

REPRESENTATIVE FOR PETITIONER:
Brian J. Clark, Barnes & Thornburg

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Forest River Realco LLC,	)	Petition No.:	20-015-02-1-3-00114
)		
Petitioner,	)	Parcel:	20-11-24-102-001.000-015
)		
v.)		
	)	County:	Elkhart
Becca Briscoe,	)	Township:	Elkhart
Elkhart Township Assessor)		
)		
Respondent.	)	Assessment Year:	2002

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

December 19, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the property exceeds its market value-in-use for the March 1, 2002, assessment.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Brian Clark of Barnes & Thornburg, on behalf of Forest River Realco LLC, filed a Form 131 Petition for Review of Assessment, dated November 24, 2004, petitioning the Board to conduct an administrative review of the above petition. The Elkhart County Property Tax Assessment Board of Appeals issued its determination on November 1, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on June 20, 2006, in Goshen, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Michael Stump, Representative of Forest River
Tammy Harnish, Barnes and Thornburg, Property Tax Analyst

For the Respondent:

Becca Briscoe, Elkhart Township Assessor
Iverson Grove, PTABOA Member and MAI Appraiser

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Appraisal for 1702 Century Drive,
Petitioner Exhibit 2 – Appraisal for 1802 Century Drive.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – GIS map of subject properties,
Respondent Exhibit 2 – Photos of buildings,
Respondent Exhibit 3 – Property record cards of subject property,
Respondent Exhibit 4 – Form 115 – PTABOA Determination,
Respondent Exhibit 5 – Shultz Appraisal of 1702 Century effective 9-28-98,
Respondent Exhibit 6 – Shultz Appraisal of 1802 Century effective 9-28-98,
Respondent Exhibit 7 – Sales comparables,

Respondent Exhibit 8 – Sales disclosures and property record cards of sales from Elkhart County Equalization Sales Ratio Study for improved industrial sales from 1-1-98 to 12-31-99,¹

Respondent Exhibit 9 – Sales disclosures and property record cards of comparable sales used in Shultz appraisals dated May 15, 2006.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 131 Petition,
Board Exhibit B – Notice of Hearing dated April 6, 2006,
Board Exhibit C – Notice of Appearance for Brian Clark,
Board Exhibit D – Hearing Sign In Sheet.

8. The subject property is an industrial property on 6.135 acres located at 1702 Century Drive and 1802 Century Drive in Goshen, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2002, the PTABOA determined the assessed value of the property to be \$192,500 for the land and \$758,200, for the improvements for a total assessed value of \$950,700.

11. For 2002, the Petitioner contends the assessed value of the property should total \$675,000.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions;

¹ The Petitioner raised several objections in regard to the evidence. Generally, the Petitioner objected to any evidence not presented at the PTABOA hearing. The Board rejects this argument. 52 IAC 2-7-1 (a) states, “a party participating in the hearing may introduce evidence... without regard to whether that evidence has been introduced at a hearing before the county property tax assessment board of appeals.” The Board’s review is *de novo* and the Respondent is entitled to support its assessment, just as the Petitioner is allowed to present any evidence it has in support of its position. The Petitioner’s objection on this is overruled. The Petitioner also objected to Respondent Exhibit 8 because the Respondent failed to submit it prior to the hearing as required by 52 IAC 2-7-1(b). The Petitioner’s objection to this exhibit is sustained and Respondent Exhibit 8 is excluded. The Respondent withdrew Exhibit 10.

and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana 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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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 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).
14. 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. Wash. 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”).
15. 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

16. The Petitioner contends assessed value of the property exceeds its market value-in-use based on its appraisals that establish the value of the property to be \$675,000.
17. In support of its value, the Petitioner presented the following testimony and other evidence:

- A. The Petitioner’s representative argues that the Indiana Tax Court has indicated in several cases that an appraisal is the best indication of value. *Clark argument*. According to the Petitioner, the property was appraised with a value of \$675,000 as of September 28, 1998. *Petitioner Exhibits 1 and 2*. The Petitioner contends that the appraisal date is in close proximity to the January 1, 1999, valuation date used for the March 1, 2002, assessment year under appeal. *Clark argument*. The Petitioner concludes that the values determined in the independent appraisals submitted by the Petitioner are superior to the values determined by the township assessor and the property should be valued at the \$675,000 appraised value. *Id.*
- B. In further support of its value, the Petitioner contends that the cost for Forest River to construct buildings comparable to the buildings located on the subject property was approximately \$10 to \$11 per square foot in 2000. *Stump testimony*. The Petitioner’s witness testified that costs were not significantly different prior to 2000. *Id.*
- C. In response to the Respondent’s arguments, the Petitioner contends that several of the properties used as comparables in the Respondent’s analysis of industrial sales are not considered arms length transactions in the Elkhart County sales database and, therefore, are not appropriately used in the Respondent’s analysis. *Harnish argument; Respondent Exhibit 7*. According to the Petitioner, adjustments for the land value in the Respondent’s analysis are also not appropriate because of the variation in the per-acre land values and because only some of the sale properties are improved for sewer and water. *Id.* Finally, the Petitioner contends that the Respondent’s “comparable” buildings are twice the size of the subject building and, therefore, the properties are not comparable.² *Id.*

² The Petitioner also contends that during the hearing before the PTABOA, questions were not asked regarding the adjustments to the comparable properties or the selected capitalization rate used in the appraisals. *Clark argument*. As we indicated above, however, the PTABOA proceedings have no bearing on the hearing before the Board. The Respondent may raise any issue and present any evidence complying with the Board’s rules that is necessary to support its assessed value.

18. The Respondent contends that the Petitioner's appraisals are flawed and do not represent an appropriate value for the property. *Briscoe argument*. The Respondent further contends that the \$950,700 assessed value of the property is correct. *Id.*
19. The Respondent presented the following testimony and other evidence in regard to this issue:
- A. The Respondent contends that the property's assessment is correct. *Briscoe testimony*. According to the Respondent, the Elkhart County ratio study for the March 1, 2002, assessment date revealed that commercial and industrial properties were overvalued by approximately 20% in Elkhart County. *Id.* In response to this information, the township assessors accelerated the depreciation schedules used for commercial and industrial properties. *Id.* Due to the accelerated depreciation schedule, the building at 1702 Century Drive is receiving 53% rather than 37% depreciation and the building at 1802 Century Drive is receiving 24% rather than 4% depreciation. *Id.*
- B. The Respondent further contends that Petitioner's witness, Michael Stump, was not a credible witness. *Briscoe argument*. According to the Respondent, the subject buildings were built in 1984 and 1997 which is prior to Mr. Stump being in the position with the company that had responsibility for the building projects. *Id.* Thus, the Respondent concludes that Mr. Stump cannot testify from personal knowledge as to the cost of construction for the subject buildings. *Briscoe argument*.
- C. The Respondent contends that the Petitioner's evidence is unsupported and fails to meet the burden of proof. *Grove testimony*.³ According to the Respondent, the

³ The Petitioner objected to the testimony of Iverson Grove because Mr. Grove sat on the adjudicating body at the county appeal level. According to Mr. Clark, Mr. Grove's appearance at the state appeal level as an advocate for the township assessment is a conflict of interest. While the Board understands the Petitioner's concern of a possible conflict, it is clear from Mr. Grove's testimony when he was acting as a fact witness explaining how the PTABOA determination was made and when he was acting as an expert witness for the Respondent testifying as to why the assessment was correct. Again, it is the Board's position that the Respondent is entitled to every opportunity to support its assessment, including presenting expert testimony. The Petitioner's objection is overruled.

PTABOA did not accept the appraisals as a true indication of value because the appraiser failed to support his values. *Id.* According to the Respondent, in the sales comparison approach to value, the appraiser failed to document how the adjustments to the comparable sales were determined. *Id.* Similarly, in the income approach, the rents, vacancy, expense ratio, and the capitalization rate used by the appraiser lacked any market support. *Id.* Mr. Grove testified that he analyzed the lender interest rates for the local lenders for the third quarter of 2002 and included an example of the type of evidence the PTABOA expects to support a capitalization rate. *Grove testimony; Respondent Exhibit 7A at 1 and 2*

- D. Finally, in support of its assessment, the Respondent presented a list of 14 sales for buildings of similar construction and a calculation of the per square foot costs of each building. *Respondent 7.* Mr. Grove testified that he then trended the values to January 1, 1999, using the appropriate comparative multipliers from Marshall Swift Valuation Service. *Grove testimony; Id.* According to Mr. Grove, the resulting calculation does not show the value of the subject property, but does show that the property's value falls significantly below the trend line. *Id.* On the basis of the calculations, Mr. Grove concludes that the property is not worth less than the assessed value and, in fact, is probably worth more than the assessed value. *Id.*
20. The 2002 Real Property Assessment Manual (the 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, from the property." 2002 REAL ASSESSMENT MANUAL – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method 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. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through the use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that

its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).

21. 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. *Long*, at 471; MANUAL at 4. 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. *Id.*
22. Here, the Petitioner submitted appraisals prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) that establish the value of the property to be \$675,000 as of September 28, 1998. *Petitioner Exhibit 1 and 2*. Generally, an appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). Further, to determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of a property value. GUIDELINES, Chap.2, pg. 7. According to the GUIDELINES, "representative disclosure statements ... refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999." Accordingly, an appraisal with an effective date within eighteen months of the January 1, 1999, assessment valuation date must, therefore, have some evidentiary value.
23. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case.

24. The Respondent alleges that the improvements are receiving more than customary depreciation as a result of the Elkhart County equalization study. *Briscoe testimony*. In order to carry its burden, however, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).
25. The Respondent further offered evidence of sales in the area and offered a mathematic comparison of those properties to the subject parcel in the form of a spreadsheet. *Respondent Exhibit 7*. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), however, “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.” 836 N.E.2d at 1082 (citations omitted). While the Respondent identified fifteen properties that it contends are “comparable,” the Respondent failed to provide any evidence of that comparability.
26. Additionally, it is not sufficient to simply identify and value fifteen properties and conclude that the subject property’s assessment is correct. A party “cannot ‘generically claim without explanation that [they] made a [] case then [] cite to . . . the record as though the evidence speaks for itself.’” *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). The Respondent’s witness here admitted that he was not providing an estimate of value of the property. Thus, while the property may, in fact, be assessed correctly, or even under-assessed, the Respondent’s spreadsheet is insufficient to rebut the Petitioner’s appraisals.

27. Finally, the Respondent alleges that the appraisal is not a true representation of value because the appraiser failed to document adjustments made in the appraisal. *Grove testimony*. In support of this contention, the Respondent provided a lender interest rate survey and calculated a capitalization rate. *Respondent Exhibit 7*. We agree with respect to the income approach. Conclusory statements that rent is \$2.40 per square foot, vacancy and collection loss is 10%, and a “typical interest rate” is 9% are insufficient to support an income approach valuation. *See Inland Steel v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (stating that testimony of a recognized appraisal expert without explanation is conclusory and lacks probative value). The Petitioner’s appraiser provided no comparable properties to show its rent calculation or its vacancy and collection loss. Further, the Respondent provided evidence to show that the relevant interest rate fell between 6 and 7.80 rather than 9%. Thus, the Respondent sufficiently rebutted the Petitioner’s income approach valuation.
28. The Respondent’s sales comparable evidence, however, is insufficient to rebut the Petitioner’s sales comparable approach valuation. It is not enough to merely allege the appraiser did not support its adjustments. To rebut an appraisal prepared in accordance with USPAP, the Respondent must provide evidence that the adjustments were somehow incorrect.⁴ This the Respondent failed to do.

SUMMARY OF FINAL DETERMINATION

29. The Petitioner raised a prima facie case that the assessed value of the subject property exceeds its market value in use. The Respondent failed to rebut the Petitioner’s sales comparable evidence. Thus, the Board finds in favor of the Petitioner and holds that the

⁴ We note, however, that two of the Petitioner’s three “comparables” in both of the appraisals are twice the size of the respective buildings on the subject property. The Petitioner contends that the Respondent’s “comparables” are inappropriate because they are half the size of the building on the subject property. It only follows then that the Petitioner’s “comparables” are inappropriate because they are twice the size of the building on the subject property. The Board, however, finds that the estimated values of \$425,000 and \$280,000 are sufficiently close to the values of the remaining similarly sized comparables to provide some evidence of the subject property’s value.

property's value is \$705,000 as determined by the sales comparable method of the Petitioner's appraisals.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE
- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.