for, the Respondent. Virginia Whipple was also sworn in as a witness for the Respondent.

FACTS

7. The subject property is a medical office building located at 3015 Tenth Street in Columbus.

8. The PTABOA determined the 2011 assessed value for the land is \$270,100 and the assessed value for the improvements is \$1,325,900, for a total assessed value of \$1,596,000.
9. At the hearing, the Petitioner requested a total assessed value of \$1,336,900 for the subject property.

RECORD

10. The official record contains the following:
 - a. Digital recording of the hearing,
 - b. Petitioner Exhibit 1 – Form TS-1A for the Subject Property
Petitioner Exhibit 2 – Subject Property Record Card (PRC)
Petitioner Exhibit 3 – Form 130 filed March 2, 2012
Petitioner Exhibit 4 – Reproduction Cost New worksheet (RCN) prepared by Mr. Smith with Aerial Map and PRCs
Petitioner Exhibit 5 – Copy of 50 IAC 27-2-7 “IAAO Standards” defined

Respondent Exhibit AA – Whipple and Wilson Credentials
Respondent Exhibit A – Burden of Proof Document
Respondent Exhibit B – Department of Local Government Finance (DLGF) Memo on Burden of Proof dated May 7, 2014
Respondent Exhibit C – 2011 and 2010 Subject PRCs
Respondent Exhibit D – Aerial View of Subject Property
Respondent Exhibit E – Seven Exterior and Interior Pictures of the Subject Property,
Respondent Exhibit F – Corrected PRC for the Cost Approach
Respondent Exhibit G – IncomeWorks Description
Respondent Exhibit H – Income Approach Workup
Respondent Exhibit I – Sales Approach Workup
Respondent Exhibit II – Aerial Showing Location of Sales
Respondent Exhibit J – PRCs for Comparable Sales
Respondent Exhibit K – Time Adjustment Explanation
Respondent Exhibit L – Time Adjustment Charts
Respondent Exhibit M – Median Sales Used in Time Adjustment
Respondent Exhibit N – Backup Data for Time Adjustment
Respondent Exhibit O – Size Adjustment Explanation
Respondent Exhibit P – Assessment Comparison
Respondent Exhibit Q – Reconciliation of Values

Board Exhibit A – Form 131 Petition
Board Exhibit B – Notice of Hearing
Board Exhibit C – Hearing Sign-in Sheet
 - c. These Findings and Conclusions.

OBJECTION

11. The Petitioner objected to the admission of the Respondent's Exhibits G and H on the grounds that the DLGF has not approved IncomeWorks as a way to assess properties in Bartholomew County. *Petitioner testimony*. The Respondent contends that the income approach is an approved method of valuing property in Indiana and that IncomeWorks is a tool the county can use to compute the income approach. The Respondent further contends that approval of IncomeWorks by the DLGF is not necessary. *Respondent testimony*. Parties are permitted to offer evidence relevant to the market value-in-use to rebut or affirm a property's assessed value. The Petitioner provided no grounds for the objection. The Petitioner's objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled.

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). A burden-shifting statute creates two exceptions to that rule.
13. First, Ind. Code § 6-1.1-15-17.2(a) "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Under Ind. Code § 6-1.1-15-17.2(b), "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 the Indiana tax court."

Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15." Under those circumstances,

if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving the assessment is correct.

14. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include this language. This change applies to all appeals pending before the Board. *See P.L. 97-2014*.
15. In the present case, the parties have expressly agreed on the record that the Petitioner has the burden of proving the 2011 assessment is incorrect.

CONTENTIONS

16. Summary of the Petitioner's case:

- a. The Petitioner was assessed, and paid taxes on, a value of \$1,596,000 for 2011. This value appears on the Form TS-1A and the subject property PRC. *Petitioner testimony; Petitioner Exhibits 1 and 2.* The front of the PRC shows land of \$270,100 and improvements of \$1,325,900. The back of the PRC shows the RCN of the improvement labeled "MEDOFF" to be \$1,162,230. The next column shows a physical depreciation rate of 12%. Subtracting the depreciation amount of 12% from the RCN amount should result in a value of \$1,022,760. However, the PRC indicates a value of \$1,268,200 which is 24% higher than what the value should be after subtracting depreciation. There is no indication on the PRC that reflects or explains the 24% adjustment increase. *Petitioner testimony; Petitioner Exhibit 2.*
- b. The Petitioner prepared a summary sheet comparing the RCN of the subject property to seven comparable properties. Three of the comparable properties (listed as numbers 1, 4, and 7 on Petitioner Exhibit 4) are medical offices similar to the subject property. An aerial photo shows that the seven comparable properties are located near the subject property on the same side of Tenth Street. The Petitioner provided PRCs for each of the comparable properties to show that only the subject property has the 24% adjustment increase as described above.
 - Comparable property #1 has a RCN of \$3,753,810 minus 10% depreciation for a value of \$3,378,400,
 - Comparable property #2 has a RCN of \$556,150 minus 12% depreciation for a value of \$489,400,
 - Comparable property #3 has a RCN of \$455,130 with 0% depreciation for a value of \$455,100,
 - Comparable property #4 has a RCN of \$546,900 with 0% depreciation for a value of \$546,900,
 - Comparable property #5 has a RCN of \$781,200 minus 2% depreciation for a value of \$765,600,
 - Comparable property #6 has a RCN of \$565,690 with 0% depreciation for a value of \$565,700,
 - Comparable property #7 has a RCN of \$1,175,540 minus 2% depreciation for a value of \$1,152,000.*Petitioner testimony; Petitioner Exhibit 4.*
- c. Upon questioning by the Respondent, the Petitioner testified that his intention with regard to Petitioner Exhibit 4 was to compare the 2011 assessed value of the subject property with the comparable properties. *Petitioner testimony.*
- d. For the subject property to be assessed uniformly with the neighboring properties, the Petitioner contends that the assessed value for 2011 should be \$270,100 for the land

and \$1,066,800¹ for the improvements for a total assessment of \$1,336,900.
Petitioner testimony.

17. Summary of the Respondent's case:

- a. The Petitioner stated, with regard to his Exhibit 4, that his intention was to use the 2011 assessed value. The Respondent noted that the Petitioner is comparing the value on the back of the PRC. The Respondent explained that the value on the back of the PRC is the worksheet value and the actual assessed value is in the 03/01/2011 column on the front of the PRC. *Respondent testimony; Petitioner Exhibit 4.* The Respondent further explained that the value on the back of the PRC is a result of using the cost approach. The cost approach is not always the most appropriate approach and there are times when a different approach, for example the sales approach or the income approach, might be used. The reason the value on the back of the PRC does not always match the front of the PRC is because the county uses a method referred to as the "correlation of values." Use of this method brings the cost value from the back of the PRC up to the market value-in-use when the value is established using the sales or income approach. The software will only allow the entry of a flat value. *Respondent testimony.*
- b. The Respondent recently visited the subject property and discovered two errors in the description on the PRC. First, the allocation of square footage between utility storage space and office space was incorrect. Second, three "stoops" were found to be overvalued and needed to be removed from the description. The Respondent prepared a proposed PRC based on the cost approach showing a value of \$1,608,800. The assessed value was not actually changed, however. *Respondent testimony; Respondent Exhibit F.*
- c. In calculating the income approach value, the Respondent used IncomeWorks which is locally relevant, county specific rental data software for commercial and industrial property. The software uses local rents, expenses, vacancy and capitalization rates. The user inputs data specific to the subject property and the program produces a value. The IncomeWorks Evaluation Report shows the subject property is a multi-tenant medical office building with an area of 15,679 square feet. The value computed under the income approach using IncomeWorks is \$1,899,091. *Respondent testimony; Respondent Exhibits G and H.*
- d. The Respondent cited four medical office sales in the sales comparison approach. The first sale is the subject property. Two of the comparable sales are in the same vicinity as the subject property. The final sale is in another part of town. Adjustments for time, age, quality, and size were made. The subject property sold in 2007, four years prior to the assessment date, for \$2,100,000. The time adjusted value of the subject property is \$2,007,600. The adjusted per square foot value range is \$128.87 to \$196.15. The median adjusted per square foot value is \$135.77 and the mean adjusted value per square foot is \$149.14. The Assessor presented a map

¹ It is unclear as to how the Petitioner specifically arrived at a proposed value of \$1,066,800 for the improvements.

showing the location of the four sales and the PRCs for each of the properties with regard to the sales. Documentation explaining and supporting the time adjustment was also presented. The size adjustment was determined using IncomeWorks. An adjustment of 5% was used for buildings consisting of less than 10,000 square feet. *Respondent testimony; Respondent's Exhibits. I, II, J, K, L, M, N, and O.*

- e. The Respondent also compared the assessments of the four medical offices². The assessment per square foot ranges from \$102.45 to \$162.26. The subject property is at the low end at \$102.45 per square foot which indicates, the Respondent contends, that the subject property is under-assessed compared to similar properties. The median assessment per square foot is \$129.25 and the mean is \$130.80. *Respondent testimony; Respondent Exhibit P.*
- f. On the Respondent's reconciliation of values, he notes that the cost approach shows a value of \$1,596,000, but contends the value under that approach should be \$1,608,800. The income approach shows a value of \$1,889,100 while the sales approach shows a value of \$2,007,600. The Respondent contends the income approach is the best approach to value the subject property and requests a value of \$1,889,100. *Respondent testimony; Respondent Exhibit Q.*

ANALYSIS

- 18. 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm an assessed valuation. 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. *Id.* at 3.
- 19. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2011, the assessment and valuation dates were the same, March 1, 2011. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- 20. The Petitioner presented a summary sheet comparing the RCNs of seven neighboring properties. The Petitioner prepared the summary with the intention of comparing the

² Note the property at 3135 Middle Road was not one of the sales included on Respondent Exhibit I. It appears in place of 940 N Marr Road.

2011 assessed values. *Petitioner testimony*. After hearing the testimony and reviewing the evidence, the RCNs listed are the worksheet values based on the cost approach from the back of the PRC and not the assessed values. While the Petitioner did provide the PRCs for the subject property and the seven other properties, the Petitioner did not provide any meaningful comparative analysis. At best, the Petitioner stated that the seven properties were located on the same side of Tenth Street in the immediate area and three of the properties had the same use as the subject property. The Petitioner simply argues that because the seven properties do not have a 24% adjustment, then the subject property's assessment is incorrect.

21. The Petitioner concluded that for the subject property to be uniformly assessed with the neighboring properties, the 24% adjustment must be removed. *Petitioner testimony*. Yet the Petitioner offered no information specific to the uses or descriptions of the comparable properties, or to recent sales information of comparable properties to support the contention. The information provided is insufficient for the Board to conclude that these properties are in fact comparable to the subject property or that the assessed value of the subject property is incorrect. *See Kooshtard Property VIII, LLC, v. Shelby County Assessor*, 987 N.E. 2d 1178, 1181 (Ind. Tax Ct. 2013). Conclusory statements are of no probative value unless accompanied by some explanation relating them to the property's true tax value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1116 (Ind. Tax Ct. 1998).
22. Accordingly, the Petitioner failed to establish a prima facie case that there is an error in the 2011 assessment of the subject property. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006), (stating that "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.").
23. When a taxpayer fails to provide probative evidence supporting its 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 Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
24. The Petitioner's failure to establish a prima facie case that there is an error in the 2011 assessment does not, however, end the Board's inquiry because the Respondent requested an increase in the assessed value. The Respondent has the burden of proving the assessment should be increased. The Board, therefore, turns to the Respondent's evidence.
25. The Respondent looked at all three valuation approaches and, after reconciliation, determined that the income approach was the best indicator of value. The Respondent used IncomeWorks to compute the value based on the income approach. The IncomeWorks Evaluation Report indicates a rental income of \$19.92 per square foot, vacancy of 11.01%, expenses of \$7.67 per square foot, and a capitalization rate of 8.25%. *Respondent Exhibit H*. The record, however, contains no substantial basis for any of

these numbers. Furthermore, there is no evidence that the report was prepared according to generally accepted appraisal principles. Therefore, the report does not support an increase in the assessment.

CONCLUSION

26. The Petitioner failed to make a prima facie case for reducing the assessment. The Respondent failed to make a prima facie case for increasing the assessment. Accordingly, the end result is that no change in the assessment should be made.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the 2011 assessment will not be changed.

ISSUED: August 26, 2014

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>>.