

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

Petition: 73-002-07-1-4-10226
Petitioner: McDonald's Real Estate Co.
Respondent: Shelby County Assessor
Parcel: 73-11-04-100-100.000-002
Assessment Year: 2007

The Indiana Board of Tax Review (Board) issues this determination in the above matter finding and concluding as follows:

Procedural History

1. The Petitioner initiated an assessment appeal regarding the subject property by filing Form 130 with the Shelby County Property Tax Assessment Board of Appeals (PTABOA) on February 18, 2009.
2. The PTABOA mailed notice of its decision on November 2, 2009.
3. The Petitioner appealed to the Board by filing a Form 131 on December 14, 2009. Petitioner elected to have this appeal heard according to small claims procedures.
4. The Board issued a notice of hearing for the appeal dated April 20, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 14, 2010. He did not inspect the property.
6. Milo Smith represented the Petitioner and was sworn as a witness. Attorney Marilyn Meighen represented the Respondent. Bradley Berkemeier was sworn as a witness for the Respondent.

Facts

7. The subject property is a fast food restaurant located on East State Road 44 in Shelbyville.
8. The PTABOA determined the assessed value is \$195,000 for land and \$670,000 for improvements (total \$865,000).
9. The Petitioner claimed the assessed value should be \$195,000 for land and \$500,950 for improvements (total \$695,950).

Record

10. By agreement, Petitions 73-002-07-1-4-10225 and 73-002-07-1-4-10226 were heard at the same time, but confusion resulted from doing so. The Petitioner presented Exhibits 12 through 17 for one parcel and another group of Exhibits 12 through 17 for the other parcel (some of those exhibits are the same and some are different). Mr. Smith explained that his numbering system was an attempt to avoid confusion. However, his system added confusion. In contrast, the Respondent presented Exhibits A through I-1 that collectively apply to both parcels. At this point it is less confusing to issue separate determinations for each petition. The official record for this petition contains the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-In Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 12 – Department of Local Government Finance (DLGF) Memorandum dated July 2, 2008,
Petitioner Exhibit 13 – Indiana Code 6-1.1-15-1 version a and version b,
Petitioner Exhibit 14 – Form 115,
Petitioner Exhibit 15 – Packet presented to the PTABOA,
Petitioner Exhibit 16 – Summary prepared by M. Smith,
Petitioner Exhibit 17 – Property record card (PRC) for the subject property,
Respondent Exhibit A – PRC for parcel 73-11-04-100-100.000-002
(East State Road 44),
Respondent Exhibit B – PRC for parcel 73-07-29-100-021.000-002
(West Rampart Drive),
Respondent Exhibit C – Spreadsheet showing Shelby County fast food restaurant assessment data with the PRCs attached,
Respondent Exhibit D – Spreadsheet showing state-wide fast food sales data for 2005 and 2006 with attached documentation,
Respondent Exhibit E – Spreadsheet showing state-wide fast food sales data for 2004–2008 with attached documentation,
Respondent Exhibit F – *P/A Builders & Developers*, Tax Court decision,
Respondent Exhibit F1 – *P/A Builders & Developers*, Tax Court decision on rehearing,
Respondent Exhibit F2 – Tax Court Precedents,
Respondent Exhibit G – Board of Tax Review determination regarding 2006 assessment of the subject property,
Respondent Exhibit H – Sales disclosure form for parcel 041-34016-20
(a/k/a the State Road 44 McDonalds),

- f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner' case:

- a. The Board should remand this appeal to the PTABOA to specifically deal with the issues that were raised, rather than just saying no change. The DLGF sent out a memo directing the PTABOA to address each concern and state reasons why the contentions were denied. This directive is supported by Indiana Code 6-1.1-15. *Smith argument; Pet'r Ex. 12, 13.*
- b. The Respondent should not have used the state-wide fast food restaurant sales spreadsheet to assess the subject property.
- The sale marked 1 is an Arby's located at 7343 Indianapolis Boulevard in Hammond. On October 31, 2005, it sold for \$1,115,000 and its 2007 assessment is \$470,200. It is assessed for 42% of its October 2005 sale price. The assessor decided that sale should not be used to adjust market factors in that neighborhood.
 - The sale marked 2 is located at 2507 Progress Parkway in Shelbyville. It is assessed for \$591,600 and sold for \$1,205,500 on November 5, 2006. This was in Shelby County. The Respondent did not offer annual adjustment factors based upon this sale to raise the assessment to its sale price.
 - The sale marked 3 is located at 6291 Central Avenue in Portage. It sold for \$1,400,000 on December 15, 2004, and has a 2007 assessment of \$229,000. Its assessed value is 16% of this sale price. That assessor decided that the sale should not be used to adjust market factors in that neighborhood.
 - The sale marked 4 is located at 8640 North Michigan Road in Indianapolis. On December 30, 2005, it sold for \$1,600,000 and has a 2007 assessment of \$421,200. This property was assessed at 26% of its sale price. No adjustment was made to the assessment the following year. These sales demonstrate that fast food restaurants are assessed at a fraction of their sale prices. *Smith testimony; Pet'r Ex. 15 at 2.*
- c. The subject property was built in 1974.¹ It was remodeled in 1987. The Respondent has assessed it with an effective age based on 2005. The effective age used for the assessment is not justified. *Smith testimony; Pet'r Ex. 15, 17.*

¹ Mr. Smith testified the date was 1973, but this slight difference appears to be insignificant.

- d. The value of a property as a going business has nothing to do with how it should be assessed. The assessment should be based on what it would cost to replace the subject property. The subject property can be built new for \$133.80 per square foot, according to Marshall & Swift's fast food restaurant valuation table, class C, type good, which is what the subject property is. It is, however, assessed at \$175.45 per square foot. *Smith testimony; Pet'r Ex. 15 at 10 -11.*
- e. The assessment is not uniform and varies greatly from what the cost to build it new would be. *Smith testimony.*
- f. The subject property sold for \$297,081 on July 20, 2005, but that price was low. The Petitioner is not claiming that price is a good indication of market value-in-use or that the assessment should be that amount. *Smith testimony; Pet'r Ex. 17; Resp't Ex. H.*

12. Summary of Respondent's case:

- a. The back side of the property record card (Exhibit A) shows how the value for the subject improvement was determined. The two main components of an assessment are land and improvement values. The improvement value is determined based on cost schedules, square footages, quality and design grade, the year of construction, the effective age, and interior finish. *Berkemeier testimony.*
- b. There are three approaches to value: cost, income, and sales. *Berkemeier testimony.*
- c. The total assessed value of the subject property is \$231 per square foot. *Berkemeier testimony; Resp't Ex. B.*
- d. A spreadsheet for 2007 fast food restaurant assessments in Shelby County shows the parcel number, address, total assessed value, square footage of the building, assessed value per square foot of building, and other data. (PRC's attached for each parcel on the list.) Although this spreadsheet was not used in determining the disputed assessment, it shows that the assessment of the subject property (\$231 per square foot) is within the range of the other 2007 assessments for fast food restaurants in Shelby County. *Berkemeier testimony; Resp't Ex. C.*
- e. Similar spreadsheets with sales of fast food restaurants located throughout Indiana show location, building square footage, sale date, sale price, the total sale price per square foot and other data. Exhibit D is for the time period of 2005 and 2006. Exhibit E is for the time period of 2004 through 2008. Attached supporting data, mostly from Loopnet.com, verifies these spreadsheets. They were not used to determine the assessed value of the subject property, but they serve as a check for that valuation. The assessment of \$231 per square foot is less than the mean (\$280) and the median (\$264) sale price per square foot in the 2005-2006 sales. It

is also less than the mean and median for the 2004-2008 sales. *Berkemeier testimony; Resp't Ex. D, E.*

- f. The correct time period to use for the 2007 assessment is sales from 2005 and 2006. *Meighen argument; Resp't Ex.II.*
- g. The subject property sold for \$297, 081. The sales disclosure form for that sale was filed in July 2005, but it indicates the contract date for the sale was November 1, 1995. The form also indicates the existence of a family or business relationship between the buyer and seller. Therefore, it is not reliable evidence of value for purposes of the 2007 assessment. *Berkemeier testimony; Resp't Ex. H.*
- h. The Petitioner failed to present any objective, verifiable evidence of the subject property's market value as of January 1, 2006. *Meighen argument.*

Analysis

- 13. The Board is a creation of the legislature and it has only those powers conferred by statute. Therefore, the Board has limited authority to remand appeals to the PTABOA. It may do so upon specific instructions from the Indiana Tax Court. *See Ind. Code § 6-1.1-15-8.* It may also remand appeals to the PTABOA when a new issue is presented at the Board's hearing and the parties and the PTABOA consent to a remand. *52 IAC 2-5-3(c).* Neither of those situations is present here. Accordingly, the Board lacks authority to grant the request for a remand.
- 14. Even if the Board had the authority to remand these appeals, the Petitioner presented no reason to do so. The Board's proceedings are *de novo*. The Board owes no deference to the PTABOA determination. Consequently, the purportedly insufficient or incomplete PTABOA determination about the Petitioner's claims did not hinder a presentation of relevant evidence and argument during the Board's hearing. *See Ind. Code § 6-1.1-15-4.*
- 15. 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). 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”).

16. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. Indiana promulgated Guidelines for assessing officials that are based on the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.²
17. Failure to comply with the Guidelines does not itself show that an assessment is not a reasonable measure of value. Ind. Admin. Code tit. 50, r. 2.3-1-1(d). Accordingly, when taxpayers challenge the accuracy of their assessments, they must do more than complain that the method by which their assessment was computed was incorrect; rather, they must present objectively verifiable evidence demonstrating what their property's market value-in-use actually is. *See, e.g., Westfield Golf Practice Ctr. v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). The Petitioner, however, offered no such evidence.
18. The Petitioner did not make a case for any assessment change.
 - a. Although it does not relate to application of the Guidelines, the Petitioner argued that the state-wide fast food restaurant sales spreadsheet should not have been used to assess the subject property. How the assessor calculated the assessed value on the property, however, is not determinative in this review. The purported use of the spreadsheet is only an argument about methodology that fails to address the pertinent issue, which is the actual market value-in-use of the subject property. Therefore, that point does not help to prove that the existing assessed value must be changed.
 - b. Part of the Petitioner's case also attempted to prove that the Guidelines were not correctly applied in determining the assessment of the subject property. The summary of improvements section on the property record card indicates that the restaurant actually was built in 1974, but it shows an effective year of construction as being 2005.³ Mr. Smith testified that the effective age of the

² Both parties presented evidence about the selling price of the subject property, but neither party claimed that price should be considered in determining the 2007 assessment. Therefore, it is unnecessary to say anything else about it.

³ Petitioner Exhibit 15 includes pages from the Guidelines, Appendix F, that discuss how actual age and effective age can determine how much depreciation a fast food restaurant building is to be allowed: "Periodic renovation of these type structures cures most forms of obsolescence. Therefore actual age must be converted to effective age following the guidelines earlier in this appendix used for determining effective age."

subject property was not properly determined, but that testimony was merely a conclusion that is not supported by any facts in the record. It is not probative evidence. Furthermore, even if the effective year of construction listed on the property record card is incorrect, that point does not necessarily mean that the assessment must be changed. *See P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (assessing officials are not limited to applying the cost approach in the Guidelines—they may make adjustments that make the valuation more accurate).

- c. As previously discussed, cost is one of the market-based approaches to valuation. The Petitioner presented some Marshall & Swift data about the cost to build a new fast food restaurant. Petitioner Exhibit 15 includes Marshall & Swift data for four classes and sixteen types of fast food restaurants. Petitioner Exhibit 15 includes photographs of several C and D rated properties as examples. Mr. Smith testified that the subject property is a good class C, and therefore, according to Marshall & Swift the cost to build it new would be \$133.80 per square foot. The record, however, contains virtually no specific facts about the subject property that relate to those classifications. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence). Mr. Smith failed to establish how or why the characteristics of the subject property are representative of the building classification he selected. Furthermore, several of the Marshall & Swift classifications have a much higher cost per square foot than what he selected. The presentation falls short of the type of detailed facts and analysis that might support a legitimate conclusion about a more accurate cost figure. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. Despite the Petitioner's contention that the state-wide fast food restaurant sales spreadsheet should not be used to make its assessment, both parties spent a great deal of time focusing on the sale prices and assessments of other fast food restaurants—altogether they presented 4 spreadsheets along with a significant amount of testimony/argument about them. Three of the spreadsheets (part of Petitioner Exhibit 15, Respondent Exhibits D and E) contain sales data pertaining to properties with locations scattered throughout Indiana. The spreadsheets show those properties were selling at anywhere from \$45 per square foot to \$982 per square foot. The fourth spreadsheet contains 2007 assessment data for fast food restaurants in Shelby County. It shows those properties were assessed at anywhere from \$62 per square foot to \$311 per square foot. But other than the fact that the spreadsheet properties are (or were) fast food restaurants, no substantial evidence about similarities and differences was introduced. The record contains no basis for drawing any conclusions about the relative market value-in-use of the subject property and any of the others on the spreadsheets. *See Long*, 821 N.E.2d at 471.

- e. The Petitioner failed to prove that the subject property is assessed for more than its actual market value-in-use as of January 1, 2006. The Petitioner also failed to prove what a more accurate market value-in-use might have been.
- f. Finally, the Petitioner argued the assessment is not uniform because the state-wide fast food restaurant spreadsheet shows other properties are assessed at a fraction of their selling prices. The spreadsheet (part of Petitioner Exhibit 15) contains data regarding approximately 35 sales from various locations scattered throughout Indiana. From that group, the Petitioner calculated assessment/sale percentages for four sales.
- An Arby's in Hammond assessment is 42% of sale price.
 - A property in Shelbyville is assessed at 49% of sale price.
 - A property in Portage is assessed at 16% of sale price.
 - A property in Indianapolis is assessed at 26% of sale price.
- The Petitioner failed to establish that this data constituted a statistically reliable sample. Similarly, the Petitioner failed to establish what an assessment/sale ratio might be that would accord with professionally acceptable standards. Therefore, the evidence does not prove that principles of uniformity and equality demand any change regarding the assessment of the subject property.
- g. Regardless of the assessment/sale ratio numbers, the Petitioner did not make a case because it failed to prove the actual market value-in-use of the subject property. A lack of uniformity and equality claim was rejected in *Westfield Golf*, 859 N.E.2d 396. *Westfield Golf* based its argument on the fact that the landing area for its driving range was assessed by using a different base rate than the base rate used to assess the landing areas of other driving ranges. *Id.* at 397-98. That difference, however, did not establish a violation of uniformity and equality requirements. The court explained that “the overreaching goal of Indiana’s new assessment scheme is to measure a property’s value using objectively verifiable data.” *Westfield Golf* did not prove the actual market value-in-use of its property or the other properties. Lacking such proof, there was no evidence that the requirements for uniformity and equality of assessment were violated.

19. When a petitioner fails to provide probative evidence that an assessment should be changed, a 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); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

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

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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>>