

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

Petition No.: 89-030-07-1-4-00153
Petitioner: Mary Carolyn Klute, trustee
Respondent: Wayne County Assessor
Parcel No.: 49-01-230-302-000-29
Assessment Year: 2007

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) by written document dated February 26, 2008.
2. The PTABOA issued its decision on September 9, 2008.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the County Assessor on September 29, 2008. The Petitioner elected to have this case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 4, 2009.
5. The Board held an administrative hearing on March 31, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Mary Carolyn Klute, Petitioner's representative
 - b) For Respondent: Michael P. Statzer, Wayne County Assessor¹
Joseph L. Kaiser, PTABOA President
Richard D. Lee, PTABOA member
Dan Williams, PTABOA member
Betty R. Smith, Wayne Township Assessor

¹ Denise Verhasselt, Wayne County Deputy Assessor, was also present to assist Mr. Statzer, but was not sworn and did not present any testimony.

Facts

7. The property is a vacant commercial lot located at 2437 National Road West, Richmond, in Wayne Township, Wayne County.
8. The Administrative Law Judge (ALJ) did not inspect the property.
9. For 2007, the PTABOA determined the assessed value of subject property to be \$218,400 for the land. There are no improvements on the subject property.
10. The Petitioner requests an assessed value of \$86,400 for the property.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its assessment:
 - a) The Petitioner contends the subject property is over-assessed because it is a vacant lot that is unusable at the present time. *Klute testimony; Pet Exs. 2 and 5.* According to the Petitioner's representative, the land is heavily wooded and has no utilities. *Klute testimony; Pet. Exs. 5 and 8.*
 - b) The Petitioner's representative further argues that the assessed value of the property has increased without justification. *Klute testimony.* According to Ms. Klute, in 2002, the assessed value of the property was \$126,000. *Klute testimony; Pet. Ex. 3.* In 2003, however, the assessed value increased to \$228,000. *Id.* The Petitioner's witness testified that the Petitioner appealed that value and the property's assessment was reduced to \$205,200 which was carried through 2004 and 2005. *Id.* Then, in 2006, the assessed value was lowered to \$86,400, but for 2007, the value increased to \$218,400, even though real estate values are down 19 to 25 percent. *Klute testimony; Pet. Ex. 4.*
 - c) The Petitioner also contends the property is over-valued based on the assessments of other nearby properties. *Klute testimony.* In support of this contention, the Petitioner's representative presented information on several purportedly comparable properties located on National Road West. *Klute testimony; Pet. Exs. 5 and 6.* The comparables all have businesses and improvements on them which, according to Ms. Klute, make their land more valuable than the Petitioner's undeveloped land. *Klute testimony.* Yet all of the comparable properties' assessments decreased from 2006 to 2007, while the subject property's value increased. *Id.*
 - d) In response to questions from the Respondent, the Petitioner's representative testified that the subject property was listed for sale in March of 2009 for \$175,000. *Klute testimony.* According to Ms. Klute, this asking price is greatly reduced from the Petitioner's previous attempts to sell the property. *Id.*

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

- a) The Respondent contends that the subject property's assessed value is correct. *Statzer testimony.* In support of this contention, the Respondent offered sales and assessment information on three comparable properties. *Id.*; *Resp. Exs. 1-4.* The Respondent testified that the property located at 2929 National Road West is a vacant lot that sold for \$185,000 in June of 2004. *Statzer testimony; Resp. Ex. 1.* According to Mr. Statzer, the sale reflected a price of \$92,500 an acre and its currently assessed for \$89,900 per acre. *Id.* Further, the property located at 1390 National Road West sold for \$310,000 on November 22, 2006, and its land is currently assessed at \$207,700 per acre. *Statzer testimony; Resp. Ex. 2.* Finally, the property located at 2101 National Road West sold for \$630,000 in March of 2007, but that price included the improvements on the property and the business. *Statzer testimony; Resp. Ex. 3.* Mr. Statzer testified that its land is currently assessed at \$107,000 per acre. *Id.*
- b) The Respondent argues that if the comparable properties' assessed land values, including the Petitioner's property, are examined relative to their location on National Road West, the values increase as the properties get closer to the center of town, where there are more amenities and more potential customers. *Statzer testimony; Resp. Exs. 1-4.* More importantly, all of the comparable properties are assessed with a base rate of \$130,000 per acre like the subject property. *Id.*

Record

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

- a) The Petition, and all pre-hearing, and post-hearing submissions by either party.
- b) The digital recording of the hearing.
- c) Exhibits:

Petitioner Exhibit 1: Form 131 Petition,

Petitioner Exhibit 2: Map of the subject property,

Petitioner Exhibit 3: Summary of taxes and assessments for the subject property from 1995 to 2007,

Petitioner Exhibit 4: Property Record Cards (PRCs) for the subject property from 2006 to 2008,

Petitioner Exhibit 5: Summary of the Petitioner's case,

Petitioner Exhibit 6: Comparable properties and the subject property's PRCs,

Petitioner Exhibit 7: Article from the PALLADIUM-ITEM newspaper dated May 30, 2004,

Petitioner Exhibit 8: Two photographs of the subject property,

Respondent Exhibit 1: PRC and sales disclosure form for 2929 National Road West,
Respondent Exhibit 2: PRC and sales disclosure form for 1390 National Road West,
Respondent Exhibit 3: PRC and sales disclosure form for 2101 National Road West,
Respondent Exhibit 4: Map showing comparable properties and the subject property,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: 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 an assessing official 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 taxpayer must explain how each piece of evidence is relevant to the 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 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in the subject property's assessed value. The Board reached this decision 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). The appraisal profession traditionally has used three methods to determine a property's market

value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value 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) *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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. In addition, for 2007, the assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. Here, the Petitioner's representative first argues that the subject property's assessment has increased year after year even as the real estate market has fallen. *Klute testimony*. Ms. Klute presented evidence of both increases and decreases in the subject property's assessment, but she presented no evidence that the assessment at issue did not reflect the market value-in-use of the property. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*
- e. The Petitioner's representative next argues that the subject property is over-assessed compared to other nearby properties. *Klute testimony*. While Ms. Klute mentions and nominally discusses value, the substance of her argument is limited to comparing only the assessed values of the properties. She does not address sales data or any other form of market value evidence, instead focusing only on comparing assessments. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties.

Id. Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* This the Petitioner has failed to do.²

- f. The Petitioner failed to raise a prima facie case that the subject property was assessed in excess of its market value-in-use for the March 1, 2007, assessment date. Where a taxpayer fails to provide probative evidence 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).

Conclusion

16. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

² To the extent that Ms. Klute's testimony regarding the listing price for the subject property could be probative of the property's market value-in-use, the Board finds that a listing in 2009 is too far removed from the January 1, 2006, valuation date to raise a prima facie case of error. *See Long*, 821 N.E.2d at 471.

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>>