

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

Petition: 84-004-08-1-3-00443
Petitioner: Seventh Street Group, LLC
Respondent: Vigo County Assessor
Parcel: 84-09-10-101-005.000-004
Assessment Year: 2008

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 with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition dated August 27, 2009.
2. The PTABOA mailed Form 115 notice of its decision on August 9, 2010.
3. The Petitioner filed a Form 131 petition with the Board on October 1, 2010, and elected to have this case heard according to small claims procedures.
4. The Board issued notice of hearing on July 29, 2011.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 7, 2011. He did not inspect the property.
6. Gerald Collins and Michael Collins were sworn as witnesses for the Petitioner. Edward Bisch Jr. was sworn as a witness for the Respondent.

Facts

7. The subject property is located at 4122, 4126, 4130, 4134, 4138, 4142, and 4146 South 7th Street in Terre Haute.
8. The PTABOA determined that the 2008 assessment is \$868,500 (\$40,500 for the land and \$828,000 for the improvements).
9. The Petitioner did not specify what the assessed value should be.

Record

10. The official record contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit A – Property description,
Petitioner Exhibit 1 – Property record card (PRC) and photograph for 2501 South 3rd Street,
Petitioner Exhibit 2 – PRC and four photographs for 3181 South 3rd Place,
Petitioner Exhibit 3 – PRC and three photographs for 3353 South Highway 41,
Petitioner Exhibit 4 – PRC and three photographs for 4800 South Highway 41,
Petitioner Exhibit 5 – PRC and two photographs for 3501-3537 South 3rd Street Place,
Petitioner Exhibit 6 – PRC and photograph for 4221 South Highway 41,
Petitioner Exhibit 7 – PRC and two photographs for 5633-5785 South Highway 41,
Petitioner Exhibit 8 – PRC and photograph for 4408 South 7th Street,
Petitioner Exhibit 9 – Photograph of subject property,

Respondent Exhibit 1 – Summary of Respondent exhibits and testimony,
Respondent Exhibit 2 – Power of Attorney,
Respondent Exhibit 3 – Form 115, PTABOA determination,
Respondent Exhibit 4 – Form 131 Petition,
Respondent Exhibit 5 – Original 2008 PRC for the subject property,
Respondent Exhibit 6 – 2008 PRC for the subject property after PTABOA determination,
Respondent Exhibit 7 – List of tenants and uses for 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.

Contentions

11. Summary of the Petitioner's case:
 - a. When the Petitioner originally appealed the subject property's assessment, the PTABOA changed the improvement's classification from Neighborhood Shop to Commercial Office. *G. Collins testimony*. In light of a review of comparable properties, the classification should be changed back to Neighborhood Shop. *G. Collins argument*.

- b. The subject property is a strip mall with seven separate units that the Petitioner leases to tenants. For the most part, those tenants are in the health-care industry. One tenant sells hearing aids. At least three others provide services such as physical therapy and home health-care. *G. Collins testimony; Pet'r Ex. A.*
- c. Eight similar properties in the same area are all classified as Neighborhood Shop. Tenants in those properties include a cell phone store, a paint store, a nail shop, a pizza shop, a Subway restaurant, and a window store. There is no real difference in use between these properties and the subject property. These comparables have tenants such as an eye doctor and a dentist that are nearly identical to the tenants in the subject property. *G. Collins testimony; Pet'r Exs. 1-8.*
- d. The Petitioner admittedly did not file the petition within 45 days of the PTABOA's notice. The Petitioner "overnighted" the petition to the Board (it should have been received by September 30), and then telephoned Commissioner Betsy Brand, who confirmed that the Board received it. The Petitioner acknowledged that the Indiana Board of Tax Review "received" stamp indicates October 1, 2010. The Petitioner also acknowledged that its Form 131 petition did not meet the 45-day deadline after the PTABOA mailed the Form 115 notice; however, the Petitioner was never notified that late filing would be an issue. *G. Collins testimony.*

12. Summary of the Respondent's case:

- a. First and foremost, the Form 131 petition was not timely filed. Therefore, the Board lacks authority to act on this petition. *Bisch argument.*
- b. The PTABOA's determination was issued on August 9, 2010. The Respondent did not receive the Form 131 until September 29, 2010. That is 51 days, but the Petitioner only had 45 days to file. *Bisch testimony; Resp't Ex. 3, 4.*
- c. Regardless of the late filing, the assessment should not be changed. The evidence the Petitioner offered to the PTABOA indicated the subject property is used as offices. The PTABOA must assess property as it is currently used. Consequently, it had to change the improvement classification from Neighborhood Shop to Commercial Office based on the evidence it had. *Bisch testimony; Resp't Ex. 7.*
- d. Some of the classifications or assessments on the Petitioner's comparables could be wrong. But if those properties are inspected and the assessments are determined to be wrong, they will be corrected. *Bisch testimony.*

Analysis

13. The Petitioner filed the Form 131 petition to the Board late, and consequently, the Petitioner lost its opportunity for review of its 2008 assessment.
 - a. Pursuant to Ind. Code § 6-1.1-15-3(d), the time limit for filing a petition with the Board and serving a copy of that petition on the opposing party is 45 days after the PTABOA's determination. In this case, the PTABOA mailed its determination on August 9, 2010. The Board's procedural rules allow an additional three days when a document is served through the mail. 52 IAC 2-3-1(f). Therefore, the Petitioner had 48 days to file its petition with the Board. That date would have been Sunday, September 26, 2010; however, the Board's procedural rules made Monday, September 27, 2010, the actual last day for filing. 52 IAC 2-3-1(b).
 - b. Furthermore, the Board's procedural rules allow for filing by United States mail or private carrier as follows:
 - (c) The postmark date on an appeal petition or petition for rehearing, correctly addressed and sent by United States:
 - (1) first class mail;
 - (2) registered mail; or
 - (3) certified mail;will constitute prima facie proof of the date of filing.
 - (d) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, will constitute prima facie proof of the date of filing if the document is sent to the board by the carrier.
- 52 IAC 2-3-1. The Petitioner offered testimony, but no documentation, that its Form 131 petition was "overnighted" to the Board—it is unclear whether that means by mail or private carrier. Because no postmark or carrier receipt is in the record, neither of the provisions quoted above were satisfied. More importantly, the testimony was about sending the petition on September 28 or 29, which was already too late.
- c. The fact that the Board subsequently confirmed receipt of the petition does not make it timely.
 - d. The fact that the failure to file on time was not raised prior to the hearing is irrelevant.

14. Beyond the late filing issue, the Petitioner did not make a prima facie case for any assessment change, even though it had the opportunity to do so.
- a. Real property is assessed based on "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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of 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 the Guidelines is presumed to be accurate, but it 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.
 - b. The Petitioner needs to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). But here the Petitioner offered no such proof.
 - c. The Petitioner tried to establish that the subject improvement was incorrectly classified as Commercial Office even though the correct classification is Neighborhood Shop. Even if that point is correct, it attacks methodology, rather than proving value. And one does not rebut the presumption that an assessment is correct by merely contesting an assessor's methodology in computing the assessment. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, market-based evidence is required to show that the assessment does not accurately reflect market value in-use. *Id.*
 - d. Evidence about nearby properties having the same use as the subject property but being classified as Neighborhood Shop rather than Commercial Office does not change anything. That point still focuses on the methodology and not what the value actually is. Therefore, it is not probative evidence on a point that is relevant to the outcome of this case.
 - e. In fact, the Indiana Tax Court rejected a similar claim in *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). Westfield Golf contended that its assessment violated Article X section 1 of the Indiana Constitution because the assessor valued its driving range's landing area using a \$35,100-per-acre base rate, but valued other driving-ranges using the Guidelines' \$1,050 golf course base rate. 859 N.E. 2d at 397-98. The case focused solely on the difference in methodology. *Id.* at 399. But the taxpayer did not show the actual market value in use of its property or of any of the properties that it argued

were being treated more favorably. Accordingly, the Westfield Golf did not prove its case. *Id.*

- f. Similarly, regardless of the classification as Neighborhood Shop or Commercial Office, the Petitioner failed to prove the market value-in-use of the subject property or the purported comparables. The Petitioner provided no substantial basis for making any conclusions about the relative market value-in-use of these properties. Therefore, the Petitioner failed to make a case that the assessed value of the subject property must be changed.

Conclusion

- 15. The Petitioner did not file a timely Form 131 petition. In addition, the Petitioner failed to prove the current assessed value is not an accurate indication of market value-in-use and the Petitioner failed to prove what a more accurate market value-in-use would be.

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>