

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

Petitions: 20-029-02-1-3-00025
 20-029-02-1-3-00026
 20-029-02-1-3-00027
 20-029-02-1-3-00035

Petitioner: Champlin Realty, LLC/Vitco Inc.,

Respondent: Union Township Assessor

Parcels: 20-14-31-451-001-000.029
 20-14-31-333-007-000.029
 20-14-31-451-005-000.029
 20-14-31-451-002-000.029

Assessment Year: 2002

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 its assessment appeals with the Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 24, 2003.
2. The PTABOA issued its determinations on June 2, 2004.
3. The Petitioner filed its appeals to the Board by filing Form 131 petitions with the county assessor on July 6, 2004. The Petitioner elected to have its cases heard pursuant to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated August 7, 2006.
5. The Administrative Law Judge Patti Kindler held the administrative hearing in Goshen, Indiana, on September 26, 2006.
6. Persons present and sworn in as witnesses at the hearing:

For Petitioner – Todd Heath, Tax Representative, Integrity Tax Consulting,
John Fiene, Certified Appraiser, Interwest Consulting Group,

For Respondent – R. Eugene Inbody, Elkhart County Assessor.

Facts

7. The property is a 162,163 square foot industrial facility located on 10.13 acres of land and three vacant parcels of land measuring 0.143 acres, 3.0 acres, and 9.25 acres, respectively, located at 900 East Wabash Street, Nappanee, in Union Township, Elkhart County.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed values of the subject properties to be \$410,800 for the land and \$891,200 for the improvements, for a total assessed value of \$1,302,000 for Parcel #20-14-31-451-001-000.029 (Parcel 1); \$3,500 for the land for Parcel #20-14-31-333-007-000.029 (Parcel 7); \$38,300 for the land for Parcel #20-14-31-451-005-000.029 (Parcel 5); and \$170,500 for the land for Parcel #20-14-31-451-002-000.029 (Parcel 2). There are no improvements on Parcel 2, 5 and 7.
10. The Petitioner requested a total assessed value for all four parcels of \$740,000.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the current assessment of \$1,514,300 for the four properties is overstated when compared to the \$740,000 appraised value of the properties. *Heath testimony; Pet'r Ex. 2, 3*. In support of this contention, the Petitioner presented a certified appraisal prepared by John Fiene, MAI, with Interwest Consulting Group, Inc., which valued the properties to be \$810,000 by the cost approach, \$720,000 by the sales comparison approach, and \$740,000 by the income approach. *Id.* The appraiser reconciled the three values and determined the value of the properties to be \$740,000 as of March 1, 2002, based on January 1, 1999, values. *Id.*
 - b. The appraisal determined the properties' value using the cost approach to value to be \$810,000. *Fiene testimony; Pet'r Ex. 3*. The Petitioner's appraiser determined that the replacement cost of the buildings before depreciation and obsolescence was \$3,756,613. *Id.* According to Mr. Fiene, the property is a 1950 structure with approximately 160,000 square feet. *Id.* Mr. Fiene testified that the buildings have had various additions over the years. *Id.* Further, portions of the buildings were constructed during World War II for the assembly of bombs and these areas are now obsolete and unusable. *Id.* The Petitioner argues that this "add-on" construction is the key deficiency with the structures because it has resulted in

varying building heights, difficulty with access, difficulty with heating, cooling, and ventilation and an inability to accommodate the newer stamping process. *Id.*; *Pet'r Ex. 3*. The Petitioner further contends that the properties are entitled to an obsolescence adjustment because of their location. *Fiene testimony*. According to Mr. Fiene, the properties are landlocked. *Id.* In addition, the properties suffer from economic obsolescence because they are located in the small town of Nappanee, rather than a larger city which would offer more opportunity for industrial corporations. *Id.*

- c. The appraisal determined the value of the subject properties to be \$720,000 using the sales comparison approach. *Fiene testimony; Pet'r Ex. 3*. Mr. Fiene testified that sales comparisons demonstrated square foot sale prices ranging from \$0.99 to \$5.65 per square foot. *Id.* According to the Petitioner's appraiser, the current assessment values the properties at \$9.49 per square foot. *Id.* Thus, the appraiser concluded, the appropriate square foot price for the subject properties, based on the sales comparison approach, was \$4.50 per square foot. *Id.*
- d. The appraisal further determined the value of the properties to be \$740,000 using the income approach to value. *Fiene testimony; Pet'r Ex.3*. According to Mr. Fiene, the comparable rents used in the income approach ranged in price per square foot from \$1.11 to \$1.67. *Id.* Using \$1.20, per square foot, the appraiser determined the net operating income for the properties to be \$96,100. *Id.* The estimated income was capitalized by 13 percent, resulting in an estimated value of \$740,000. *Id.*
- e. Finally, the Petitioner argues that property record cards, location maps, photographs and comparable data for three comparable industrial properties show that the subject properties are over assessed. *Heath testimony; Pet'r Ex. 5*. The Petitioner's witness testified that the first property is an older industrial facility with 118,745 square feet that is assessed at \$3.65 a square foot. *Id.* The second property is another older industrial facility with 81,602 square feet that is assessed for \$4.00 a square foot. *Id.* The third property, which consists of two parcels with an 87,000 square foot industrial facility and an effective age of 1980, is currently assessed at \$7.02 per square foot. *Id.* According to the Petitioner's witness, the third property is located in Nappanee and is almost right behind the subject property. *Id.* Mr. Heath concluded that comparing the assessed values of these properties with the assessed value per square foot for the subject property of \$9.49 demonstrates an error in the assessment. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the subject properties are correctly assessed based on the sale of comparable properties. *Inbody testimony; Resp't Ex. 1*. According to the Respondent, the properties are currently assessed at \$8.03 per square foot. *Id.* The Petitioner's witness testified that the Lippert Components property sold for \$482,487 or \$12.57 a square foot. *Id.* Further, the Lindon Investments/

Damon Corporation property sold for \$1,800,000 or \$12.03 a square foot. *Id.*; *Resp't Ex. 2, 3.*

- b. The Respondent further contends that the subject properties are assessed correctly based on the assessment of comparable properties. *Inbody testimony; Resp't Ex. 4.* According to the Respondent's witness, the Leggett & Platt Corporation property located in Middlebury is assessed for \$11.22 per square foot. *Id.* The Respondent contends that this property is a good comparable for the subject properties because various additions have been added over the years to the multi-level building. *Id.*
- c. Finally, the Respondent contends that the Petitioner has requested several different values for the properties and appears to be "fishing" for a figure. *Inbody testimony.* According to the Respondent, the Petitioner requested a value of \$759,200 at the PTABOA hearing, then requested an assessment of \$820,000 and now is requesting a value of \$740,000. *Id.* The Respondent, however, contends that the current assessment was derived according to the guidelines and comparables support that assessment as it stands. *Id.*

Record

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The digital recording of the hearing,
- c. Exhibits:

Petitioner Exhibit 1 – Notice of Final Assessment Determination, Form 115,

Petitioner Exhibit 2 – Letter to the Board and Elkhart County PTABOA regarding the property appraisal,

Petitioner Exhibit 3 – Certified narrative appraisal for the subject property,

Petitioner Exhibit 4 – Elkhart County Assessor response regarding the appraisal submitted,

Petitioner Exhibit 5 – Description and property record card for three properties offered as comparable property assessments,

Petitioner Exhibit 6 – A copy of evidence and other information submitted to the Elkhart PTABOA prior to the hearing consisting of the cover letter, aerial photograph of the subject property, layout of the subject property, photographs for three comparable assessments, and a map of Nappanee,

Petitioner Exhibit 7 – A valuation summary allocating the requested assessment to each of the parcels,

Petitioner Exhibit 8 – A color plat map of the subject property,

Respondent Exhibit 1 – Photographs and property record cards for the subject property,
Respondent Exhibit 2 – Photograph, sales disclosure form and property record card for Lippert Components,
Respondent Exhibit 3 – Photographs, sales disclosure and property record card for Lindon Investments/Damon Corporation,
Respondent Exhibit 4 – Property record card and aerial for Leggett & Platt/Syndicate Systems,
Respondent Exhibit 5 – The Elkhart County Industrial Land Sales and the industrial land values from the Elkhart County Land Order,
Respondent Exhibit 6 – Property record cards for the three vacant parcels of the subject property,
Respondent Exhibit 7 – The Form 131 petitions,
Respondent Exhibit 8 – Page 2 of the Notice of Final Determination, Form 115,
Respondent Exhibit 9 – Authorization of Representation,

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notices 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 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).
- 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 support the Petitioner's contentions. This conclusion was arrived at because:

- a. Real property in Indiana is assessed on the basis of its "true tax value." *See* Ind. Code § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). 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.*
- b. Here, the Petitioner presented a certified appraisal for the subject properties establishing a value for the four parcels of \$740,000 as of March 1, 2002, based on January 1, 1999, values.¹ In his appraisal, Mr. Fiene valued the properties by reconciling values determined using the sales comparable approach, the income approach, and the cost approach to value. *Id.* Further, the appraiser certified that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *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 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioner has raised a prima facie case that the assessment of the subject properties is over-valued.
- c. 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). In order to carry its burden, 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

¹ While real estate is *assessed* as of March 1, 2002 for the 2002 assessment, it is to be *valued* as of January 1, 1999. MANUAL at 4, 9. Thus, the 2002 assessment is based on the conditions of the property and structures on the property as of the assessment date (March 1, 2002) and those conditions and structures are valued based on their value as of January 1, 1999. Here the appraisal states that "The effective date of this appraisal assignment is March 1, 2002, the valuation date for the 2002 tax roll, pay 2003. The base value date is January 1, 1999." *Pet'r. Exhibit 3 at 4*. While the phrasing may be awkward, we believe that the appraiser valued the properties as of January 1, 1999, based on the condition of the property as of March 1, 2002. In fact, Mr. Fiene testified that his "final determination of market value-in-use of this property which would have reflected January 1999 and bridging the gap between January 1999 and March of 2002" was \$740,000. Regardless, we find this sufficient to relate the properties' value back to January 1, 1999, to comply with the requirements of *Long*.

prima facie case). To rebut or impeach a petitioner's case, the assessor has the same burden to present probative evidence that the petitioner faces to raise its prima facie case.

- d. Here, the Respondent contends that the subject property is correctly assessed based on the sale and assessment of comparable properties. The Respondent, however, made no attempt to show that its proffered properties were, in fact, comparable to the subject properties. 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), "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).
- e. The Respondent also contends that the Petitioner appears to be "fishing" for a value because of competing appraised values and different requested assessments. The Board shares the Respondent's concern. Here there is an appraisal dated January 10, 2005, that appraised the property as of March 1, 2002, for \$740,000 with a "base value date" of January 1, 1999. There is also an appraisal dated August 22, 2003, that values the property at \$820,000. Finally, the Petitioner reported that the property sold for \$860,000 on December 31, 2001, in its Form 131 Petitions. Generally, the sale of a subject property is the best evidence of its value. The Respondent, however, elicited no testimony regarding this purported sale. Nor was any documentary evidence submitted by either party in support of the sale value. Further, there is no evidence that the \$80,000 difference between the two appraised values cannot be attributed to appreciation during the period between January 1, 1999, and August 22, 2003. Thus, while the Respondent raises a legitimate concern, its unsupported contentions are insufficient to rebut the Petitioner's prima facie case. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- f. The Board finds that the Respondent failed to show that the appraisal or the actions taken by the appraiser were not within the standards set by USPAP or that they were outside standard appraisal practices. The Board, therefore, finds in favor of the Petitioner and holds that the value of the four parcels at issue in this appeal together is \$740,000.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case that the subject properties are overvalued. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and determines that the value of the subject properties together is \$740,000.

Final Determination

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

ISSUED: _____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.