

REPRESENTATIVES FOR PETITIONERS:

Mark Suvak, Executive Vice-President, Childcraft Industries, Inc.

REPRESENTATIVES FOR RESPONDENT:

Joseph Martin, Jackson Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Childcraft Industries, Inc.,	)	Petition No.:	31-011-05-1-4-00001
	)		31-011-05-1-4-00002
	)		31-011-05-1-4-00003
	)		31-011-05-1-4-00004
Petitioner,)		
	)	Parcel No.:	0204290007915
	)		0204300005105
	)		0204310000110
v.	)		0204320004030
)		
)		
Jackson Township Assessor,	)	County:	Harrison
	)	Township:	Jackson
	)	Assessment Year:	2005
Respondent.)		

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

October 17, 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

ISSUES

1. The parties presented the following restated issues for consideration by the Board:
 - I. *Whether the Petitioner's appeals, if successful, would be effective to change the subject property's assessment for the March 1, 2004, assessment date;*
 - II. *Whether the Petitioner's failure to receive notice of the hearing conducted by the Harrison County Property Tax Assessment Board of Appeals has any effect on the Petitioner's appeal to the Board; and*
 - III. *Whether the subject property's November 1, 2004, sale price is probative of its market value-in-use as of January 1, 1999.*

PROCEDURAL HISTORY

2. The Harrison County Property Tax Assessment Board of Appeals (PTABOA) issued its Form 115 Notification of Final Assessment Determination (Form 115) for each of the above captioned parcels on January 23, 2006. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner, Childcraft Industries, Inc., filed Form 131 Petitions to the Indiana Board of Tax Review for Review of Assessment (Form 131 petitions), petitioning the Board to conduct an administrative review of the assessments of the subject parcels.¹ The Petitioner filed its Form 131 petitions on February 23, 2006.

¹ The parcel numbers on the Form 115s differ from the numbers referenced by the Petitioner in the Form 131 petitions. *See Board Ex. A.* In fact, the Form 130 petitions, which the Petitioner filed to initiate the appeal process at the local level, contain parcel numbers that differ from the numbers contained on either the Form 115s or the Form 131 petitions. The parties do not explain those discrepancies; however, they apparently do not dispute that the differing parcel numbers all describe the same property. The Board therefore will proceed on that assumption.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a consolidated administrative hearing with regard to the above referenced petitions was held on July 20, 2006, in Corydon, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Mark Suvak, Executive Vice President Childcraft Industries, Inc.
 - Jeffrey Mullen, Controller, Childcraft Industries, Inc.

 - For the Respondent:
 - Joseph Martin, Jackson Township Assessor
 - Paul Saulman, Harrison County Assessor
 - Clyde Windell, Harrison County PTABOA
 - Paul Reas, Harrison County PTABOA

5. Clyde Windell and Paul Reas, members of the Harrison County PTABOA, were sworn but did not present testimony.

6. The Petitioner presented the following exhibits:
 - Petitioner's Exhibit 1 – Listing of parcels under appeal,
 - Petitioner's Exhibit 2 – Property profile,
 - Petitioner's Exhibit 3 – Copy of Form 115,
 - Petitioner's Exhibit 4 – Copy of Form 11, dated October 14, 2005,²
 - Petitioner's Exhibit 5 – Copy of settlement statement with contract sale price
Listed at \$1,178,000, personal property listed at \$122,000
for a total purchase price of \$1,300,000.
 - Petitioner's Exhibit 6 – Copy of offer to purchase real estate and personal
property,
 - Petitioner's Exhibit 7 – Copy of 50 IAC 21.

7. The Respondent did not submit any exhibits for consideration by the Board.

² The Petitioner submitted one packet of exhibits for all four (4) appeal petitions. The Petitioner also submitted a separately labeled Exhibit "4" for each petition containing the Form 11 applicable to each parcel. The Board treats all of those documents collectively as Petitioner's Exhibit 4.

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

Board Exhibit A – The Form 131 petitions and attachments,
Board Exhibit B – Notices of hearings dated May 8, 2006,
Board Exhibit C – Hearing sign-in sheet.

9. The property under appeal consists of four parcels classified as commercial property. Parcel 0204320004030 includes improvements, while the other three parcels are adjacent vacant lots. All four parcels are located at 1010 Keller Drive, New Salisbury, Indiana. The Board shall refer to the above referenced parcels collectively as “the subject property” unless otherwise indicated.

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

11. The PTABOA determined that the assessed value of the property is as follows:

Parcel 0204290007915

Land: \$118,100	Improvements: \$0	Total: \$118,100
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Parcel 0204300005105

Land: \$70,600	Improvements: \$0	Total: \$70,600
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Parcel 0204310000110

Land: \$38,000	Improvements: \$0	Total: \$38,000
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Parcel 0204320004030

Land: \$104,200	Improvements: \$3,041,200	Total: \$3,145,400
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12. The Petitioner requested the following values for the subject property at the hearing:
Total: \$1,178,000

JURISDICTIONAL FRAMEWORK

13. 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; 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

14. A petitioner seeking review of a determination of a county property tax assessment board of appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
15. 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”).
16. Once a 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

17. The Petitioner presented the following evidence and arguments in support of its contentions:
- A. The Petitioner purchased the subject property from Keller Manufacturing Co. (Keller) on November 1, 2004, for \$1,300,000. *Suvak testimony; Pet'r Ex. 5.* The sale price included the Petitioner's purchase of personal property. *Id.* The total value of the personal property was \$122,000. *Id.* Thus, the portion of the sale price attributable to the subject property (land and improvements) was \$1,178,000. *Id.*
 - B. The Petitioner did not have any relationship with Keller prior to purchasing the subject property. *Suvak testimony.* Keller first listed the property in July or August of 2004 using Colliers International, Harry K. Moore Co., a company from Louisville, Kentucky. *Id.* Keller listed the property for \$1,300,000. *Id.* At that time, a handful of buyers from around the country came to look at the property. *Id.* Keller, however, did not know that the Petitioner was interested in the subject property when it determined its asking price. *Id.* The Petitioner paid Keller's asking price when it purchased the subject property in November 2004. *Id.*
 - C. According to the relevant statutes, the sale price of the subject property is its market value, and the assessment should be reduced to \$1,178,000. *Suvak argument.* The Petitioner previously sold a property for \$1,500,000 that was assessed for well over \$3,000,000. *Suvak testimony.* In that case, the purchaser appealed its assessment, and the assessment was reduced to \$1,500,000. *Id.* Contrary to what the Respondent believes, sales prices have something to do with value. *Mullen argument.* The rules promulgated by the Department of Local Government Finance concerning annual adjustments support that proposition. *Id; Pet'r Ex. 7.*
 - D. Manufacturing plants have been decreasing in value over the past five to ten years. *Suvak testimony.* Based on the Petitioner's experience with its own facilities, the

market value of those types of facilities was decreasing from 1999-2004. *Suvak testimony*.

- E. The Petitioner filed Form 130 petitions with the Harrison County Assessor on September 1, 2005. *Board Ex. A*. On those petitions, the Petitioner indicated that it was appealing the March 1, 2004, assessment of the subject property. *See Board Ex. A; Suvak testimony*. The Form 115 issued by the PTABOA listed the assessment date under appeal as March 1, 2005. *Suvak testimony; Pet'r Ex. 3*. Although the Petitioner did not own the property on March 1, 2004, it was responsible for a portion of the property taxes associated with that assessment date. *See Suvak testimony; Pet'r Exs. 5-6*. The Petitioner therefore listed the year of appeal as "2004/2005" on its Form 131 petitions. *Suvak testimony; Board Ex. A*.
 - F. The Petitioner never received a Form 114 notifying it that the PTABOA was going to meet to consider the Petitioner's appeal. *Mullen testimony*. The Petitioner therefore did not have the opportunity to present anything to the PTABOA. *Id.* The Petitioner did receive the Form 115 from the PTABOA indicating that there was no change to the assessment. *Id.*
18. The Respondent presented the following evidence and argument in support of the current assessment:
- A. Childcraft received a good deal when it bought the subject property. *Saulman testimony*. If there had been several bidders involved, the price of the property would have been much higher. *Id.* Keller was struggling, and it had to sell to someone. *Id.* Mr. Saulman has first-hand knowledge that Keller lost money in the sale, because he was a shareholder in Keller. *Id.*
 - B. The Respondent assessed the subject property using the Real Property Assessment

Guidelines for 2002 – Version A (Guidelines). *Saulman testimony; Martin testimony.*
The assessed value is equal to the building permit value. *Id.* The county and township assessors are only trying to protect the other taxpayers in the county by assessing the subject property correctly. *Id.*

- C. Mr. Martin checked with a representative from the State Board of Tax Commissioners who informed him that assessed value had nothing to do with a property's sale price. *Martin testimony.* Mr. Martin does not believe that the statute has changed to allow sales prices to become assessed values. *Martin argument.*
- D. The Petitioner's arguments open the door for any company or individual to ask for a decrease in its property's assessment. *Martin testimony.* For example, if the price of corn were to go down, Tyson would ask for a reduction in assessment for its plant. *Id.* Thus, if the Board were to adopt the Petitioner's position, it would open the door to a "big mess." *Id.*

Discussion

Issue I

Whether the Petitioner's appeals, if successful, would be effective to change the subject property's assessment for the March 1, 2004, assessment date

19. The Form 131 petitions indicate that the Petitioner is appealing the assessment of the subject property for assessment years "2004/2005." *Board Ex. A.* The Form 115 determinations, however, purport to relate to the March 1, 2005, assessment date.
20. The fact that the Petitioner was not the fee owner of the subject property as of March 1, 2004, does not automatically deprive the Petitioner of standing to appeal from the March 1, 2004, assessment. The purchase agreement, which makes the Petitioner responsible for a pro-rated portion of the taxes based upon the March 1, 2004, assessment is sufficient to confer the Petitioner with standing to prosecute an appeal of the March 1, 2004, assessment. *See Pet'r Exs. 5-6.*

21. Standing issues aside, the effective year of a property tax appeal is determined by statute rather than by the parties' characterizations of the effective year. *See* Ind. Code § 6-1.1-15-1. Ind. Code § 6-1.1-15-1 provides, in relevant part:

(b) In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference with the county or township official referred to in subsection (a):

(1) not later than forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or

(2) on or before May 10 of that year;

whichever is later. . . .

(c) A change in an assessment made as a result of an appeal filed:

(1) in the same year that notice of a change in the assessment is given to the taxpayer; and

(2) after the time prescribed in subsection (b);

becomes effective for the next assessment date.

(d) A taxpayer may appeal a current real property assessment even if the taxpayer has not received a notice of assessment in the year. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date.

Ind. Code § 6-1.1-15-1.

22. The Petitioner filed Form 130 petitions requesting a preliminary conference with the Jackson Township Assessor on September 1, 2005. That is well after the March 1, 2005, assessment date. Thus, had the Respondent not subsequently issued Form 11 Notices, any change made pursuant to the Petitioner's appeals would have been effective for the March 1, 2006, assessment date. *See* Ind. Code § 6-1.1-15-1(d). The Respondent, however, issued Form 11 Notices regarding changes in the assessments of the subject parcels on October 14, 2005. *Pet'r Ex. 4*. While the Form 11 Notices actually post-date the Petitioner's Form 130 petitions, the Petitioner alleged in its Form 131 petitions that

the Harrison County Assessor did not require the Petitioner to re-file its Form 130 petitions. *Board Ex. A.* Thus, the Petitioner initiated its appeals within forty-five days of receiving notice of a change in the subject property's assessment.

23. Unfortunately, the Form 11 Notices are internally contradictory regarding the effective date of the change in assessment. Each Form 11 Notice contains the statement "New Assessment Effective March 1, 2005." *Pet'r Ex. 4.* The Form 11 Notices, however, also contain the following statement in all capital letters: "THIS IS NOT A BILL. THIS IS A NOTICE OF ASSESSMENT OF YOUR REAL ESTATE FOR 2004 PAY 2005." *Id.* The parties did not present any evidence to help resolve this contradiction. Based on the relative prominence of the reference to the 2004 assessment year, the Board finds that the Form 11 Notices reflect a change in the assessments of the subject parcels for the March 1, 2004, assessment date. Consequently, any change ordered by the Board pursuant to the Petitioner's Form 131 petitions would be effective for the March 1, 2004, assessment date.

Issue II

Whether the Petitioner's failure to receive notice of the hearing before the Harrison County Property Tax Assessment Board of Appeals has any effect on the Petitioner's appeal to the Board

24. The Petitioner contends that it did not receive prior notice of the PTABOA's hearing on its Form 130 petitions. The Petitioner, however, does not explain what, if any, relief to which it is entitled as a result of such lack of notice. The Respondent did not address the issue.
25. In order to invoke the subject matter jurisdiction of the Board, a taxpayer must demonstrate that it is appealing from a determination of an assessing official or county PTABOA concerning, among other things, the assessment of tangible property. Ind. Code § 6-1.5-4-1. Once a petitioner has properly invoked the Board's jurisdiction, its proceedings are *de novo*. The Petitioner is not limited to evidence or issues raised before

the PTABOA. *See* Ind. Code § 6-1.1-15-4(m) (“A person participating in a hearing [before the Board] is entitled to 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.”); *see also* Ind. Admin. Code tit. 52, r. 2-5-3(a) (“The board may not limit the scope of the issues raised in the appeal petition to those presented to the PTABOA unless all parties agree to the limitation of issues.”). Thus, while the lack of notice may have deprived the Petitioner of the ability to present evidence or arguments to the PTABOA, that lack of notice did not impact the Petitioner’s ability to present its case to the Board. *Id.* The Board therefore finds that the Petitioner’s lack of notice of the PTABOA hearing has no effect on the Petitioner’s appeals to the Board.

Issue III

Whether the subject property’s November 1, 2004, sale price is probative of its market value-in-use as of January 1, 1999

26. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property as “the 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.

27. A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may rebut that presumption with evidence relevant to the market value-in-use

of the subject property, including information regarding the sale price of the property. MANUAL at 5.

28. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). That valuation date applies to assessments for subsequent years through and including 2005. See MANUAL at 2 ("This assessment manual contains the rules for assessing real property located in Indiana for the March 1, 2002, through March 1, 2005, assessment dates).³ Consequently, in an appeal of a 2004 or 2005 assessment, a party relying on evidence regarding the market value-in-use of a property as of a date substantially removed from the relevant valuation date must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. See *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property); see also *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006) ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without *some explanation* as to how these values relate to the January 1, 1999 value.")(emphasis in original).
29. Here, the Petitioner submitted evidence that it bought the subject property together with certain personal property for a total of \$1,300,000. *Suvak testimony*; *Pet'r Exs. 5-6*. Mr. Suvak further testified that the Petitioner did not have any relationship with the seller, Keller Manufacturing Co. (Keller), that Keller listed the subject property with a realtor prior to the sale, and that the Petitioner paid Keller's asking price. *Suvak testimony*.

³ Beginning with the March 1, 2006, assessment date, assessing officials are required to adjust assessments of real property annually to account for changes in value since the last general reassessment. Ind. Code § 6-1.1-4-4.5; Ind. Admin. Code tit. 50, r. 21-1-1 through r. 21-12-1. The valuation date for such adjustments will be January 1 of the year preceding the assessment date. Ind. Admin. Code tit. 50, r. 21-3-3(b).

Thus, in accordance with the Manual, the Petitioner submitted compelling evidence that the subject property was worth no more than \$1,300,000 as of November 1, 2004.⁴

30. The Petitioner, however, did not present any evidence regarding how the November 1, 2004, sale price relates to the subject property's value as of January 1, 1999. In fact, when questioned on that subject, Mr. Suvak testified to his belief that the market value of the subject property had decreased between 1999 and 2004, and that, based on the Petitioner's experience with its own facilities, the market values of industrial facilities as a whole were declining. *Suvak testimony*. The lack of evidence relating the November 1, 2004, sale price to a value as of January 1, 1999, together with Mr. Suvak's concession that property values were decreasing, prohibits the Board from finding that sale price is reflective of, or at least unlikely to be less than, the subject property's market value-in-use as of January 1, 1999.

31. Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the assessment.

SUMMARY OF FINAL DETERMINATION

32. The Petitioner has appealed the subject property's assessment for the March 1, 2004, assessment date. The Petitioner, however, failed to present a prima facie case that the assessment is in error. The Board finds for the Respondent.

⁴ It is less clear whether allocation of the sale price between real and personal property made by the Petitioner and Keller is entitled to same weight. Given the Board's finding that the Petitioner failed to relate the sale price to a value as of January 1, 1999, however, the Board need not decide whether the Petitioner made a prima facie case that the market value-in-use of the subject property was \$1,178,000 – the portion of the overall sale price that the Petitioner and Keller allocated to the real property involved in the sale.

This Final Determination of the above captioned matter is issued this 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>.