
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

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|-------------------------------------|---|-----------------------------------|
| Haddad Properties Ltd. Partnership, |) | Petition No.: 19-002-11-1-4-00027 |
| |) | |
| Petitioner, |) | Parcel: 19-11-10-100-019.003-002 |
| |) | |
| v. |) | |
| |) | |
| Dubois County Assessor, |) | Dubois County |
| |) | Bainbridge Township |
| |) | Assessment year: 2011 |
| Respondent. |) | |

Appeal from the Final Determination of the
Dubois County Property Tax Assessment Board of Appeals

September 25, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law

ISSUE

The issue presented for consideration by the Board is whether the Petitioner's property was over-assessed for the 2011 assessment year.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is a warehouse located at 1919 Container Drive, Jasper, Indiana.
2. The Petitioner initiated its 2011 assessment appeal by timely filing a Form 130 on October 12, 2011. On December 2, 2011, the Dubois County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its determination, valuing the subject property at \$380,300 for the land and \$3,285,100 for the improvements, for a total assessed value of \$3,665,400.¹
3. On December 5, 2011, the Petitioner filed a Form 131 Petition for Review of Assessment. The Petitioner elected to have this case heard according to small claims procedures. On April 8, 2013, the Respondent filed a motion, requesting that the hearing to be transferred from small claims procedures to the Board's standard hearing procedures. On April 9, 2013, the Board granted the Respondent's motion and the case was heard pursuant to the procedures outlined in 52 IAC 2.
4. The Board's designated Administrative Law Judge, Paul Stultz, held the hearing on July 17, 2013. He did not inspect the property.
5. Certified Tax Representative Milo Smith represented the Petitioner and was sworn as a witness. Attorney Marilyn Meighen represented the Respondent. Gail Gramelspacher, Dubois County Assessor, and PTABOA members Natalie Jenkins and Gregory Abell were all sworn as witnesses, but did not provide testimony.
6. The Petitioner presented the following exhibits:
Petitioner Exhibit 1 – 2011 property record card for the subject property,

¹ The Petitioner filed a Petition for Correction of an Error (Form 133) after the PTABOA's determination. As a result, on June 5, 2012, the PTABOA issued a determination reducing the value of the improvements to \$2,884,600. Consequently, the total assessed value of the property is \$3,264,900. *Meighen argument.*

Petitioner Exhibit 2 – 2008, 2009, and 2010 Federal tax schedules (Rental Real Estate Income and Expenses of a Partnership or an S Corporation, Form 8825)

Petitioner Exhibit 3 – Income analysis,

Petitioner Exhibit 4 – Letter from Larry E. Nunn, Certified Public Accountant, to Milo Smith dated July 10, 2013.

7. The Respondent did not offer exhibits.
8. The following additional items are recognized as part of the record:
 - Board Exhibit A – The 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.

SUMMARY OF THE PETITIONER'S CASE

9. The Petitioner contends that a 95% adjustment for economic obsolescence should be applied to the PTABOA's total assessed value.² *Smith testimony.*
10. The property was vacant most of 2008 and received \$140,741 in gross rental income. *Pet'r Ex. 2.* According to LoopNet.com, market rental rates in Jasper, Indiana were \$5.00 per square foot. Thus, the gross rental income for the subject property should have been \$787,000. *Smith testimony; Pet'r Ex 3.* The property received 18% of its potential gross revenue that year. *Smith testimony.*
11. In 2009, the property was vacant and received \$1,365 in gross rental income. *Pet'r Ex. 2.* Again, the 2009 gross rental income should have been \$787,000. *Smith testimony; Pet'r Ex 3.* The property received 0.1734% of its potential gross revenue. *Smith testimony.*
12. In 2010, the property received \$4,090 in gross rental income. *Smith testimony; Pet'r Ex. 2.* The gross rental income should have been \$750,000, based on the market rental rate of \$4.79 per square foot. *Smith testimony; Pet'r Ex. 3.* The property received 0.5% of its potential gross revenue that year. *Smith testimony.*

² The Board notes that obsolescence, a form of depreciation, is applied to improvements only.

13. The surveyed rates provided by RealyRates.com show that the national overall income capitalization rate for all industrial properties is between 5.62% and 13.63% with the average being 10.15%. The Petitioner used a capitalization rate of 10% to calculate the income approach. *Smith testimony; Pet'r Ex. 3*. The property would need net operating income of \$366,540 to support the assessed value of \$3,665,400. *Smith testimony*.
14. The property averaged a 40% vacancy rate over the eleven years the Petitioner owned the property rather than the 10% vacancy rate for the Indianapolis area as determined by market data analyzed by RealtyRates.com. *Pet'r Ex. 3*. Using the eleven years, the Petitioner should receive 33% obsolescence based on the life of the building. Considering the gross rental income for 2009 and 2010, the Petitioner should be granted 95% obsolescence depreciation for 2011. *Smith testimony*.
15. The Indiana Tax Court has held that a property was entitled to a 95% obsolescence adjustment where the property had not received income in the year of the appeal or the prior year.³ In this case, the parties agree that the property was vacant. The Petitioner tried to generate revenue by renting storage space for boats and RVs, but those efforts were unsuccessful. *Smith testimony*.
16. A 95% obsolescence adjustment should be applied to the assessed value of \$3,665,400. Assessments are to be judged based upon the utility received and assessors are expected to adjust the assessed value to comply. *Smith testimony*.

SUMMARY OF THE RESPONDENT'S CASE

17. The Petitioner's income approach to value is not reliable. The data used for the calculations are based on properties that are not comparable to the subject property. *Meighen argument*.

³ The Petitioner cited to *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E.2d 801 (Ind. Tax Ct. 1998) for that proposition.

18. The 10% capitalization rate that the Petitioner used is from a national publication and does not identify what areas are included. The national capitalization rate is not specific to Dubois County or Jasper, Indiana. *Meighen argument.*
19. The Petitioner used a 10% vacancy rate and a 40% expense ratio that were based on the Indianapolis warehouse district. The Petitioner should have used information specific to the subject location. *Meighen argument.*
20. Assuming that the Petitioner's rates and ratios accurately reflect the Jasper, Indiana market, the calculations show that the property is actually under assessed (i.e., using the \$3.665 million assessed value). The Respondent asserts that when \$3,665,400 is divided by 157,500 square feet, the value is \$4.30 per square foot. The market data used in the Petitioner's income capitalization approach indicates a value of approximately \$4.70 per square foot. The fact that the subject property has a higher vacancy rate than the market rate could be caused by many factors, such as bad management. *Meighen argument.*
21. In a recent Indiana Tax Court opinion, the Court held that market data must be compared to the actual property being valued. Where the market numbers do not coincide with the actual numbers, the market numbers have to be used. *Meighen argument.*
22. Mr. Smith's position that vacancy automatically equals obsolescence is not correct. *Meighen argument.*

BURDEN OF PROOF

23. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

24. Here, the parties agreed that the Petitioner has the burden of proving that the 2011 assessment is incorrect and what the correct assessment should be.

ANALYSIS

25. 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.
26. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required 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). The valuation date for a 2011 assessment was March 1, 2011. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, the value as of that date. *Long*, 821 N.E.2d at 471.

27. In this case, the Petitioner offered an income approach calculation to demonstrate that its property suffered from economic obsolescence in 2011.⁴ More specifically, the Petitioner asserts that, due to vacancy, its property did not generate rental income in line with the market rental rates and, therefore, suffers from 95% economic obsolescence.
28. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also necessary to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property is out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expense data helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013).
29. In this case, the Petitioner used vacancy rate information and expense ratios based on the Indianapolis warehouse district to calculate the income approach. Similarly, the Petitioner used an income capitalization rate based on national data. The Petitioner, however, failed to demonstrate that the national and regional rates were based on properties that are similar or comparable to the subject property. The Petitioner also failed to explain reasons why its property experienced a 40% vacancy as opposed to the alleged 10% market vacancy rate.⁵ *See id.* (footnote added).

⁴ Economic (external) obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on the property's value. *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for obsolescence, a property owner must identify the causes of obsolescence present and quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998).

⁵ The Petitioner's primary assertion that its property's decreased income level/vacancy results in obsolescence is unsupported. The Petitioner provided no explanation or evidence concerning the causes of the vacancy. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).

30. While the Petitioner provided evidence of the actual income and expenses of the property for 2008, 2009, and 2010, the Petitioner failed to demonstrate how these amounts relate to the relevant valuation date of March 1, 2011. The Petitioner acknowledged that the 2011 actual rental income data was unavailable, but failed to provide further explanation. *Pet'r Ex. 3 at 2.*
31. The record is devoid of evidence that the Petitioner's methods comply with generally accepted appraisal principles. Accordingly, the Board concludes that the Petitioner failed provide probative evidence to establish a prima facie case that the 2011 assessment was incorrect.
32. When a taxpayer fails to provide probative evidence supporting the position 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

33. The Petitioner failed to establish a prima facie case for a reduction in assessed value. The Board finds in favor of the Respondent.

SUMMARY OF FINAL DETERMINATION

34. The 2011 assessment will remain unchanged.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.