

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

Petition Nos.: 45-030-08-1-4-00003
45-030-09-1-4-00008
45-030-10-1-4-00004
Petitioner: Southlake Nautilus Health and Racquet Club, Inc.,
and 45th Street Properties, LLC¹
Respondent: Lake County Assessor
Parcel No.: 45-12-21-276-002.000-030
Assessment Years: 2008, 2009, and 2010

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

Procedural History

1. The Petitioners initiated their assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written request dated November 13, 2009, for the 2008 assessment year, by written request dated November 6, 2010, for the 2009 assessment year, and by written request dated June 28, 2011, for the 2010 assessment year.
2. The PTABOA failed to hold a hearing on the Petitioners' appeals within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioners filed appeals to the Board by filing Form 131 petitions on October 23, 2012. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under a subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioners elected to have the appeals heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 9, 2012.

¹ Southlake Nautilus Health and Racquet Club, Inc., owned the property on the March 1, 2008, assessment date. 45th Street Properties, LLC, purchased the property on January 22, 2009.

5. The Board held an administrative hearing on January 7, 2013, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.

6. The following persons were present and sworn in at hearing:

For Petitioner: Rex D. Hume, Tax representative,
Jeffrey R. Vale, MAI appraiser,

For Respondent: Robert W. Metz, Lake County Hearing Officer.

Facts

7. The property under appeal is a health club located at 240 West 79th Avenue, Merrillville, Indiana.

8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2008, the assessor determined the assessed value of the property to be \$696,200 for the land and \$1,101,800 for the improvements, for a total assessed value of \$1,798,000. For 2009, the assessor determined the assessed value of the property to be \$696,200 for the land and \$1,133,700 for the improvements, for a total assessed value of \$1,829,900 and for 2010, the assessor determined the assessed value of the property to be \$696,200 for the land and \$945,100 for the improvements, for a total assessed value of \$1,641,300.

10. For 2008, the Petitioners requested either a total assessed value of \$1,113,400, or \$1,224,700 for the subject property. For 2009, the Petitioners requested either a total assessed value of \$1,125,600 or \$1,238,200 and for 2010, the Petitioners requested a total assessed value of \$961,800 or \$1,058,000.²

Issues

11. Summary of the Petitioners' contentions in support of the alleged errors in the property's assessment:

- a. The Petitioners' representative contends that the Petitioners' property was over-valued in 2008, 2009, and 2010 based on the property's purchase price. *Hume testimony*. In support of this contention, Mr. Hume submitted the sales disclosure form and the closing statement for the subject property showing the property was purchased on January 22, 2009, for \$1,050,000. *Petitioner Exhibits 2 and 3*. Mr. Hume calculated trending factors based on the changes in the property's assessed values from year to year. *Hume testimony; Petitioner Exhibit 5*. According to Mr. Hume, the resulting values based on the purchase price are \$1,113,400 for the March

² Mr. Hume presented two alternative values for each year. He based one value on the purchase price of the property trended to the relevant valuation dates. For the second method, he used the property's appraised value trended to each valuation date.

- 1, 2008, assessment, \$1,125,600 for the March 1, 2009, assessment and \$961,800 for the 2010 assessment date. *Hume testimony; Petitioner Exhibit 1*. Mr. Hume admitted that the buyer and seller shared some investors and that there was no normal market exposure. *Hume testimony; Petitioner Exhibit 4*. However, he argued that the overlapping investors did not have a majority interest in either entity. *Id.* Further, Mr. Hume contends, the sale was a negotiated deal among knowledgeable real estate investors – which provides some assurance that the purchase price reflects the property’s market value. *Id.*
- b. Alternatively, Mr. Hume contends the property was over-valued based on the property’s appraised value. *Hume testimony*. In support of this contention, Mr. Hume submitted an appraisal prepared by Jeffrey R. Vale, a certified MAI appraiser, who certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Petitioner Exhibit 6*. The appraisal valued the property at \$1,155,000 as of January 1, 2009. *Id.* According to Mr. Vale, he developed all three approaches to value, but relied primarily on the sales comparison approach. *Id.; Vale testimony*.
- c. Mr. Vale testified that there were no arm’s length sales of health club properties in northwest Indiana. *Vale testimony*. According to Mr. Vale, he expanded his search area to northern and central Indiana and found three health clubs that were comparable to the subject property. *Id.* Mr. Vale testified that he also included a sale of a commercial property in Merrillville because, although it was not a health club, it fit in with the other sales. *Id.* Mr. Vale estimated the value of the subject property using the sales comparison approach was \$1,155,000. *Id.*
- d. Mr. Vale testified that, in his cost approach to value, he considered four sales of vacant commercial land that he deemed to be the most comparable to the subject property’s land. *Vale testimony; Petitioner Exhibit 6*. From the four sales, Mr. Vale estimated the land value to be \$102,000 an acre, or \$275,400. *Id.* Mr. Vale then calculated the depreciated cost of the improvements to be \$947,409 using Marshall Valuation Service, resulting in a value of \$1,223,000 for the property using the cost approach. *Id.*
- e. Finally, Mr. Vale testified that he developed the income approach to value the Petitioners’ property. *Vale testimony*. According to Mr. Vale, he found only two health club rentals in the area so he also included a large commercial office space. *Id.; Petitioner Exhibit 6*. From those leases, Mr. Vale determined that \$6.00 a square foot on a net lease basis was a reasonable market rent for the subject property. *Id.* After calculating the gross income, vacancy and collection loss, and the expenses, Mr. Vale estimated the property’s net operating income to be \$118,364, which he capitalized using an 11.5% loaded capitalization rate, resulting in an estimated value of \$1,029,000 for the subject property. *Id.*

- f. In response to the assessor's case, Mr. Vale contends the assessor's appraiser made several errors that would affect his value conclusion. *Vale testimony; Petitioner Exhibit 8.*
 - g. Mr. Vale first argues that the Respondent's cost approach should be given little weight. *Vale testimony.* According to Mr. Vale the appraiser used \$375,000 as the sale price for the sale of 7101 East 81st Avenue, when the actual price was \$300,000. *Id.* Mr. Vale supported his argument with a sales disclosure report from the Department of Local Government Finance. *Id.* In addition, Mr. Vale argues that the 30% zoning adjustment to 9527 Broadway was too high. *Vale testimony.* According to Mr. Vale, the adjustment amounts to \$114,000, but the land is surrounded by commercial property. *Id.* Thus, Mr. Vale argues, it would not cost much to have the property rezoned from agricultural land to commercial land. *Id.* Further, Mr. Vale argues, the assessor's appraiser used an economic life of 25 years for the building. *Vale testimony.* But Mr. Vale contends that, because of the property's steady decline in revenues, the property has only fifteen more years of economic life. *Id.*
 - h. Similarly, Mr. Vale contends the assessor's appraiser's sales comparison analysis should not be relied upon by the Board. *Vale testimony.* According to Mr. Vale, in his sales comparison approach, Mr. Stronks shows a sale price of \$875,000 for 218 South East Street, which is the Super Bowl bowling alley in Crown Point. *Id.* But Mr. Vale presented the sales disclosure form which indicates that the property sold for \$666,000. *Id.* Mr. Vale contends that Mr. Stronks also failed to consider how inferior the subject property's location is to his comparable properties and therefore, Mr. Vale argues, his location adjustments were too low. *Id.*
 - i. Finally, Mr. Vale argues that the assessor's appraiser's income approach has little credibility. *Vale testimony; Petitioner Exhibit 8.* According to Mr. Vale, three of Mr. Stronks' comparable rental properties are on commercial thoroughfares and the appraiser either made a small location adjustment or, in the case of 9159 Wicker Boulevard in St. John, no adjustment at all. *Id.* Moreover, two of the appraiser's rentals are to national health club chains. *Id.* Mr. Vale contends that the subject property would not be desirable to a national chain because of the property's poor visibility and access. *Id.*
12. The Respondent admits that the property's assessed values were too high based on the property's appraised value, but argues that the property should be valued higher than the assessed value the Petitioners seek for 2008, 2009 and 2010. The Respondent presented the following evidence in support of its contention:
- a. The Respondent's representative contends the assessed value of the Petitioners' property should be \$1,550,000 based on its appraised value. *Metz testimony.* In support of this contention, Mr. Metz submitted an appraisal prepared by William Stronks, an Indiana certified general appraiser, who valued the property at \$1,550,000 as of January 1, 2009. *Respondent Exhibit 2.* In his appraisal, Mr. Stronks certified

that he prepared his appraisal report in accordance with USPAP. *Id.* Mr. Stronks used all three approaches to value to develop his estimate of value. *Id.*

- b. According to the Respondent's appraiser's report, Mr. Stronks based his sales comparison approach on four sales of commercial properties located within a relatively similar market. *Respondent Exhibit 2.* After adjusting the sales for differing physical and locational characteristics, Mr. Stronks estimated the value of the subject property to be \$1,550,000. *Id.* Mr. Stronks gave primary emphasis to the sales comparison approach in his valuation. *Id.*
- c. The Respondent's appraiser also developed the cost approach to value. *Respondent Exhibit 2.* Mr. Stronks used four vacant land sales and estimated the value of the land on the subject property to be \$120,000 an acre, or \$320,000. *Id.* According to the appraiser, he calculated the depreciated value of the improvements at \$1,351,983. *Id.* Using the cost approach, Mr. Stronks estimated the value of the subject property to be \$1,650,000. *Id.*
- d. The Respondent's appraiser located five similar rental properties within the subject property's general market area and adjusted the properties for differences in location, size, type of tenant, and condition. *Respondent Exhibit 2.* According to Mr. Stronks, he estimated the property's net operating income at \$157,201. *Id.* In Mr. Stronks' appraisal, he stated that he analyzed capitalization rates and deemed a capitalization rate of 9.5% to be applicable to the subject property. *Id.* The appraiser contends that, because the income approach is based on a net lease scenario, he multiplied the local tax rate times the vacancy rate to load the rate. *Id.* Mr. Stronks calculated the loaded capitalization rate at 9.7%. *Id.* The resulting value conclusion is \$1,620,000 using the income capitalization approach. *Id.*
- e. In the hearing, Mr. Metz testified: "I believe both appraisals took into consideration all three approaches to value and both appraisers probably ran into the same problems, separately, the lack of comparable sales and, obviously, the limitations to the three different approaches to value." *Metz testimony.* And he concluded "[i]t appears like they both came to a somewhat similar conclusion." *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Form 131 petitions,
 - b. A digital recording of the hearing labeled Southlake Nautilus/45th Street,
 - c. Exhibits:

Petitioner Exhibit 1 – Summary of issues,

Petitioner Exhibit 2 – Sales disclosure form for the subject property,

Southlake Nautilus/45th Street Properties

Findings & Conclusions

Page 5 of 10

Petitioner Exhibit 3 – Closing statement for the subject property,
Petitioner Exhibit 4 – Statement of Martin Shreibak,
Petitioner Exhibit 5 – Trending factors calculated from the property’s assessed values,
Petitioner Exhibit 6 – Appraisal report of Jeffrey R. Vale, MAI,
Petitioner Exhibit 7 – Income trends from 2005 to 2012 for Southlake Nautilus,
Petitioner Exhibit 8 – Review of the Q and A Appraisal by Jeffrey R. Vale, MAI,

Respondent Exhibit 1 – Copy of Petitioners’ appraisal report,
Respondent Exhibit 2 – Appraisal report of Q and A Appraisal Service, Inc.,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notice of hearing, dated November 9, 2012,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that its property’s assessment is wrong 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). Effective July 31, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and reenacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment. Here, because the property’s 2008, 2009, and 2010 assessed values did not increase by more than 5% over the previous year’s assessment, the Petitioners have the burden of proof for all three assessment years.

Analysis

15. The Petitioners established a prima facie case that their property’s assessments were over-stated for the March 1, 2008, March 1, 2009, and March 1, 2010, assessment dates. The Respondent presented rebuttal evidence, but the weight of the evidence supports the Petitioners’ proposed values. The Board reached this decision for the following reasons:
- a. In Indiana, assessors value real property based on the property’s market value-in-use, 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.” MANUAL at 2. Thus, a party’s evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal

³ HEA 1099 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

- prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- b. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the 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). For the March 1, 2008, and March 1, 2009, assessment dates, the valuation date was January 1 of the previous year. 50 IAC 21-3-3. For the March 1, 2010, assessment date, however, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).
- c. Here, the Petitioners presented a market value appraisal prepared by Jeffrey R. Vale, an Indiana certified appraiser and MAI, who prepared the appraisal in accordance with USPAP. Using the sales comparison approach, the cost approach, and the income capitalization approach, the appraiser estimated the value of the property to be \$1,155,000 as of January 1, 2009. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is incorrect. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Further, the Petitioners' representative presented some evidence to trend the appraised value to the correct valuation dates. Thus, the Board finds that the Petitioners raised a prima facie case that their property should be assessed at \$1,224,700 for March 1, 2008, \$1,238,200 for March 1, 2009, and \$1,058,000 for March 1, 2010.
- d. The Petitioners also presented the sales disclosure form and the closing statement from the purchase of the subject property for \$1,050,000 on January 22, 2009. However, Mr. Hume admitted that the sale was a negotiated deal among real estate investors – some of whom had interests in the both sides of the transaction. The Respondent's appraiser voiced the same concern in his appraisal. Moreover, the Respondent's appraiser contends that public records show that the purchase price was \$1,315,593. Thus, because the property was not widely marketed, the buyer and seller shared some common investors, and because the actual price of the property is in dispute, the Board finds that the property's purchase price is less reliable than the property's appraised value.
- e. Once the Petitioners raised a prima facie case that their property was over-valued, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- f. Here, the Respondent also presented an appraisal of the property's market value. The Respondent's appraisal was prepared by William Stronks, an Indiana certified general appraiser who prepared the appraisal in accordance with USPAP. Mr. Stronks used all three approaches to value and estimated the value of the property to be \$1,550,000 as of January 1, 2009. While Mr. Stronks did not provide any explanation about how the appraisal of January 1, 2009, might demonstrate or be relevant to the value of the property as of January 1, 2007, January 1, 2008, or March 1, 2010, the Respondent's appraiser valued the property as of the same date the Petitioners' appraiser used. Thus, there is some evidence in the record that trends the property's appraised value to the relevant valuation dates.
- g. Both the Petitioners' appraisal and the Respondent's appraisal occurred sufficiently contemporaneously with the statutory valuation dates to be probative of the property's value for the 2008, 2009 and 2010 assessment dates. The Board must, therefore, weigh the evidence presented by both parties and determine the most persuasive evidence of the property's value.
- h. First, although both appraisers used the same comparable land sales to develop the land value for the subject property, the Respondent's appraiser used a sale price of \$375,000 for 7101 E. 81st Avenue. The Petitioners' appraiser, however, presented the sales disclosure information showing the property sold for \$300,000. Mr. Vale also contends the 30% adjustment to 9527 Broadway for zoning used by Mr. Stronks is excessive because the property is surrounded by commercial property and there is no justification for believing a zoning change would cost \$114,000.
- i. Mr. Vale also contends that the sale price of \$875,000 for 218 South East Street used by Mr. Stronks in his sales comparison approach to value is incorrect. Mr. Vale submitted the sales disclosure form which shows that the property sold for \$666,000. Mr. Vale further contends that the location adjustments in the Respondent's appraisal are too low because the subject property is hidden. Mr. Vale argues that the Petitioners' property is not located on a major thoroughfare like the Respondent's appraiser's comparable sales.
- j. Further, Mr. Vale disagreed with Mr. Stronks' value using the income capitalization approach. Mr. Vale argues that 4340 Lincoln Highway in Matteson, Illinois, and 2744 East 146th Street in Carmel, Indiana, are leased to national health clubs who would not be interested in the subject property because of its location. Further, the properties located at 4340 Lincoln Highway in Matteson, Illinois, 2744 East 146th Street in Carmel, Indiana, and 9159 Wicker Boulevard in St. John, Indiana, are all on commercial thoroughfares unlike the subject property.
- k. The Respondent, on the other hand, did not raise any issues with the Petitioners' appraisal. In fact, Mr. Metz testified, "I believe both appraisals took into consideration all three approaches to value and both appraisers probably ran into the same problems, separately, the lack of comparable sales and, obviously, the

limitations to the three different approaches to value.” And he concluded “[i]t appears like they both came to a somewhat similar conclusion.” Thus, because of the errors identified by the Petitioners’ appraiser in the Respondent’s appraisal and the Respondent’s failure to present any impeachment or rebuttal evidence, the Board finds the Petitioners’ appraisal more probative of the subject property’s market value-in-use for the 2008, 2009 and 2010 assessment years.

Conclusion

16. The Board finds the weight of the evidence supports the Petitioners’ appraised value trended to the relevant valuation dates and therefore holds that the assessed value of the subject property is \$1,224,700 for 2008, \$1,238,200 for 2009, and \$1,058,000 for 2010.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should be reduced for the 2008, 2009, and 2010 assessment years.

ISSUED: March 21, 2013

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>.