

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

Petition: 36-016-02-1-3-00003
Petitioner: Cerro Wire & Cable Co., Inc.
Respondent: Vernon Township Assessor (Jackson County)
Parcel: 14-04-06-1500-00101
Assessment Year: 2002

The Indiana Board of Tax Review (“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 Jackson County Property Tax Assessment Board of Appeals (“PTABOA”) by filing Form 130 on November 10, 2003.
2. The PTABOA mailed notice of its decision on February 23, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on March 26, 2007. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 25, 2007.
5. Administrative Law Judge Paul Stultz held the administrative hearing in Brownstown on September 13, 2007. He did not conduct an on-site inspection of the subject property.
6. Mr. Duane Zishka was present and sworn in as a witness for the Petitioner. No one appeared on behalf of the Respondent.

Facts

7. The subject property is a manufacturing and distribution facility on 20.393 acres located at 102 Industrial Way in Crothersville, Indiana.
8. The assessed value determined by the PTABOA is \$259,700 for land and \$7,756,900 for improvements (total \$8,016,600).
9. The 131 Petition requested an assessed value of \$259,700 for land and \$6,314,900 for improvements (total \$6,574,600). At the hearing, the Petitioner claimed the assessed value of its building should be \$5,509,200.

Contentions

10. The only contention involves the assessed value of the 214,000 square foot building located on the subject property. The assessed value of the yard improvements, land and other components is not part of this appeal. *Zishka testimony*.
11. The building is a pre-engineered metal building with tilt-up concrete exterior walls designed for manufacturing and warehousing with some office area. The original section was constructed in 1997. An additional section was constructed in 1999. The general contractor for both sections was AML, Inc. The Petitioner provided an “Actual Construction Cost Worksheet” that explains and summarizes its cost calculations for the building. In addition, the Petitioner provided invoices of the actual costs for both the original building and the addition. Most of the invoice charges were from AML, but other vendors include Correll/Bradley Architects, Law Engineering, Engineering & Testing Services, Inc., Clark County Chemical, Central Sheet Metal Co., Inc, and Neill-LaVielle Supply Company. The lists also include some costs for items that Cerro Wire itself supplied from some of its other locations. *Zishka testimony; Pet’r Ex. 1, 2, 3, 4*.
12. The assessed value for the building is best indicated by adjusting the actual construction cost for the building to January 1, 1999. This adjustment was accomplished by using Marshall and Swift Valuation Service comparative cost multipliers for the July 1999 quarter. The adjusted construction cost of the building is \$5,509,200. *Zishka testimony; Pet’r Ex. 5*. The adjusted construction cost also reflects a deduction for components that are assessed with the land or separate from the building such as storm piping (drainage), asphalt paving, dock equipment, etc. *Zishka testimony; Pet’r Ex. 2*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Written summary and four photos,
Petitioner Exhibit 2 – Construction cost sheet,
Petitioner Exhibit 3 – Summary of construction cost for original building with invoices attached,
Petitioner Exhibit 4 – Summary of construction cost for addition to building with invoices attached,
Petitioner Exhibit 5 – Adjustment of construction cost to January 1, 1999,
Petitioner Exhibit 6 – 2002 Real Property Assessment Guideline –Version A, Appendix F, pp. 24, 27, 31,
Respondent Exhibits – None,
Board Exhibit A – Form 131 Petition,
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 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 did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a. Indiana's assessment system is a departure from past practice: “Simply put, under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value *is actually correct.*” *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *see also, O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 93-94 (Ind. Tax Ct. 2006). The standard for measuring accuracy is market value-in use. *Id.*
 - b. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary

method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- c. Construction costs must include all direct labor and material costs plus the indirect expenses required to construct an improvement. “Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants and attorneys.” GUIDELINES, intro. at 1. “The use of original cost is only appropriate if the improvement being valued was completed on or about January 1, 1999, or where ... [there is] an accurate estimate of original cost ... [trended] to January 1, 1999.” *Id.* at 2.
- d. The Petitioner introduced copies of the invoices for the construction costs for the original building and the addition. These invoices appear to span everything from initial architect and engineering services to completion of the finished project. That approach would be consistent with the Guidelines’ requirements for construction costs. Nothing was offered to rebut or impeach these documents. Nothing was offered that might indicate these documents are incomplete. Nothing in the record disputes the fact that these invoices accurately document the prescribed elements of cost.¹ These invoices, together with the summary and explanation that the Petitioner provided, probably would be sufficient to establish a prima facie case, if the building was the only improvement on the property. GUIDELINES, intro. at 2. But that is not the case here.
- e. The property record card is not in evidence. The record fails to establish what part of the current assessed value is attributed to the building. The record also fails to establish exactly what all of the improvements on this parcel might be. Clearly, there are other improvements in addition to the building itself that must be included in the assessed value. The Petitioner contends that yard improvements, land, and other components are not part of this appeal, but fails to establish what value should be included for them in the assessment.

¹ As previously noted, nobody appeared for the Respondent. No evidence or arguments were presented against the Petitioner’s case. *See Meridian Towers*, 805 N.E.2d at 480 (stating that the Board exceeds its statutory authority if it attempts to make a case for an assessor). For purposes of this analysis, the Board accepts the following cost figures for the building that are summarized on the Petitioner’s worksheet (Pet. Ex. 2):

Adjusted 1999 Actual Building Construction Cost for the Original Building	\$3,377,489.84
Adjusted 1999 Actual Building Construction Cost for the Addition	\$2,233,002.94.

- f. The 131 Petition claims that the assessed value of the improvements should be reduced to \$6,314,900. Based on construction costs, the Petitioner may have proved the building's value-in-use should be \$5,509,200. The difference between these two numbers is \$805,700. That difference is unexplained. (If it is the Petitioner's position that that value should be attributed to other improvements, the Petitioner failed to explain it.) The Petitioner's case leaves the actual value-in-use of the excluded improvements (and consequently, the total overall assessment) as a matter of sheer speculation. The Petitioner failed to walk the Board through every element of the analysis. *Indianapolis Racquet Club*, 802 N.E.2d 1022. Therefore, even if the Petitioner presented a case that is enough to establish that the current assessment is incorrect, the Petitioner failed to establish what the correct assessment might be.
- g. The Petitioner's approach is contrary to the fundamental goal of the current assessment system, which seeks to arrive at the overall market value-in-use. *See O'Donnell*, 854 N.E.2d 90; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- h. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner did not make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not 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>