

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

Petition #: 35-013-02-1-3-00011; 35-013-02-1-4-00012; 35-013-02-1-4-00013;
35-013-02-1-3-00014
Petitioner: Clifford K. Runion
Respondent: Dallas Township Assessor (Huntington County)
Parcel #: 013-00030-00; 013-00031-00; 013-00026-00; 013-00025-00
Assessment Year: 2002

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 Petitioner initiated an assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated January 9, 2004.
2. The PTABOA mailed notice of its decision on September 13, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the county assessor on October 11, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 25, 2005.
5. The Board held a consolidated administrative hearing with regard to the above referenced petitions on July 7, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Clifford K. Runion, property owner, and Terri Boone, Huntington County Assessor, appeared at the hearing and were sworn as witnesses.

Facts

7. Parcels 013-00026-00 and 013-00031-00 are classified as vacant commercial land. Parcels 013-00025-00 and 013-00030-00 are classified as industrial grain elevators and contain improvements. All four parcels are located on Market Street in Dallas Township, Huntington County, Indiana. The Board shall refer to the above referenced parcels collectively as the “subject property,” unless otherwise indicated.

8. The Administrative Law Judge did not conduct an inspection of the subject property.
9. The PTABOA determined the following assessed values for the subject parcels:

Parcel 013-00030-00

Land: \$2,400 Improvements: \$1,400 Total: \$3,800

Parcel 013-00031-00

Land: \$2,100 Improvements: \$0 Total: \$2,100

Parcel 013-00025-00

Land: \$7,800 Improvements: \$34,700 Total: \$42,500

Parcel 013-00026-00

Land: \$1,900 Improvements: \$0 Total: \$1,900

10. At hearing, the Petitioner requested a total assessed value for the subject property of \$30,000.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The subject parcels are "chopped up," with two feet of frontage on Main Street and a railroad track beside the parcels. *Runion testimony.*
- b) The grain bins have been destroyed by wind and are not usable. *Id.* They are not worth anything. *Runion argument.* Due to the condition of the grain bins, banks will not loan money to the Petitioner to fix the property. *Runion testimony.* The Petitioner's insurer will not cover the cost of removing the grain bins. *Id.*
- c) The subject building needs many repairs. *Id.* The roof has been worked on, but still leaks. *Id.*
- d) The Petitioner purchased all four parcels together on December 11, 2002, for \$30,000. *Id.*; see also *Resp't Exs. 8, 4B-4D.* Even with some repairs, the subject property is still only worth \$30,000. *Runion argument.* The property was on the market for six months with an asking price of \$49,900, which the Petitioner has since lowered to \$44,900. *Runion testimony.* The Petitioner has not received any written offers to purchase the subject property. *Id.* Prior to the Petitioner's purchase of the subject property, it sold at a public auction for a bid of \$25,000. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a) As a result of the PTABOA hearing, the assessed value of the grain bins was lowered through application of 90% obsolescence depreciation. *Boone testimony; Resp't Ex. 2D.*
- b) The Petitioner's asking price of \$44,900 for the subject property supports the current assessment. *Boone testimony and argument; Resp't Ex. 9D.*
- c) The fact that the Petitioner bought the subject property for \$30,000 does not necessarily mean that the property is worth that amount. *Boone argument.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR 6078.
- c) Exhibits:

Parcel 013-00030-00

Respondent Exhibit 1: Copy of Form 130 Petition with property record card (PRC).

Respondent Exhibit 2: Copy of Form 115 with PRC.

Respondent Exhibit 3: Copy of 1995 PRC.

Respondent Exhibit 4: Copy of 2001 pay 2002 tax bill for parcel 013-00030-00.

Respondent Exhibit 5: Copy of 2002 pay 2003 tax bill for parcel 013-00030-00.

Respondent Exhibit 6: Copy of 2002 pay 2003 tax bills for parcels 013-00031-00 and 013-00026-00.

Respondent Exhibit 7: Copy of 2002 pay 2003 tax bills for parcels 013-00025-00 and 013-00030-00.

Respondent Exhibit 8: Copy of sale contract.

Respondent Exhibit 9: Copy of Form 131.

Board Exhibit A: Copy of Form 131 petition and attachments.

Board Exhibit B: Copy of notice of hearing.

Board Exhibit C: Notice of County Assessor Representation.

Board Exhibit D: Hearing sign-in sheet.

Parcel 013-00031-00

Respondent Exhibit 1B: Copy of Form 130 Petition with property record card (PRC).

Respondent Exhibit 2B: Copy of Form 115 with PRC.
Respondent Exhibit 3B: Copy of 1995 PRC.
Respondent Exhibit 4B: Land contract.
Respondent Exhibit 5B: Copy of 2001 pay 2002 tax bill for parcel 013-00030-00.
Respondent Exhibit 6B: Copy of 2002 pay 2003 tax bill for parcel 013-00030-00.
Respondent Exhibit 7B: Copy of 2002 pay 2003 tax bills for parcels 013-00031-00 and 013-00026-00.
Respondent Exhibit 8B: Copy of 2002 pay 2003 tax bills for parcels 013-00025-00 and 013-00030-00.
Respondent Exhibit 9B: Copy of Form 131.

Board Exhibit A: Copy of Form 131 petition and attachments.
Board Exhibit B: Copy of notice of hearing.
Board Exhibit C: Notice of County Assessor Representation.
Board Exhibit D: Hearing sign-in sheet.

Parcel 013-00026-00

Respondent Exhibit 1C: Copy of Form 130 Petition with property record card (PRC).
Respondent Exhibit 2C: Copy of Form 115 with PRC.
Respondent Exhibit 3C: Copy of 1995 PRC.
Respondent Exhibit 4C: Real estate contract.
Respondent Exhibit 5C: Copy of 2001 pay 2002 tax bill for parcel 013-00030-00.
Respondent Exhibit 6C: Copy of 2002 pay 2003 tax bill for parcel 013-00030-00.
Respondent Exhibit 7C: Copy of 2002 pay 2003 tax bills for parcels 013-00031-00 and 013-00026-00.
Respondent Exhibit 8C: Copy of 2002 pay 2003 tax bills for parcels 013-00025-00 and 013-00030-00.
Respondent Exhibit 9C: Copy of Form 131.

Board Exhibit A: Copy of Form 131 petition and attachments.
Board Exhibit B: Copy of notice of hearing.
Board Exhibit C: Notice of County Assessor Representation.
Board Exhibit D: Hearing sign-in sheet.

Parcel 013-00025-00

Respondent Exhibit 1D: Copy of Form 130 Petition with property record card (PRC).
Respondent Exhibit 2D: Copy of Form 115 with PRC.
Respondent Exhibit 3D: Copy of 1995 PRC.
Respondent Exhibit 4D: Real estate contract.
Respondent Exhibit 5D: Copy of 2001 pay 2002 tax bill for parcel 013-

00030-00.

Respondent Exhibit 6D: Copy of 2002 pay 2003 tax bill for parcel 013-00030-00.

Respondent Exhibit 7D: Copy of 2002 pay 2003 tax bills for parcels 013-00031-00 and 013-00026-00.

Respondent Exhibit 8D: Copy of Form 131.

Respondent Exhibit 9D: Real estate listing.

Board Exhibit A: Copy of Form 131 petition and attachments.

Board Exhibit B: Copy of notice of hearing.

Board Exhibit C: Notice of County Assessor Representation.

Board Exhibit D: Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 276 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board... through every element of the analysis”).
- c) Once 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). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner did provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property is assessed for an amount in excess of its market value. The Petitioner testified that he purchased the subject property in December 2002, for \$30,000. *Runion testimony*.

- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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). Three generally accepted appraisal techniques may be used to calculate a property’s market value-in-use: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess property.
- c) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, 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*, 2006 Ind. Tax LEXIS 4 (Ind. Tax Ct. 2006). A taxpayer, however, may rebut that presumption with evidence relevant to the market value-in-use of the subject property, including information regarding the sale price of that property. MANUAL at 5.
- d) Thus, the \$30,000 price for which the Petitioner bought the subject property on land contract is probative of the property’s market value-in-use. The Manual, however, also provides that, for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Id.* The Petitioner entered into the land contract for the purchase of the subject property on December 11, 2002, almost three years after the relevant valuation date. *See Resp’t Ex. 1*. Nonetheless, the subject property is assessed for 167% of its purchase price. Absent evidence to the contrary, the Board will not assume that the subject property depreciated substantially between January 1, 1999, and the date that the Petitioner bought the property. In any event, the subject property would have had to depreciate at an extremely high rate in order for the current assessment to be a more accurate measurement of its true tax value than the purchase price.
- e) Based on the foregoing, the Petitioner established a prima facie case that the assessment is in error and that the correct assessment should be no more than \$30,000. The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s evidence concerning the sale price of the subject property.
- f) The Respondent relied solely upon the fact that the Petitioner listed the subject property for \$44,900 to support the accuracy of the current assessment. As the Petitioner explained, however, he has not received any written offers to purchase the property for that amount. Moreover, the Petitioner has repaired the property since entering into the land contract, and his listing price is further removed from the relevant valuation date of January 1, 1999, than is the December 11, 2002,

sale price. *See Runion testimony.* The Respondent therefore failed to rebut the Petitioner's prima facie case.

Conclusion

16. The Petitioner established by a preponderance of the evidence that the current assessment is incorrect and that the subject parcels should be assessed for a combined total of no more than 30,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.