

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

Petition No.: 02-073-07-1-4-03772
Petitioner: L&S Realty Investment Corporation (Mickey's Linen)¹
Respondent: Allen County Assessor
Parcel No.: 02-07-22-403-004.000-073
Assessment Year: 2007

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

Procedural History

1. L&S Realty Investment Corporation initiated an assessment appeal with the Allen County Property Tax Assessment Board of Appeals ("PTABOA"). On November 19, 2009, the PTABOA issued notice of its determination lowering the subject property's assessment, although not as much as L&S Realty had requested.
2. On December 29, 2009, L&S Realty filed a Form 131 petition with the Board. L&S Realty elected to have its appeal heard under the Board's small claims procedures.
3. On July 15, 2010, the Board held a hearing through its duly appointed administrative law judge, Jennifer Bippus ("ALJ").
4. The following people were present and sworn in at the hearing:
 - a) For L&S Realty: David Schaadt, Integrity Tax Consultants
 - b) For the Allen County Assessor:² Robin Thompson, Deputy Allen County Assessor

¹This is the way that David Schaadt, the certified tax representative who filed the appeal, described the property owner. As discussed below, however, that description is somewhat misleading. At first blush, it appears that Mickey's Linen is an assumed name for L&S Realty Corp. Based on the evidence offered at the hearing, though, it appears that L&S Realty owned the property on the assessment date, but later sold it to 1401 Dividend Road, LLC, which is associated in some way with Mickey's Linen. See *Resp't Ex. 2 (sales disclosure form)*. Also, it is not entirely clear whether Mr. Schaadt represents L&S Realty, 1401 Dividend Road, LLC, Mickey's Linen, or some combination of the three. For purposes of this determination, the Board refers to the petitioner as L&S Realty.

²John Rodgers appeared as counsel for the Assessor.

Facts

5. The subject property contains an industrial warehouse located at 1401 Dividend Road in Fort Wayne, Indiana.
6. The ALJ did not inspect the subject property.
7. The PTABOA determined the following values for the subject property:
Land: \$62,600 Improvements: \$217,800 Total: \$280,400.³
8. At the hearing, L&S Realty requested a total assessment of \$210,000.

Parties' Contentions

9. Summary of L&S Realty's contentions:
 - a) Beginning in August 2002, Mickey's Linen subleased the subject property for \$3,491 per month. *Pet'r Ex. 2*. Beginning August 1, 2004, Mickey's Linen rented the subject property as the prime tenant for the re-negotiated rate of \$2000 per month. *Id.* Mickey's Linen negotiated the lower rate because it found that the market did not support the higher rent that it had paid as a sub-tenant. *Id.*; *Schaadt testimony*.
 - b) On July 10, 2008, 1401 Dividend Road, LLC, which is associated in some capacity with Mickey's Linen, bought the subject property from L&S Realty for \$210,000. *See Pet'r Ex. 2; Resp't Ex. 9.*⁴ The property had been "up for sale" the entire time that Mickey's Linen was a tenant, but there were no interested buyers. *Pet'r Ex. 2; see also, Schaadt testimony*. L&S Realty had even listed the property for a couple of months before 1401 Dividend Road, LLC, bought it. *See Schaadt testimony; Resp't Ex. 9*.
 - c) Although the sale occurred "outside the range" of sale dates used in determining March 1, 2007 assessments, Mr. Schaadt believed that the sale was still a "good guideline" and a "reference point." *Schaadt testimony*. Mr. Schaadt used the United States Department of Labor's Consumer Price Index for the Midwest region to relate the sale price to the valuation date. *Schaadt testimony; Pet'r Ex. 9*. Based on that index, he arrived at a January 1, 2006 value of \$190,736. *Id.* Nonetheless, Mr.

³ At the hearing, the ALJ mistakenly indicated that the assessment of record was \$316,400. Although the parties agreed with the ALJ, the Form 115 issued by the PTABOA lists values of \$62,600 for land and \$217,800 for the improvements. *Board Ex. A*.

⁴ In his testimony, Mr. Schaadt did not clearly distinguish between L&S Realty, Mickey's Linen and 1401 Dividend Road, LLC. Indeed, from the way Mr. Schaadt described the property owner on the Form 131 petition and his testimony, one might easily assume that L&S Realty, under the assumed name Mickey's Linen, actually bought the property from an unidentified third party. But based on the evidence as a whole, including the disclosure form filed in connection with sale, the Board infers that L&S Realty actually rented the property to Mickey's Linen and later sold it to 1401 Dividend Road, LLC, which was somehow associated with Mickey's Linen. *See Resp't Ex. 9*.

Schaadt believed that the unadjusted 2008 sale price best represented the property's market value-in-use. *Schaadt testimony*. Mr. Schaadt reached that conclusion, in part, because his analyses of the subject property's market value under the cost, income, and sales-comparison approaches, all yielded values close to that unadjusted sale price.

- d) Mr. Schaadt premised his cost-approach analysis on the notion that the Assessor erred in applying the Real Property Assessment Guidelines for 2002 – Version A. According to Mr. Schaadt, the Assessor improperly used the General Commercial Industrial (“GCI”) cost schedule instead of the General Commercial Kit (“GCK”) schedule. *Schaadt testimony*. For support, Mr. Schaadt pointed to photographs of the subject property that he claimed depicted a kit building used for storage. *Id.*; *Pet’r Ex. 8*. Using the GCK schedule, Mr. Schaadt valued the subject building at \$144,192. When he added that amount to the assessed values for the property's land and other improvements, he came to a total value of \$215,642. *Schaadt testimony*; *Pet’r Ex. 3*.
- e) For his income-approach analysis, Mr. Schaadt took \$24,000 as the subject property's potential gross income, which he derived from the \$2,000-per-month lease. He then subtracted the following amounts: \$2,400 for expenses, which he based on a ratio of 10% of gross income; \$1,080 for a management fee, which he based on a ratio of 5% of gross income; \$1,600 for “Reserves/Replacement”; \$3,328 which he did not explain, but which may have been for anticipated vacancy; and \$648, which he also failed to explain. *See Schaadt testimony*; *Pet’r Ex. 4*. That left net income of \$18,272. *Id.*
- f) To determine an appropriate capitalization rate, Mr. Schaadt started with an overall rate of 8.5%, which was below the 9.66% rate for industrial property suggested by the RealtyRates.com Investor Survey-1st quarter 2006. *Schaadt testimony*; *Pet’r Ex. 7*. Mr. Schaadt then “loaded” that overall rate by adding .26% to account for taxes. *Id.* When he divided the property's net income by his loaded capitalization rate of 8.76%, he arrived at a value of \$208,584. *Id.*
- g) Finally, while Mr. Schaadt also did a sales-comparison analysis, he did not rely on his conclusions under that approach as heavily as he relied on his conclusions under the cost and income approaches. *Schaadt testimony*. Mr. Schaadt used listings or sales for five comparable properties. To account for differences between those comparable properties and the subject property, Mr. Schaadt adjusted each sale or listing price as follows: 1% of the sale or listing price for each year's difference in age, 1% for each percentage point difference in the amount of office space, 1% per each foot difference in wall height, and 2% per each ratio-point difference in land-to-building ratio. *Pet’r Ex. 11 at tab 4*. The properties sold or were listed for sale for an average adjusted price of \$28.80 per square foot of building space—a little more than the \$26.22 per square foot derived from the subject property's actual sale price. *Id.* Significantly, a property just south of the subject property (comparable #4 in

Mr. Schaadt's analysis) sold for an unadjusted price of \$28.31 per square foot. *Schaadt testimony; Pet'r Exs. 6, 11.*

10. Summary of the Assessor's contentions:

- a) To determine March 1, 2007 assessments, assessors had to use sales from 2005-06. Accordingly, the Assessor's witness, Robin Thompson, looked at five sales from that period that she felt were similar in to subject property in terms of size and use. *Thompson testimony; Resp't Ex. 6.* A building located at 4903 Speedway Drive (comparable #2) is very close to the same size as the subject building and sold for \$41.67 per square foot. *Id.* As a whole, the five properties sold for an average price of \$35.58 per square foot. *Id.* Therefore, Ms. Thompson recommended using a rate of \$35.00 per square foot to value the subject property, which translated to a total value of \$284,400. *Thompson testimony.*
- b) According to Ms. Thompson, her sales-comparison analysis was better than Mr. Schaadt's because she used properties that were more like the subject property. *Thompson testimony; Resp't Ex. 6.* For example, Ms. Thompson's comparables were closer to the subject building's size and use type than Mr. Schaadt's comparables. *Id.* Although Ms. Thompson's buildings had Type-3 walls compared to the subject building's Type-1 walls, the majority of her comparable buildings had slightly higher quality grades than the subject building. And all of the buildings, including the subject building, were in average condition. *Id.*
- c) By contrast, Mr. Schaadt's comparables mostly contained buildings that were much larger than the subject building. Although using larger buildings leads to lower per-unit rates, Mr. Schaadt did not adjust the properties' sale or listing prices to account for size differences. *Thompson testimony.* And while Mr. Schaadt's fourth comparable building was closer to the subject building's size, it was used for a different purpose than the subject building and, unlike the subject building, had no office space. *Id.*
- d) Ms. Thompson did not consider the subject property's July 2008 sale because it was outside the relevant period for determining March 1, 2007 assessments and the Assessor did not have any information that the property had been listed for sale. Plus, there was a business relationship between Mickey's Linen and L&S Realty, in that Mickey's Linen was L&S Realty's tenant. *See Thompson testimony.* Similarly, Ms. Thompson did not value the property using the cost or income approaches. As to the latter, she did not have copies of the leases or evidence of the owner's expenses. *Id.*

Record

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

- a) The Form 131 petition

b) The digital recording of the hearing

c) Exhibits:

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|------------------------|---|
| Petitioner Exhibit 1: | Cover sheet explaining exhibits, |
| Petitioner Exhibit 2: | Copy of e-mail from Jim Tichy to Teresa Brown and Gregory Brown, |
| Petitioner Exhibit 3: | Sheet explaining Mr. Schaadt's cost-approach analysis, |
| Petitioner Exhibit 4: | "Income Statement breakdown," |
| Petitioner Exhibit 5: | Sheet summarizing Mr. Schaadt's conclusions under cost, sales-comparison, and income approaches, |
| Petitioner Exhibit 6: | Aerial photograph, |
| Petitioner Exhibit 7: | Two printouts from <i>www.realtyrates.com</i> , |
| Petitioner Exhibit 8: | Photographs of the subject property, |
| Petitioner Exhibit 9: | Calculations using U.S. Department of Labor Value Trending Calculator, |
| Petitioner Exhibit 10: | Copy of the subject property record card, |
| Petitioner Exhibit 11: | Booklet with eight tabs offered at PTABOA hearing. |
| Respondent Exhibit 1: | Notice of Hearing, |
| Respondent Exhibit 2: | Assessor's Position Statement, |
| Respondent Exhibit 3: | Aerial photograph of the subject property, |
| Respondent Exhibit 4: | Property record card of the subject property, |
| Respondent Exhibit 5: | Photograph of subject property, |
| Respondent Exhibit 6: | Description of Comparable Properties, |
| Respondent Exhibit 7: | Property record cards and Photographs of Comparable Properties, |
| Respondent Exhibit 8: | Findings and Conclusions of Allen County PTABOA, with attached booklet containing eight tabs offered at the PTABOA hearing, |
| Respondent Exhibit 9: | Sales disclosure statement. |
| Board Exhibit A: | Form 131 petition, |
| Board Exhibit B: | Copy of hearing notice, |
| Board Exhibit C: | Appearance of Counsel by F. John Rogers, |
| Board Exhibit D: | Hearing sign-in-sheet. |

d) These Findings and Conclusions.

Analysis

12. The most applicable governing cases are:

- a) A petitioner seeking review of an assessing official's determination has the burden to establish a prima facie case proving 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 petitioner 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.”)
 - c) Once the petitioner establishes a prima facie case, the burden shifts to assessing official to impeach or rebut the petitioner’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.
13. L&S Realty proved that the subject property’s assessment should be reduced from \$280,400 to \$210,000. The Board reaches this conclusion for the following reasons:
- a) The 2002 Real Property Assessment Manual defines “true tax value” 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 have traditionally 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002– Version A.
 - b) A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n. 6. A taxpayer 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. By contrast, a taxpayer does not rebut the presumption that an assessment is accurate simply by contesting an assessor’s methodology in computing it. *Eckerling v. WayneTwp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Strictly applying the Guidelines is not enough; instead, the taxpayer should offer the types of market-value-in-use evidence described in the Manual. *Id.*
 - c) 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).

- d) Although Mr. Schaadt offered his analyses under three different generally accepted valuation approaches, none of those analyses were probative. First, Mr. Schaadt's cost-approach analysis was simply an attack on the Assessor's methodology in computing the subject property's assessment under the Guidelines. As explained in *Eckerling*, that does not suffice to rebut the assessment's presumed accuracy.
- e) Similarly, while Mr. Schaadt followed the income and sales-comparison approaches in form, his analyses lacked substance. For example, in determining the subject property's net income, Mr. Schaadt offered no support for why he decided to estimate expenses at 10% of gross income or management costs at 5% of gross income. Similarly, in his sales comparison analysis, he did not explain why he adjusted his comparable properties' sale prices by 1% per unit difference to account for differences in age, wall height, and percentage of office space. Indeed, without probative evidence to support those adjustments, the Board finds it unlikely that the market would have valued differences in age wall-height, and percentage of office space so uniformly.
- f) Nonetheless, the subject property's \$210,000 sale price was probative of its market value-in-use. Granted, the sale occurred more than two years after the January 1, 2006 valuation date that applied to 2007 assessments. But Mr. Schaadt used the CPI for the Midwest region to explain how that sale price related to the property's value as of January 1, 2006. It is not a compelling explanation—the CPI does not closely track the real estate market in Allen County—and it might not justify reducing the subject property's assessment to \$190,736 (the amount suggested by the CPI) even if L&S had asked for such an assessment. But it is at least some evidence that the property was worth no more than \$210,000 as of January 1, 2006.
- g) Thus, the burden shifted to the Assessor to impeach or rebut the subject property's sale price. She made several attempts to impeach that sale price, though none ultimately succeeded. First, the Assessor's witness, Ms. Thompson, pointed out that the sale was outside the period used for determining March 1, 2007 assessments. As already explained, however, Mr. Schaadt offered at least some evidence to show that the property was worth no more than \$210,000 as of January 1, 2006. And the Assessor did not offer any countervailing evidence.
- h) Second, Ms. Thompson attacked the sale's validity on grounds that, as an existing tenant, Mickey's Linen and its associated entity, 1401 Dividend Road, LLC, had a business relationship with L&S Realty. That attack was similarly unpersuasive. Black's Law Dictionary defines an arm's-length transaction as "a transaction between two parties, however closely related they may be, conducted as if the parties were

strangers, so no conflict of interest arises.” BLACKS LAW DICTIONARY (9th ed. 2009). The mere fact that an entity related to 1401 Dividend Road, LLC leased the property from L&S Realty before 1401 Dividend Road, LLC bought the property does not raise an inference that either party to the sale acted in anything other than its own best interest.

- i) That being said, the looseness with which Mr. Schaadt described the parties to the transaction causes the Board at least some concern. As explained in notes 1 and 4, *infra*, Mr. Schaadt’s testimony easily could have led one to believe that Mickey’s Linen was an assumed name for, or otherwise closely related to, L&S Realty. But the sales disclosure form indicates otherwise. In the space provided for a county assessor to identify special circumstances relating to validating a sale, the Assessor provided:

7-15-08 per PH/call . . .seller Steven Hazelrigg; property on market 2 mo’s. States Mickey’s linens had leased property which ended 7-07 and were mo. to mo. Buyers are affiliated . . . Micke[y]s but they will not be occupying bldg. . . 7-15-08 [undecipherable] for Buyer they will be leasing to Mickies Towels & Linens. They did not have appraisal for this purchase.

Resp’t Ex. 9. In light of that entry, the Board finds that L&S Realty was the property owner on the March 1, 2007 assessment date, and that it sold the property to 1401 Dividend Road, LLC, which in turn was closely associated with Mickey’s Linen. Thus, the Board concludes that the parties to the sale negotiated at arm’s length.

- j) Finally, Ms. Thompson testified that she was unaware of the subject property having been listed for sale. The Board construes that as a claim that the property was not exposed to the market before the sale. But Mr. Schaadt testified that the property had been listed for sale for two months and the sales disclosure form corroborates his testimony. In addition, Jim Tichy, Mickey’s Linen’s controller, represented in an e-mail that the property had been “up for sale” the entire time that Mickey’s Linen was a tenant. *Pet’r Ex. 2.* While Mr. Tichy’s statement was hearsay, the Assessor did not object to its admission or otherwise attempt to dispute it. The Board therefore gives Mr. Tichy’s statement at least some weight. Taken together, Mr. Schaadt’s testimony and Mr. Tichy’s hearsay statement show that the subject property was exposed to the market to some extent.
- k) The Assessor also tried to rebut the subject property’s sale price with Ms. Thompson’s opinion of the subject property’s value. Ms. Thompson formed her opinion after analyzing sales of properties that she believed were comparable to the subject property. While Ms. Thompson may have used properties with buildings that were more similar to the subject building than the properties that Mr. Schaadt used in his sales-comparison analysis, she still did almost nothing to explain how relevant differences affected the properties’ relative market values. Instead, she apparently sought to level those differences by simply basing her estimate of the subject property’s value on the average per-square foot sale price for all five properties.

Without more, the Board will not assume that Ms. Thompson's methodology comported with generally accepted appraisal principles. In any event, the Board is more persuaded by the subject property's sale price, even given the relative remoteness of the sale from the valuation date and the limited information about the property's exposure to the market.

- 1) Because L&S made a prima facie case that the subject property was worth no more than its \$210,000 sale price and the Assessor failed to impeach or rebut that sale price, the subject property's assessment must be reduced.

Summary of Final Determination

14. L&S Realty made a prima facie case that the subject property was worth no more than its \$210,000 sale price. The Assessor failed to impeach or rebut L&S Realty's evidence. Therefore, the Board finds for L&S Realty and orders that the subject property's March 1, 2007 assessment be changed to \$210,000.

ISSUED: _____

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>