

REPRESENTATIVE FOR PETITIONER:
Thomas J. Galligan, Jr., Attorney at Law

REPRESENTATIVE FOR RESPONDENT:
F. John Rogers, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Hardware Wholesaler,)	Petition No.:	02-074-02-1-4-03009
)	Parcel:	502443008
Petitioner,)		
)		
v.)		
)	Allen County	
Adams Township Assessor,)	Adams Township	
)	2002 Assessment	
Respondent.)		

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

August 1, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (the "Board") has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Is the subject property assessed at a higher value than its market value-in-use?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. On March 18, 2005, the Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination. On April 20, 2005, Hardware Wholesaler (the “Petitioner”) filed a Form 131 Petition for Review of Assessment, requesting the Board to conduct an administrative review.
2. Pursuant to Ind. Code § 6-1.1-15-4, Paul Stultz, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3, held a hearing on April 17, 2007, at Fort Wayne, Indiana.
3. The following persons were sworn as witnesses at the hearing:
For the Petitioner – Thomas Galligan,
For the Respondent – Teresa West, Deputy Township Assessor.
4. The following exhibit was presented for the Petitioner:
Petitioner’s Exhibit 1 – Consulting letter prepared by John Fiene.¹
5. The following exhibits were presented for the Respondent:
Respondent’s Exhibit 1 –Position Statement,
Respondent’s Exhibit 2 – Aerial photograph of subject parcel,
Respondent’s Exhibit 3 – Diagram of the building interior,
Respondent’s Exhibit 4 – Sketch of the building interior,
Respondent’s Exhibit 5 – North side photograph of the building,
Respondent’s Exhibit 6a – West side photograph of the building,
Respondent’s Exhibit 6b – West side photograph of the building,
Respondent’s Exhibit 7 – South side photograph of the building,
Respondent’s Exhibit 8 – Interior photograph of building G,
Respondent’s Exhibit 9a – Interior photograph of building G,
Respondent’s Exhibit 9b – Interior photograph of building G,
Respondent’s Exhibit 9c – Photograph of warehouse converted to office space,
Respondent’s Exhibit 10a – Photograph of buildings F and E,

¹ The Respondent objected to admission of Exhibit 1 because it is hearsay. For reasons explained later in this determination, that objection is sustained. The Board will not consider the consulting letter as part of the evidence in making its final determination.

Respondent's Exhibit 10b – Photograph of building E,
Respondent's Exhibit 11 – Photograph of truck terminal,
Respondent's Exhibit 12 – Photograph of building D,
Respondent's Exhibit 13 – Description of use, square footage, and age of improvements,
Respondent's Exhibit 14 – Building permits for subject property,²
Respondent's Exhibit 15 – Property record card,
Respondent's Exhibit 16 – Form 115 with the Allen County PTABOA Findings and Conclusions,
Respondent's Exhibit 17 – Form 131.

6. 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,
 - Board Exhibit D- Notice of Appearance.
7. The subject property is an industrial office and warehouse located at 6502 Nelson Road in New Haven, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The 2002 assessed value determined by the PTABOA is \$5,390,200.
10. The 131 Petition claims the total assessed value should be \$2,150,000.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

11. 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.*

² The Petitioner objected to admitting these building permits because they all were issued after the assessment date. Exhibit 14 consists of 41 permits that were issued between July 2002 and September 2004. They show substantial expenditures to remodel the subject property after the assessment date, March 1, 2002. The Respondent failed to establish how they might be relevant. The Board sustains the objection to Exhibit 14 and will not consider those permits in making its final determination.

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).

12. 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”).
13. 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.

ANALYSIS

14. The Petitioner’s claim for a lower assessment is based on a document that purportedly came from of a licensed appraiser. *Galligan testimony; Pet’r Ex. 1*. It was referred to as an appraisal, but that is not what it is. The document specifies “[t]his consultation letter should not be construed as an appraisal report. The appraiser/analyst has inspected the subject property, but has limited the analysis to the consulting issues to be addressed. *** Should a full appraisal later be desired, I will require engagement under a separate contract” *Ex. 1 at 1*. The letter recommends a land value of \$150,000 and an improvements value between \$1,617,000 and \$2,641,700. *Id. at 3*. It contains certification language, but that certification is not signed. In fact, although the document states it was prepared by John F. Fiene, MAI, IFAC, SRA, there is no signature anywhere in the exhibit. Furthermore, Mr. Fiene did not appear at the hearing to testify.³

³ As a result of the Respondent’s hearsay objection, the Petitioner’s attorney offered to “cure” by having Mr. Fiene testify at some later date. He offered no substantial justification or excuse for not having Mr. Fiene at the hearing to authenticate his work and answer questions about it, which is a requirement that counsel should have anticipated, especially because the consulting letter constitutes the Petitioner’s entire case. Allowing the Petitioner an additional hearing to cure its mistake is not justified. Therefore, the Board declines the offer.

15. The Respondent objected to the document because it is hearsay, pointing out that the appraiser who prepared it was not present to testify and to be cross-examined. The Respondent argued that where there is a proper objection to hearsay evidence, the Board may not base the resulting determination solely on that evidence.
16. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered as evidence to prove the truth of the matter asserted. (Ind. R. Evid. 801(c)). Petitioner's Exhibit 1 was offered to show the true tax value of the property. It is hearsay. The Petitioner did not attempt to argue otherwise.
17. The Petitioner also offered no argument that the document should be allowed under any recognized hearsay exception, but simply contended the document is a proper exhibit.
18. The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3 (2004). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

19. The Petitioner offered no substantial argument for admitting the hearsay, and several factors weigh against allowing it. The fact that the opinion is not a signed, certified appraisal is significant. The failure of Mr. Fiene to authenticate the document and the lack of opportunity for the Respondent to ask questions about it are also extremely significant points. For example, the letter states that it is "as of March 1, 2002," but it also references "base valuation being January 1, 1999." Without better explanation, it is not clear that the range of value it proposes is properly related to the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

Furthermore, the wide range of value recommended by this letter (somewhere between \$1,767,000 and \$2,791,700) is so broad that, standing alone, it provides no exact answer for what a “correct” assessment would be. Finally, no other evidence corroborates the hearsay.

20. The Respondent’s objection is sustained. Petitioner’s Exhibit 1 will not be considered as evidence in this case.
21. The Board would reach the same conclusion about the assessment if it overruled the objection and admitted this evidence because there is absolutely no other evidence that supports the Petitioner’s claim. 52 IAC 2-7-3.
22. The evidence does not support the claim that the assessed value exceeds the market value-in-use of the subject property. The Petitioner did not make a prima facie case.
23. When a taxpayer fails to provide probative evidence supporting its 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).

SUMMARY OF FINAL DETERMINATION

24. The Board finds in favor of the Respondent. The assessment will not be changed.

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

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>