

REPRESENTATIVE FOR PETITIONER:

Heidi Cintron, Property Tax Manager, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Kristin Rowe, Concord Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Wyland Drive Associates LTD,)	Petition No.: 20-011-07-1-3-00095
c/o Holladay Properties,)	
)	Parcel No.: 20-06-01-176-020.000-011
Petitioner,)	
)	County: Elkhart
v.)	
)	Township: Concord
Elkhart County Assessor,)	
)	
Respondent.)	Assessment Year: 2007

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

January 6, 2010

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. To support its claim that the subject property was over-assessed, Wyland Drive Associates, LTD relied on the valuation opinion of Heidi Cintron, its property tax manager. While Ms. Cintron’s opinion tracked generally accepted valuation approaches

in form, she did not explain how she made key substantive judgments underlying her opinion. Wyland therefore failed to meet its burden of proof.

Procedural History

2. Wyland appealed the subject property's March 1, 2007 assessment. On June 22, 2009, the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding that assessment. Wyland then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Wyland's appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On August 11, 2010, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on Wyland's appeal. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. The following people were sworn in as witnesses:
For Wyland: Heidi Cintron, Property Tax Manager
Michael Micka, Property Management Director
Timothy Baker, Executive Vice President of Asset Management

For Elkhart County: Cathy Searcy, Elkhart County Assessor
Kristin Rowe, Concord Township Assessor
5. Wyland submitted the following exhibits:
Petitioner Exhibit 1: July 26, 2010 letter from Heidi Cintron to the Board; July 6, 2010 hearing notice; June 1, 2009 letter from Cintron to the PTABOA with attached statement from George R. Barkley; May 15, 2009 letter from Wyland to the PTABOA; May 7, 2009 letter from Cintron to the PTABOA; tax representative certificate for Cintron;
Petitioner Exhibit 2: Form 114 notice of PTABOA hearing;
Petitioner Exhibit 3: Property record card for the subject property; site plan; 2008 tax statement;
Petitioner Exhibit 4: Sales comparison grid; arrayed details of comparable sales; photographs, property record cards, county online property data, and sales details for comparable sales;

Petitioner Exhibit 5: Income approach calculations; financial statements for 2004-2007.

6. The Assessor submitted the following exhibits, although the Board excludes Exhibits B-G in response to Wyland's objection:

Respondent Exhibit A: Form 131 petition; Form 115 determination; property record card for the subject property;

Respondent Exhibit B: Wyland's sales-comparison grid with handwritten remarks;

Respondent Exhibit C: Printout from the Board's website;

Respondent Exhibit D: Printout from www.Bluecrownfunding.com;

Respondent Exhibit E: August 9, 2010 letter from Steven W. Sante to the Concord Township Assessor; Mr. Sante's resume, education transcript, and references; cover page and copies of pp. 276, 490, 491-92 from THE APPRAISAL OF REAL ESTATE (13th ed.); copies of documents from Marshall Valuation Service (11 pages); "Example of How to Calculate Reserve Allowance";

Respondent Exhibit F: Copy of Ms. Cintron's income-approach calculations with handwritten proposed corrections;

Respondent Exhibit G: August 5, 2010 printout from www.loopnet.com titled "Elkhart, IN Market Trends*Beta*."¹

7. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 131 petition

Board Exhibit B: Hearing notice

Board Exhibit C: Hearing sign-in sheet

Board Exhibit D: Respondent's exhibit list

Board Exhibit E: Notice of Township Assessor Representation

8. The subject property contains a multi-tenant building located at 4505 Wyland Drive in Elkhart, Indiana.

9. The PTABOA determined the following values for the subject property:

Land: \$109,700 Improvements: \$951,300 Total: \$1,061,000

10. On the Form 131 petition, Wyland requested the following assessment:

¹ The packet submitted by the Assessor included a cover sheet outlining Ms. Rowe's rebuttal of the Wyland appeal. The Assessor did not offer that cover sheet as an exhibit.

Land: \$109,700 Improvements: \$723,800 Total: \$833,500

Objection to Assessor's Exhibits

11. Wyland objected to all of the Assessor's exhibits because the Assessor did not provide those exhibits to Wyland before the hearing. *Cintron objection*. The Board sustains Wyland's objection as to exhibits B-G.
12. In a non-small-claims appeal, the Board's procedural rules require each party to give all other parties: (1) a list of the witnesses and exhibits it intends to offer at the Board's hearing at least 15 business days before that hearing, and (2) copies of documentary evidence and summaries of its witnesses' anticipated testimony at least five business days before the hearing. 52 IAC 2-7-1(b)(1) and (2). The Board may exclude evidence based on a party's failure to comply with those deadlines. 52 IAC 2-7-1(f).
13. The Assessor did not give Wyland copies of her exhibits within the rule's deadline. Instead, Ms. Rowe simply claimed (1) that she did not know that the appeal had been filed until the month before the hearing, and (2) that she did not know she would be appearing at the hearing until just 10 days before it was held. Ms. Rowe may have been in an unfortunate position. But that does not excuse the Assessor's failure to comply with the Board's procedural rules. The Assessor is the party to Wyland's appeal; she was therefore responsible for providing whoever she wanted to represent her at the hearing with sufficient notice to allow that representative to comply with the Board's rules.
14. The Board notes that failing to exchange exhibits offered solely for the purposes of impeachment may not necessarily require exclusion of those exhibits. But the Assessor did not identify which, if any, exhibits she offered for that purpose. The Board will not undertake that analysis for the Assessor.
15. That being said, Exhibit A is comprised of procedural documents and the subject property's record card. Although there was no need for the Assessor to offer those procedural documents as exhibits, Wyland could hardly have been surprised by their

contents. The same is true for the subject property's record card. Thus, the Board overrules the Assessor's objection to Exhibit A.²

Analysis

Parties' Contentions

A. Wyland's Contentions

16. Wyland's property tax manager, Heidi Cintron, used the sales-comparison and income approaches to estimate the subject property's market value. In each case, the property's value was less than its assessment. *Cintron testimony; Pet'r Exs. 4 & 5.*
17. For her sales-comparison analysis, Ms. Cintron compared the subject property to industrial properties that sold between January 2006 and May 2008. *Cintron testimony; Pet'r Ex. 4.* Ms. Cintron acknowledged that those properties were not identical to the subject property, but she contended that they were of the same industrial type. *Cintron testimony.* And all of the properties were from Elkhart County. In fact five of them were from the same township as the subject property. *Id.; Pet'r Ex. 4.* While Ms. Cintron did not inspect the buildings' interiors, she relied on information from brokers and the properties' record cards. *Cintron testimony.* The properties sold for prices ranging from \$385,000 to \$744,800, or \$9.96 to \$21.54 per square foot. *Pet'r Ex. 4.* Wyland requested an assessment equating to more than \$22.00 per square foot. *Baker testimony.*
18. Ms. Cintron compared the five properties to the subject property on the basis of the following characteristics: building size, building class, number of buildings, number of stories, year built, and lot size. *Pet'r Ex. 4; see also Cintron testimony.* She then adjusted each property's sale price if it differed from the subject property in terms of those characteristics. *Id.* Ms. Cintron based her adjustments on "a percentage of a median that was across the different comps[,] so each section was a percentage of what

² While Wyland could not have been prejudiced by the Assessor's failure to exchange Exhibit C—a printout from the Board's website—that website prohibits parties from citing to the discussions contained therein in any proceedings. See <http://www.in.gov/ibtr/2420.html> (last viewed January 5, 2011).

the total comps came out to.” *Cintron testimony*. The adjusted sale prices ranged from \$501,600 to \$876,400. *Pet’r Ex. 4*. In light of those adjusted sale prices, Ms. Cintron estimated the subject property’s market value at \$660,000 to \$665,000. *Cintron testimony*. On cross-examination, Ms. Cintron acknowledged that she did not adjust the sale prices from 2007 and 2008 to account for time-related market differences between those sale dates and the January 1, 2006 valuation date applicable to 2007 assessments. *See Cintron testimony*. But Ms. Cintron claimed that she did not rely heavily on those later sales. *Id.* In any event, Timothy Baker, Wyland’s Executive Vice President of Asset Management, argued that Wyland was asking for an assessment that was 50% higher than the median sale price, making Ms. Cintron’s sales-comparison analysis reliable even without those time adjustments. *Baker argument*.

19. For her income-approach analysis, Ms. Cintron first determined the subject property’s net operating income for each year from 2004-2007. *Cintron testimony; Pet’r Ex. 5*. To do that, she subtracted the property’s operating expenses from its actual income. *Id.* She also subtracted \$30,000 for replacement reserves, although those reserves were not reflected on the financial statements that Wyland submitted. *See id.* In response to the Assessor’s claim that she allotted too much for replacement reserves, Ms. Cintron pointed out that the subject property is significantly older than other commercial properties and that, as a multi-tenant “flex” building, it would have higher build-out expenses than warehouse properties. *Cintron testimony*. Plus, Ms. Cintron explained that she did not account for vacancies, and that the vacancy loss for a multi-tenant property like the subject property would more than offset any overestimate of the property’s replacement reserves. *Id.*
20. Ms. Cintron then capitalized each year’s net operating income using a rate of 9.5%. To support that rate, Ms. Cintron pointed to information from Brent Miller, a broker with FM Stone Commercial. *Cintron testimony; Pet’r Ex. 1*. Wyland, however, did not offer a letter signed by Mr. Miller. Instead, it offered a letter to the Assessor on the letterhead of Holladay Properties that appears to quote from or reproduce either a letter or an e-mail

from Mr. Miller to Ms. Cintron. *Pet'r Ex. 1*. In any event, Mr. Miller provided capitalization rates derived from four sales in 2006. The first three sales were sold as a package with an overall capitalization rate of 9.6%. The fourth had a capitalization rate of 14.5%. *Id.* Ms. Cintron explained that verifying an overall rate is difficult because property owners maintain the confidentiality of their financial information, and she offered a letter from George R. Barkley, a certified general appraiser, to corroborate that fact. *Cintron testimony; Pet'r Ex. 1*.

21. Mr. Baker pointed out that Wyland leases the property to multiple tenants that are typically smaller companies with average lease terms of no more than two years. Those short lease terms result in turnover that, according to Mr. Baker, probably averages at least 25% per year, which in turn creates costs to “re-tenant” the property and dramatically impacts the property’s cash flow. *Baker testimony*. Thus, claimed Mr. Baker, the 9.5% capitalization was “quite honestly way over market, but dramatically impacted by the fact that the average lease length . . . is very short.” *Id.*
22. When Ms. Cintron divided each year’s net operating income by her 9.5% capitalization rate, she arrived at values ranging from a low of \$582,232 in 2007 to a high of \$992,895 in 2006.

B. The Assessor’s Contentions

23. Wyland’s request for an assessment of \$833,500 represents the same assessment that Wyland requested in 2002 and 2006. *Rowe testimony*. But it is highly unlikely that the subject property’s value would have remained unchanged for all those years. *Rowe testimony*.
24. More importantly, Ms. Cintron’s sales-comparison- and income-approach analyses have significant flaws that make them unreliable. *Id.* For example, of the six sales that Ms. Cintron used in sales-comparison analysis, only two—comparables #3 and #4—related to the January 1, 2006, valuation date at issue in this appeal. *Id.* Ms. Cintron made no time

adjustment for the other four sales. *Rowe testimony*. And Ms. Cintron used sales of properties that did not closely compare to the subject property. *Searcy testimony*. Of the two timely sales that Ms. Cintron relied on, one involved a concrete-block wood shop and the other involved a warehouse. *Rowe testimony*.

25. Similarly, Ms. Cintron used four years of income data, but only the 2006 data was relevant to the subject property's market value-in-use as of the January 1, 2006 valuation date. *Rowe testimony*. And Ms. Cintron arbitrarily included replacement reserves of \$30,000, which equaled 32% of the property's operating expenses. *Id.*

Administrative Review and the Parties' Burdens

26. A taxpayer seeking review of an assessing official's determination must make 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).
27. 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").
28. If the taxpayer makes a prima facie case, the burden shifts to the assessor 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); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

A. Wyland failed to rebut the presumption that the subject property was correctly assessed.

29. 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 2 (incorporated by reference at 50 IAC 2.3-1-2(2006)). Appraisers traditionally have used three methods to determine a property’s market 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.
30. 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 the Uniform Standards of Professional Appraisal Practice (“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.
31. 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. 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, the evidence lacks probative value. *Id.* For March 1, 2007 assessments, that valuation date was January 1, 2006. 50 IAC 21-3-3(2006).

32. Wyland failed to rebut the presumption that the subject property was correctly assessed. Wyland relied entirely on Ms. Cintron’s valuation opinion. While Ms. Cintron followed two generally accepted valuation approaches in form, her analyses lacked substance: she failed to support key assumptions upon which her estimates rested.

1. Ms. Cintron’s sales-comparison analysis

33. First, the Board notes that three of Ms. Cintron’s purportedly comparable sales occurred more than a year after the relevant January 1, 2006 valuation date. And Ms. Cintron did not attempt to explain how those sales related to the properties’ values as of that valuation date. Ms. Cintron’s failure to relate those later sales to January 1, 2006 values detracts from the reliability of her conclusions. Nonetheless, three of Ms. Cintron’s purportedly comparable sales occurred within one year of the appropriate valuation date. So the Board cannot say that her analysis was completely unrelated to the subject property’s true tax value.
34. Timeliness questions aside, in order to effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not probative; the proponent must instead identify the relevant characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 470-71. The proponent must also explain how any differences between the properties affect their relative market values-in-use. *Id.*
35. Ms. Cintron at least generally explained how her five purportedly comparable properties compare to the subject property—they all contain single-story buildings used for what she characterized as similar industrial manufacturing purposes. The buildings are relatively similar in size—the smallest of Ms. Cintron’s purportedly comparable buildings is 32,500 square feet and the largest is 44,200 square feet while the subject

building is 36,000 square feet. The properties also contain similarly-sized lots—the subject lot is 2.58 acres while the other lots range from 2.27 acres to 3.98 acres.

36. But the purportedly comparable properties also differ from the subject property in significant ways. For example, their buildings are all older than the subject building—the subject building was built in 1988 while the others were built between 1962 and 1981. And while 30% of the subject building is office space, the other buildings all have less than 11% office space.³ Similarly, while the subject property is rented to multiple tenants, at least two of Ms. Cintron’s comparable properties, including two of the three that sold in 2006, were not.

37. Of course, comparative properties need not be identical to a given property in order to be useful in a sales comparison analysis. But the person performing that analysis must explain how relevant differences affect the properties’ relative values. Often that is done by using objectively verifiable evidence to adjust the comparable properties’ sale prices. Ms. Cintron did adjust her comparable properties’ sale prices to reflect differences in the age, class, and size of the buildings, and the size of the lots. But she did not explain how she quantified those adjustments, other than to say: (1) that she based them on “a percentage of a median that was across the different comps[,] so each section was a percentage of what the total comps came out to,” and (2) that the adjustments were supported by data from the properties’ record cards and Loopnet. *Cintron testimony*. The Board cannot decipher what Ms. Cintron meant by the first statement. As to her second statement, there is nothing on the face of the property record cards or Loopnet data offered by Wyland that purports to quantify Ms. Cintron’s adjustments.

38. Thus, Ms. Cintron did little more than identify five properties that bear some similarities to the subject property, but that are inferior to the subject property in a number of ways and that sold for less money than what the subject property is assessed for. Without some

³ Of the subject building’s 36,000 square feet, 10,800 square feet are assessed as industrial office. *Pet’r Ex. 4*. The comparable building with the highest percentage of office space—2009 Middlebury—is assessed as having 3,744 square feet of office space out of a total building area of 37,000 square feet. *Id.*

support for Ms. Cintron's adjustments, those sale prices do little to show the subject property's actual market value-in-use or even a likely range of values.

2. Ms. Cintron's income-approach analysis

39. Ms. Cintron's income-approach analysis suffers from similar shortcomings. While the income approach ultimately rests on mathematical formulas, one must make numerous judgments in determining how to apply those formulas and what data to plug into them. Once again, Ms. Cintron failed to support key judgments that significantly influenced her valuation opinion. For example, she used replacement reserves of \$30,000 without even attempting to explain how she arrived at that figure. Wyland's financial statements did not reflect any allowance for replacement reserves and Ms. Cintron did not point to any other source. *See Pet'r Ex. 5*. Ms. Cintron claimed that accounting for losses from vacancies would more than offset any overstatement of the property's replacement reserves. But she overlooked the fact that her analysis already accounted for vacancy and collection losses. Despite referring to "gross rent potential," Ms. Cintron used the property's actual rental income in her analysis. And that actual income necessarily excluded uncollected rent, whether due to vacancy or some other reason.
40. Ms. Cintron also gave little support for another key judgment in her income-approach analysis—her selection of a capitalization rate. As explained by the Indiana Tax Court, a capitalization rate "generally reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as 'apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters.'" *Lacy Diversified Industries v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003)(quoting AM. INST. OF REAL ESTATE APPRAISERS, *THE APPRAISAL OF REAL ESTATE*, 417 (10th ed. 1992)).
41. Ms. Cintron did not explicitly consider any of those factors, choosing instead to rely on a letter or e-mail from a realtor who laid out rates derived from the sales of four "Elkhart investment comps close to the size of [the subject property]." *Pet'r Ex. 1*. The realtor,

however, did not testify at the hearing, nor did the portion of his correspondence quoted by Ms. Cintron explain whether those market-derived rates reflected an appropriate capitalization rate for the subject property. Indeed, the only information he offered about those properties was the sizes of their buildings and their net operating incomes. Thus, the realtor's information only marginally supports Ms. Cintron's chosen capitalization rate.

42. Mr. Baker attempted to support Ms. Cintron's capitalization rate by explaining that the subject property had high tenant turnover. While that might generally justify a higher rate than the rate for otherwise similar properties with more stability, it begs the question of what the rate for those other properties would be. And the only evidence that Wyland offered was for properties about which it had almost no information.
43. Ms. Cintron, however, claimed that confidentiality concerns precluded Wyland from comparing the subject property to the properties from which the realtor derived his overall rates. Although that might have made it more difficult for Ms. Cintron to verify whether those overall rates were appropriate to use in valuing the subject property, it did not excuse Wyland from its burden of proof. Ms. Cintron could have looked to the factors described by the Tax Court in *Lacy Diversified Industries* and generally accepted appraisal principles to develop a capitalization rate independent from the rates reported by the realtor or at least to check whether the realtor's rates were appropriate for the subject property. But she did not do that.
44. Given Ms. Cintron's failure to support the amount she used for replacement reserves and the extremely limited support that she offered for her chosen capitalization rate, her conclusions under the income approach were not sufficiently reliable to carry probative weight.

SUMMARY OF FINAL DETERMINATION

45. Because Ms. Cintron did not adequately support her valuation opinion, her opinion was not sufficiently probative to rebut the presumption that the subject property was correctly assessed. 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>>