

REPRESENTATIVE FOR PETITIONER:
Robert Patel, Member of Corporation

REPRESENTATIVE FOR RESPONDENT:
Edward O. Martin, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mulchand, Inc.,	)	Petition No.:	89-030-14-1-4-10098-15
)		
Petitioner,	)	Parcel No.:	89-16-36-320-103.000-030
)		
v.	)	County:	Wayne
)		
Wayne County Assessor,	)	Township:	Wayne
)		
Respondent.	)	Assessment Year:	2014

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

December 8 , 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioner prove the subject property's 2014 assessment was incorrect?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2014 assessment appeal with the Wayne County Assessor on September 8, 2014. On February 2, 2015, the Wayne County Property Tax Assessment

Respondent Exhibit 9: Profit and Loss statement for January 2008 through December 2013 (CONFIDENTIAL),

Respondent Exhibit 10: Value computation of the subject property labeled as “Dave’s Sheet.”

7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131 with attachments,

Board Exhibit B: Hearing notice dated June 8, 2016,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Notice of Appearance for Edward O. Martin.

8. The subject property is an improved commercial property, commonly known as Econo Lodge hotel, located at 419 Commerce Road in Richmond.

9. The PTABOA determined the total assessment is \$1,886,500 (land \$510,500 and improvements \$1,376,000).

10. On its Form 131, the Petitioner requested a total assessment of \$700,000 (land \$200,000 and improvements \$500,000).

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

OBJECTIONS

12. Mr. Martin objected to a question posed by Mr. Patel to Ms. Smith-Henson during cross-examination on the grounds of relevancy. Specifically, Mr. Patel asked Ms. Smith-Henson what the property record card “would look like” if the improvements had been assessed as a modular or mobile home. The ALJ took the objection under advisement.

13. Given the well-established requirement of a taxpayer to prove the value of the property rather than challenge the methodology used to compute the assessment, the Board agrees Mr. Patel's question likely has little relevance. Yet, that question goes more to the weight of the question rather than to admissibility. Thus, while it has no effect on the final determination, Mr. Martin's objection is overruled. Mr. Patel's question and Ms. Smith-Henson's response are included in the record.

PETITIONER'S CONTENTIONS

14. The subject property's assessment is too high. From an "income standpoint," the property lost roughly \$110,000 from 2013 to 2014. Currently, "the property taxes for this property are 11.5%, while the hotel industry standard is only 5%." In fact, the Petitioner owns three other assets in Indiana, including one in Bloomington, but the property taxes on the Bloomington property are "half that" of the subject property. *H. Patel argument; Pet'r Ex. 1, 2.*
15. The property is comprised of buildings made of "modular construction." They were built in Tennessee and "trucked over, room by room." The electrical wiring and plumbing was completed in a factory. Additionally, one of the 42 room buildings has been "shut down." *H. Patel testimony; R. Patel testimony.*
16. The industry standard is that similar properties sell for "about 2.5 times their gross revenue." As the subject property has "none of the bells and whistles like a normal property, it would likely sell for only 1.1 or 1.2 times its gross revenue." *H. Patel argument.*

RESPONDENT'S CONTENTIONS

17. Before addressing the merits of the appeal, the Petitioner did not timely respond to a defect notice issued by the Board. Specifically, on April 23, 2015, the Board issued a defect notice to the Petitioner regarding the filing of its appeal. The defect notice stated that the Petitioner had until May 23, 2015, to correct the defect. According to the testimony of Mr. Patel, he signed and mailed the required document on May 21, 2015.

However, Mr. Patel conceded the Board's "date stamp" indicates receipt on May 27, 2015. *Martin argument (referencing R. Patel testimony)*.

18. Regardless, the subject property is correctly assessed. The assessment was determined utilizing the cost approach. While the income approach was computed and considered, it was not utilized. The improvements were assessed as "frame with joist." Admittedly, Ms. Smith-Henson is "not sure" how that differentiates from a "modular." The assessment increased from 2013 to 2014 as a result of documentation filed by the Petitioner's tax representative noting an "increase in the average daily rate and occupancy." *Smith-Henson testimony; Smith testimony; Resp't Ex. 6, 7.*
19. The PTABOA determined the current assessment represented a rate of \$19,000 per room, and found no change was warranted. Additionally, the Petitioner filed an appeal in 2013 and an "informal conference" was held. Ultimately, the PTABOA determined no change was to be made to the 2013 assessment. *Smith-Henson testimony.*

BURDEN OF PROOF

20. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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, 1233 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
21. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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 the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

22. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
23. Here, the parties agree the assessed value of the property did not increase by more than 5% from 2013 to 2014 and that the burden is to remain with the Petitioner. In fact the assessment increased from \$1,798,400 in 2013 to \$1,886,500 in 2014, an increase of only 4.9%. While the Respondent testified that the property’s assessment was also appealed in 2013, there was no dispute that the appeal was unsuccessful. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

ANALYSIS

24. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
25. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).

26. Before addressing the merits of the case, the Board will first turn to the question of whether the Petitioner's response to the defect notice was timely. Mr. Patel offered undisputed testimony that he specifically recalled mailing the required documents on May 21, 2015, the day he signed it. His testimony is sufficient to establish that he mailed the document on that date. *F&F Construction Co. v. Royal Globe Ins. Co.*, 423 N.E.2d 654, 656 (Ind. Ct. App. 1981) citing *United Farm Bureau Mutual Ins. Co. v. Adams*, 251 N.E.2d 696 (Ind. Ct. App. 1969) (holding that "...proof consisting of the testimony from one with direct and actual knowledge of the particular message in question is required to establish proof of mailing.") A document is considered filed when it is deposited in the United States First Class mail. Ind. Code § 6-1.1-36-1.5(b); *Ind. Sugars v. State Bd. of Tax Comm'rs*, 683 N.E.2d 1383, 1386-1387 (Ind. Tax Ct. 1997). The Petitioner filed its response to the defect notice on May 21, 2015, two days prior to the stated deadline. As such, the response was timely.³
27. Turning to the merits of the appeal, the Petitioner failed to offer sufficient evidence for reducing the assessment. Regarding the Petitioner's contention that the property taxes are "a higher percentage than the industry standard," the Board lacks jurisdiction to hear general claims that a petitioner's taxes are too high or that those taxes are higher than those paid by other property owners. The Board is a creation of the legislature, and only has the authority as conferred by statute. *Whetzel v. Dept of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) (citing *Matonovich V. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)).

³ The Board notes the likely delay in receiving the document was because the actual due date, May 23, 2015, was a Saturday and May 25, 2015, was a holiday. Thus, the effective due date should have been May 26, 2015. Again, the Board received the document on May 27, 2015. Allowing three days for mailing, as provided by Ind. Code § 4-21.5-3-2(e), the Petitioner's response was timely.

28. Of course, the Board has the authority to hear the Petitioner's assessment challenge. In an effort to prove the assessment incorrect, the Petitioner offered what it referred to as "revenue documents." The Board views this as an attempt to utilize the income approach to valuation. While the income approach is certainly an accepted valuation technique, the Petitioner failed to actually develop that approach. Instead, the Petitioner merely provided two "profit and loss" statements. One statement was for 2014, and the other statement was for both 2013 and 2014.
29. For several reasons, these statements alone do not constitute probative evidence of the property's value. First, the statements include many expenses that may be relevant in valuing the business as a whole, but are unallowable when valuing only the real estate. For example, depreciation, amortization, and business licenses and permits are included as expenses on the Petitioner's profit and loss statements. Second, the Petitioner failed to explain how 2014 income and expenses, most of which occurred after the assessment date in question, are relevant to the property's 2014 market value-in-use.
30. Most importantly, the Petitioner failed to actually compute a value. It is not enough to simply offer an income statement. Computing a value involves much more, including developing and supporting a capitalization rate, and analyzing the market to adjust any unreasonable property specific income and expenses. It is not the Board's duty to attempt to derive a value from the Petitioner's evidence, or to otherwise make a case for the Petitioner. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 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").
31. The Petitioner also vaguely referred to a purported "industry standard" of valuation. The Petitioner stated properties generally sell for "about 2.5 times their gross revenue," but the subject property would "likely sell for only 1.1 or 1.2 times its gross revenue." Accordingly, the Petitioner suggested the subject property should be valued in this manner. The Petitioner failed to offer anything to support the notion that this is an accepted valuation technique. Further, the Petitioner failed to offer anything more than

mere speculation as to the appropriate factor for the subject property. Again, even if this method and factor were assumed to be correct, the Petitioner failed to actually compute a value utilizing this method.

32. Consequently, the Petitioner failed to make a prima facie case that the 2014 assessment is incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

33. In accordance with these findings and conclusions, the 2014 assessment will not be changed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, 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 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 of 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>>.