

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

Petition #: 35-014-02-1-3-00426
Petitioner: Innovative Packaging, Inc.
Respondent: Huntington Township Assessor (Huntington County)
Parcel #: 0140345300
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (PTABOA) by written document dated January 12, 2004.
2. The PTABOA mailed notice of its decision on September 21, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Huntington Township Assessor on October 19, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 3, 2006.
5. The Board held an administrative hearing on June 21, 2006, before its duly appointed Administrative Law Judge, Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Todd Heath, Taxpayer Representative
Eugene Fleck, Owner – Innovative Packaging, Inc.¹
John Fiene, Certified Appraiser
 - b) For Respondent: Julie Newsome, Deputy Huntington Township Assessor

Facts

¹ Mr. Fleck simply testified that he “owns” Innovative Packaging, Inc. He did not testify whether he is an officer of the corporation.

7. The subject property, which is located at 1320 Flaxmill Road, Huntington, is classified as a commercial property, as shown on the property record card for parcel # 0140345300.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Huntington County PTABOA:
Land \$314,700 Improvements \$1,235,300 Total \$1,550,000.
10. Assessed Value requested by Petitioner on the Form 131 petition:
Land \$314,700 Improvements \$861,900 Total \$1,176,600.
11. On June 6, 2006, the Petitioner filed a request with the Board to amend its Form 131 petition. In that request, the Petitioner, through its certified tax representative, alleged that it had discovered instances where Huntington County officials had applied market adjustments to reduce the assessments of other properties to more closely resemble the sale prices of those properties. *See Board Ex. C.* The Petitioner requested leave to amend its Form 131 petition to include a claim that the subject property should receive a similar obsolescence adjustment. *Id.* The Board granted the amended petition on June 7, 2006, and notified all parties of this change via mail on June 7, 2006. *Board Ex. D.*
12. At the administrative hearing on June 21, 2006, Julie Newsome, the Deputy Township Assessor representing the Respondent, testified that she was not aware of the Petitioner's request to amend the Form 131 petition or of the Board's order granting that request. *Newsome testimony.* Mr. Heath testified that he mailed Petitioner's request to amend the Form 131 petition to the Respondent. *Heath testimony.* The ALJ offered Ms. Newsome the opportunity to consult with the Huntington Township Assessor's office regarding the amended petition. Ms. Newsome declined to do so and opted to proceed with the hearing. *Newsome statement.*
13. Thus, although Ms. Newsome raised an issue concerning lack of notice regarding the amendment to the Petitioner's Form 131 petition, the Respondent waived any objection to such lack of notice. Moreover, as discussed below, the Board does not rest its decision on claims made in the Petitioner's request to amend the Form 131 petition. Instead, the Board bases its decision on the sale price of the subject property as supported by an appraisal performed by John Fiene. The Petitioner referenced both of those items in its original Form 131 petition. *See Board Ex. A.*

Issue

14. Summary of the Petitioner's contentions in support of alleged error in assessment:
 - a) While preparing for the hearing, the Petitioner discovered instances where assessing officials in Huntington County applied obsolescence adjustments to the valuations of certain properties in order to bring the assessments of those properties in line with their sale prices. The Petitioner submitted a property record card (PRC) for a property owned by Sabine LLC, showing that the assessor applied an obsolescence

- depreciation adjustment of seventy percent (70%) based on that property's sale price of \$625,000. *Heath testimony; Pet'r Ex 1a*. The adjustment reduced the property's assessment to \$625,300. *Id*. The Petitioner also submitted a PRC for a property owned by Tippman & Dumas Property Partners (Tippman & Dumas) showing that the assessor applied an obsolescence adjustment of sixty-four percent (64%). *Heath testimony; Pet'r Ex. 1b*. That adjustment lowered the property's assessment to \$1,036,300, which is similar to its sale price of \$1,050,000. *Id*.
- b) The Petitioner bought the subject property for \$1,200,000 in October 2000. *Fleck testimony; Pet'r Ex. 3 at Settlement Statement*. The Petitioner bought the property from a company located in Illinois, after the seller had listed the property for sale with a listing agent. *Id*. The Petitioner contends that the subject property should be treated in a similar manner to the properties owned by Sabine and Tippman & Dumas, which would require the application of an obsolescence factor of twenty-nine percent (29%) to the subject improvements. *Heath argument*.
- c) The Petitioner also submitted an appraisal prepared by John Fiene, a certified general appraiser. *Pet'r Ex. 2*. Although Mr. Fiene prepared the appraisal on December 13, 2004, he testified that he had also visited the subject property in November 2001. *Fiene testimony*. In his appraisal, Mr. Fiene estimates the "as is" market value-in-use of the subject property at \$1,100,000 as of March 1, 2002. *Fiene testimony; Pet'r Ex. 2*. Mr. Fiene, however, also testified that he used sales both pre-dating the January 1, 1999, valuation date and post-dating the March 1, 2002, assessment date in estimating the subject property's market value-in-use. *Fiene testimony*. Mr. Fiene's appraisal report further indicates that the appraisal is retrospective for the March 1, 2002, valuation date "for the 2002 tax roll, pay 2003" and that the "base value date is January 1, 1999." *Fiene testimony*.
- d) In his appraisal, Mr. Fiene provides detailed information regarding the various adjustments he made to the sale prices of comparable properties in arriving at his estimate of value under the sales comparison approach. *Fiene testimony; Pet'r Ex. 2 at 40-43*. Sale #3 is the subject property. *Fiene testimony*. Mr. Fiene actually adjusted the sale price of the subject property downward to \$1,177,573 in order to account for the seller having financed a portion of the sale price. *Id.; Pet'r Ex. 2 at 30*.
- e) After Mr. Fiene's adjustments, the price per square foot of building space for the comparable properties ranged from \$7.38 and \$9.34 per square foot. *Fiene testimony; Pet'r Ex. 2 at 43*. Mr. Fiene reconciled to a value of \$8.50 per square foot for the subject property. *Id*. The subject property sold for \$9.00 per square foot. *Fiene testimony*.

15. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent presented several exhibits, which it contends were based on the claims made in the Petitioner's Form 131 petition prior to its amendment. *Newsome testimony; Resp't Exs. 1 - 11.*
 - b) Representatives of the Respondent have toured the subject property, and the Respondent stands by its assessment.

Record

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

- a) The Form 131 petition,
- b) The recording of the hearing,
- c) Exhibits

- Petitioner Exhibit 1: Cover letter
- Petitioner Exhibit 1a: Property Record Card for Sabine LLC
- Petitioner Exhibit 1b: Property Record Card for Tippman & Dumas Property Partners
- Petitioner Exhibit 2: Appraisal for subject property as of March 1, 2002
- Petitioner Exhibit 3: Assessment Analysis prepared by Integrity Tax Consulting

- Respondent Exhibit 1: Form 131
- Respondent Exhibit 2: Subject Property Record Card
- Respondent Exhibit 3: Form 115
- Respondent Exhibit 4: Sales Disclosure
- Respondent Exhibit 5: Township Comparables
- Respondent Exhibit 6: GIS 2005 Aerial View
- Respondent Exhibit 7: 2002 Reassessment Base Rates
- Respondent Exhibit 8: Assessment Guideline Book 2, Understanding Grade
- Respondent Exhibit 9: Assessment Guideline Book 2, GCK,
- Respondent Exhibit 10: Form 130
- Respondent Exhibit 11: Appearance Notice for Deputy Township Assessor

- Board Exhibit A: Form 131 Petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Letter from Petitioner Requesting to Amend the Petition
- Board Exhibit D: Letter from Board Granting Request to Amend Petition
- Board Exhibit E: Hearing Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

17. 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.
18. The Petitioner provided sufficient evidence to support its contentions. The Board reaches this conclusion for the following reasons:
- a) 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.
 - b) 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 offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional

Appraisal Practice (USPAP).”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- c) Here, the Petitioner submitted two items of evidence that are highly probative of the subject property’s market value-in-use. First, the Petitioner submitted evidence that it bought the subject property for \$1,200,000 in an arm’s length transaction after the seller listed the property for sale with a listing agent. *See Fleck testimony; Pet’r Ex. 3 at Settlement Statement*. In addition, the Petitioner presented an appraisal performed by a licensed appraiser in conformity with USPAP. *Pet’r Ex. 2 at 62-63*. The appraisal estimates the market value-in-use of the subject property to be \$1,100,000 as of March 1, 2002. *Id. at 60*. Moreover, there is evidence to show that the values derived from the October 2000 sale and Mr. Fiene’s appraisal are closely related to the subject property’s market value as of the relevant valuation date of January 1, 1999. The sale occurred just twenty-two (22) months after January 1, 1999. In addition, Mr. Fiene indicated that he used a “base” valuation date of January 1, 1999, and that the sales he relied upon in estimating the subject property’s value under the sales comparison approach occurred between May 1998 and February 2003. *Fiene testimony; Pet’r Ex. 2 at 23*.
- d) The Respondent did not attempt to impeach or rebut the evidence presented by the Petitioner. Although Ms. Newsome submitted several exhibits on behalf of the Respondent, she did not explain their significance, indicating only that they related to the Form 131 petition prior to its amendment. *See Newsome testimony*. The requirement that a taxpayer walk the Board through every element of its analysis is equally applicable to assessors attempting to rebut a taxpayer’s prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e) Thus, all that remains is for the Board is to determine which of the two items submitted by the Petitioner is a more accurate measurement of the subject property’s true tax value – the October 2000 sale price of \$1,200,000, or Mr. Fiene’s estimate of \$1,100,000. The Board finds that the October 2000 sale price is the best evidence of the subject property’s true tax value. As a general matter, the sale price of a property normally will present the best evidence of its market value. While Mr. Fiene adjusted the sale price of the subject property to account for the seller having financed a portion of the sale, that fact does not render Mr. Fiene’s estimate a more accurate indicator of the subject property’s market value than the price agreed upon by two market-actors negotiating at arm’s length. Moreover, the Petitioner bases its request for relief on the sale price of the subject property rather than on Mr. Fiene’s appraisal.

Summary of Final Determination

- 19. The Petitioner made a prima facie that the assessment is incorrect and that the correct assessment is \$1,200,000. The Respondent did not rebut the Petitioner’s evidence. The Board finds in favor of the Petitioner.

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>>.