

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

Petition: 20-012-03-1-4-00474
Petitioner: St. Joseph Bank & Trust
Respondent: Concord Township Assessor (Elkhart County)
Parcel: 20-06-05-406-039.000-012
Assessment Year: 2003

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 15, 2004.
2. The PTABOA mailed notice of its decision on July 27, 2005.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on August 25, 2005. The Petitioner elected to have this case heard according to the small claim procedures.
4. The Board issued notice of hearing to the parties dated July 31, 2007.
5. The Board held an administrative hearing on September 6, 2007, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn as witnesses at the hearing:
For Petitioner – Carla D. Bishop, Meritax – Property Tax Consultants,
For Respondent – Richard Schlueter, Concord Township Deputy Assessor,
Robert W. Brewer, Concord Township Deputy Assessor,
Kristin L. Rowe, Concord Township Assessor.

Facts

7. The subject property is a 3-story bank/office building located at 101 South Main Street, Elkhart.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the assessed value of the subject property is \$93,600 for the land and \$1,485,500 for the improvements, for a total assessed value of \$1,579,100.
10. The Petitioner requested a total assessed value of \$1,000,000 at the Board hearing.

Issue

11. Summary of Petitioner's contentions:
 - a. The assessed value exceeds the market value-in-use of the subject property. *Bishop testimony.* In support of this contention, the Petitioner submitted a summary appraisal report for the subject property prepared by Aaron Wood, associate, and Richard Correll, certified appraiser, Correll Commercial Real Estate Services. *Petitioner Exhibit 2.*¹ The appraisal is dated March 28, 2007. It estimates the value of the subject property was \$1,000,000 as of January 1, 1999. *Id.*
 - b. Even though the appraisal estimates "retrospective market value," the subject property did not change substantially in physical attributes between the valuation date of January 1, 1999, and the date of the appraisal report, March 28, 2007. *Bishop testimony.*
12. Summary of Respondent's contentions:
 - a. The subject property is correctly assessed with the land at \$93,600 and improvements at \$1,485,500, for an overall assessed value of \$1,579,100. *Respondent Exhibit 1; Schlueter testimony.* In support of this contention, the Respondent submitted an aerial photograph showing the location of the subject

¹ At the hearing Mr. Richard Schlueter, Concord Township Deputy Assessor objected to the Petitioner's submission of the appraisal because this evidence was not submitted at the PTABOA hearing. Mr. Schlueter testified the Petitioner should be limited to the evidence submitted at the PTABOA hearing (i.e. a 1997 bank appraisal that established a market value of \$1.2 million). Mr. Schlueter argued that the Petitioner agreed no new issues or evidence would be raised at the Board hearing because it accepted small claims procedures. 52 IAC 3-1-2 (b). Ms. Bishop testified, and Mr. Schlueter confirmed, the Petitioner mailed a copy of the evidence (i.e. Correll's appraisal) on or about April 4, 2007. The Board's procedural rules state that "a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals." 52 IAC 2-7-1 (a). In addition, the Board's small-claims procedural rules state in pertinent part, the parties shall make available to all other parties copies of any documentary evidence intended to be presented at the hearing at least five days before the day of a small claims hearing. 52-IAC 3-1-5 (f). Here, there was no prejudice to the Respondent because the Petitioner provided the evidence to Respondent approximately 3 months before the scheduled Board hearing. In addition, the Petitioner is not limited to only the evidence that was submitted at the PTABOA hearing. The Respondent's objection is overruled.

property and five comparable properties that sold in 2005 and 2006 in the subject area.² *Respondent Exhibit 5; Brewer testimony.* According to the Respondent, the comparables sold for \$69.25 per square foot to \$101.69. *Brewer testimony.* The Respondent argues the subject property has been renovated and shows very little deterioration. The utility received from the subject property is comparable to the sales and construction per square foot cost of the comparable properties. *Id.*

- b. The Petitioner's appraisal conducted March 28, 2007, should be given little weight. *Schlueter testimony.* The appraiser listed the subject property in the wrong township. The market value was developed as if the building was a rental office, but the subject property is owned and occupied by the bank (i.e. property owner). *Id.* Further, the appraiser shows the market rents in the area range from \$9.00 to \$12.00 per square foot; however, he used a market rent of \$7.00 per square foot for the income approach to value. *Id.* Two of the three comparables used in the appraisal were not located in Elkhart County. *Id.* Further, the appraisal does not conform to the Uniform Standards of Professional Appraisal Practices (USPAP) because the appraiser failed to specifically explain how the appraisal conducted on March 28, 2007, was developed to retroactively reflect a January 1, 1999, market value. *Id.*
- c. Finally, the Petitioner never established that any of the factual information contained on the subject property record card is incorrect. *Respondent Exhibit 3; Schlueter testimony.* Therefore, because the township determined the assessed value of the subject property using the standards set forth by the State, the true tax value as of the assessment date is fair and accurate. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. Form 131 petition and related attachments,
 - b. Digital recording of the hearing,
 - c. Exhibits:

Petitioner Exhibit 1 – Petitioner's summary of issues,

² The Petitioner objected to the Respondent introducing an aerial map and testimony regarding sales and construction costs of comparable properties in the area. *Respondent Exhibit 5.* According to Ms. Bishop, she requested the Respondent's documentary evidence and a list of anticipated witnesses in a letter to the Concord Township Assessor dated and mailed August 30, 2007. The Board's small claims procedural rules state "parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be present at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5 (f). The rules further state, "if a paper is served through the United States mail, three (3) days must be added to a period that commences upon service of that paper." 52 IAC 2-3-1(e). The Petitioner's request was mailed August 30, 2007 (six days before the scheduled hearing). The Petitioner failed to allow the three additional days for United States mail. Consequently, the objection is overruled.

- Petitioner Exhibit 2 – Summary appraisal report prepared by Correll Commercial Real Estate Services,
- Petitioner Exhibit 3 – Copy of the Form 131 petition, Form 115 – Notification of Final Assessment Determination and Form 130 petition,
- Petitioner Exhibit 4 – Copy of a letter from Carla Bishop to Kristen L. Rowe, Concord Township Assessor, dated April 4, 2007,

- Respondent Exhibit 1 – Copy of the Form 115 – Notification of Final Assessment Determination,
- Respondent Exhibit 2 – A request for additional evidence from the PTABOA to Carla Bishop, dated May 19, 2005, and a request for additional evidence from the PTABOA to the Concord Township Assessor, dated May 19, 2005,
- Respondent Exhibit 3 – Subject property record card,
- Respondent Exhibit 4 – Witness and exhibits list from Kristin Rowe, Concord Township Assessor to Indiana Board of Tax Review, dated July 21, 2005,
- Respondent Exhibit 5 – Aerial map of the subject area,

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. 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 Township 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).
 - b. 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”).

- c. 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.
15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. The 2002 Real Property Assessment Manual (hereinafter MANUAL) defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, for the property." 2002 REAL PROPERTY ASSESSMENT MANUAL – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
 - b. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4, 8. This valuation date also applies to succeeding assessment years through 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments to begin in 2006). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999.
 - c. Here, the Petitioner submitted an appraisal by a trainee appraiser (supervised by a licensed appraiser) that values the subject property at \$1,000,000 as of January 1, 1999. *Petitioner Exhibit 2*. The appraisers attest the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraisers used the income and sales comparison approaches to value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479.

- d. As a result, the Respondent had a burden to present probative evidence to rebut or impeach the Petitioner's case. The Indiana Tax Court stated:

The court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.*

Fidelity Federal Savings & Loan v. Jennings County Assessor, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (emphasis added) (citations omitted).

- e. Here, the Respondent submitted an aerial photograph and testimony about the per square foot assessment costs for five properties that were sold or constructed in the Petitioner's neighborhood as support for the assessment. *Respondent Exhibit 5; Brewer testimony*. The Respondent failed to identify specific characteristics of those properties or explain how their characteristics compared to the characteristics of the subject property. Similarly, the Respondent failed to identify or explain the differences between the properties that might affect their relative market values-in-use. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence. *See Long*, 821 N.E.2d at 470. Thus, the Respondent's "comparable" properties are insufficient to impeach or rebut the Petitioner's evidence.
- f. The Respondent noted that the appraisal report is based on only one sale in Elkhart County and two others from South Bend and Lafayette. *Schlueter testimony*. The Respondent argues the appraiser failed to conform to USPAP because the appraisal does not contain a specific explanation about how data collected on March 28, 2007, was trended back to develop the market value-in-use as of January 1, 1999. *Id.* The Respondent also questioned the market rent per square foot price used in the development of the income approach to value. *Id.*
- g. The argument that the appraisal has little weight because the appraiser used sales from South Bend and Lafayette is not persuasive. It is well within an appraiser's expertise to choose the sales they deem most comparable to the subject property. Absent evidence to the contrary, the comparables chosen by the appraiser are reasonable. Further, it is uniquely within the expertise of an appraiser to apply or not apply adjustments to properties to value the differences between them. Thus, it was appropriate for the Petitioner's appraiser to determine the adjustments to be applied to the comparables in the sales comparison approach and the applicable

market rent for the subject property in the income approach in determining the market value of the subject property.

- h. The Respondent's allegations concerning the appraisal not being prepared in accordance with USPAP are unsupported and conclusory. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioner's case. *See Hometown Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005).
- i. The Board finds that the Respondent failed to rebut or impeach the Petitioner's evidence.

Conclusion

- 16. The evidence demonstrates that the market value-in-use of the subject property is \$1,000,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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>