

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00096A
Petitioner: R & M Properties
Respondent: Department of Local Government Finance
Parcel #: 001-15-26-0470-0001
Assessment Year: 2002

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

Procedural History

1. The Petitioner attended an informal hearing as described in Ind. Code § 6-1.1-4-33. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$2,689,800. The DLGF's Notice of Final Assessment was sent to the Petitioner on April 4, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated March 8, 2005.
4. A hearing was held on April 8, 2005, in Crown Point, Indiana before Special Master Ken Daly.

Facts

5. The subject property is located at 801 Main Street, Griffith, in Calumet Township, Lake County, Indiana.
6. The subject property contains a commercial/industrial business consisting of nineteen (19) buildings located on 28.393 acres of land.
7. The Special Master did not conduct an on-site visit of the property.

a) Assessed values of subject property as determined by the DLGF are:

Land: \$605,600	Improvements: \$2,084,200	Total: \$2,689,800
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b) Assessed values requested by the Petitioner:

The Petitioner did not specify a requested value on its Form 139L petition. At the hearing, the Petitioner relied upon an appraisal estimating the market value of the subject property to be \$2,395,000.

8. The persons indicated on the attached sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Ronald Austgen, Owner

For Respondent: Terry Knee, representing the DLGF

Issues

10. Summary of Petitioner's contentions in support of alleged error in assessment:

a) The Petitioner submitted a certified appraisal estimating the market value of the subject property to be \$2,395,000 as of September 3, 2003. *Austgen testimony; Petitioner Exhibit 1, at 9.*

b) The subject buildings are extremely old. *Austgen testimony.* Building 11 was a Quonset building that collapsed and was rebuilt in 1999 or 2000. *Id.* Buildings 14, 15 and 16 are difficult to rent and sat empty all summer. *Id.* Those buildings have asbestos roofs. *Id.*

c) Portions of the subject parcel are vacant and contain wetlands. *Id.*

d) If the Respondent is using the Petitioner's appraisal as the basis for recommended changes, the Respondent should reduce its value by 3% or 4% per year. *Id.*

11. Summary of Respondent's contentions in support of assessment:

a) The appraiser did a reasonable job on the appraisal, but the Respondent had some questions regarding his calculations under the income approach to value. *Knee testimony.* On page 100 of the appraisal, the appraiser states that the subject property had an 8.7% vacancy rate and that the vacancy rate for the immediate market area was 13.6%. *Knee testimony; Petitioner Exhibit 1, at 100.* The appraiser, however, used a vacancy rate of 15% in determining an effective gross income for the subject property. *Id.* The appraiser did not justify his use of a 15% vacancy rate. *Id.* The Respondent's representative, Terry Knee, used a vacancy rate of 10% in performing a revised analysis under the income approach. *Knee testimony.*

- b) The appraiser indicated that properties in the subject area had a common area maintenance (“CAM”) expense rate of \$.25 to \$.75 per square foot. *Knee testimony; Petitioner Exhibit 1, at 101.* The appraiser further determined that the subject property had CAM expenses of \$.26 per square foot. *Id.* The appraiser, however, increased the subject property’s CAM expenses by 50% in determining the subject property’s net operating income. *Knee testimony; Petitioner Exhibit 1, at 101, 105.* Mr. Knee used a CAM expense rate of \$.26 in performing his revised analysis under the income approach. *Knee testimony.*
- c) Mr. Knee performed an analysis of the subject property’s market value under the income approach using the same numbers as the appraiser, with the exception of vacancy rate and CAM expenses. *Knee testimony; Respondent Exhibit 3.* He arrived at a value of \$2,635,400. *Id.* This is very close to the assessed value of \$2,689,800, which was determined through application of the cost approach to value. *Knee testimony; Respondent Exhibit 1.*
- d) Although the appraiser also used the comparable sales method (sales comparison approach), he did not use the cost approach to value. Mr. Knee testified that the cost approach, with a few adjustments, would be the more appropriate method to use in estimating the market value of the subject property. *Id.*

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1506.
- c) Exhibits:

Petitioner Exhibit 1: Appraisal dated September 3, 2003

Respondent Exhibit 1: Subject property record card (PRC)

Respondent Exhibit 2: Subject photograph

Respondent Exhibit 3: Copy of page 5 of the Appraisal recalculated

Respondent Exhibit 4: Copy of page 100 of the Appraisal

Respondent Exhibit 5: Copy of page 101 of the Appraisal

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign-in Sheet

- d) These Findings and Conclusions.

Analysis

13. The most applicable laws 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 276 (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.
14. The Petitioner did provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner submitted an appraisal of the subject property in support of its claim that the property is assessed in excess of its market value. The appraisal estimates the market value of the subject property to be \$2,395,000 as of September 3, 2003. *Petitioner Exhibit 1, at 9.*
 - b) The 2002 Real Property Assessment Manual (“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 a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). Three generally accepted appraisal techniques may be used to calculate a property’s market value-in-use: 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 property.
 - c) 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*, 2006 Ind. Tax LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use an appraisal prepared in accordance with the Manual’s definition of true tax value and the Uniform Standards of Professional Appraisal Practice (“USPAP”) to rebut the presumption that an assessment is correct. MANUAL at 5; *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 [USPAP].”).
- d) 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); 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.*
 - e) The appraisal submitted by the Petitioner was performed by a licensed, certified appraiser in conformance with USPAP. *Petitioner Exhibit 1, at 4*. Moreover, the appraiser arrived at his estimation of value through applying the income and sales comparison approaches to value, both of which the Manual expressly recognizes as generally accepted appraisal techniques. *Petitioner Exhibit 1, at 80-106*; MANUAL at 3, 13-15.
 - f) The appraisal, however, estimates the market value of the subject property as of September 3, 2003, a date more than four (4) years after the relevant valuation date of January 1, 1999. Nonetheless, the record contains at least some evidence to relate the appraised value to the subject property’s market value-in-use as of the relevant valuation date of January 1, 1999. Five (5) of the six (6) sales relied upon by the appraiser occurred between February 1999 and December 2000. *Petitioner Exhibit 1, at 80*. Moreover, the appraiser’s estimation of value under the sales comparison approach was \$2,365,000 – \$30,000 less than his final estimate of value. *Petitioner Exhibit 1, at 9, 80*. This evidence is not sufficient to relate the appraiser’s final estimate of \$2,395,000 to a precise value as of January 1, 1999. It is, however, sufficient to demonstrate that the subject property’s market-value-in-use as of January 1, 1999, did not exceed \$2,395,000.
 - g) Based on the foregoing, the Petitioner established a prima face case that the current assessment is in error and that the correct assessment should not exceed \$2,395,000.
 - h) The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s appraisal. *See Meridian Towers*, 805 N.E.2d at 479.
 - i) The Respondent did not present its own independent appraisal of the subject property. Instead, the Respondent simply questioned two of the values used by the appraiser in his calculations under the income approach, substituted what it believed to be the correct values, and recalculated an amount using those substituted values. *See Knee testimony; Respondent Exhibit 3*.

- j) As an initial matter, this provides no assurance that, had the Petitioner's appraiser used what the Respondent believes to be the correct vacancy rate and common area maintenance ("CAM") expense ratio in his analysis under the income approach, he would have reached the same final estimation of value urged by the Respondent. Such changes arguably could have affected other judgments made by the appraiser in completing his analysis under the income approach. Moreover, it is unclear whether the appraiser would have engaged in the same type of reconciliation of values if, as calculated by the Respondent, his income approach had yielded a value almost \$300,000 greater than the value yielded by his sales comparison analysis.
- k) Regardless, the Respondent did not demonstrate that its chosen values are more appropriate than the values used by the appraiser. The appraiser used a vacancy rate of 15%, which exceeded both the 8.7% rate experienced by the subject property and the 13.6% indicated by the market in the immediate area, although it was consistent with the vacancy rate experienced by other operators of industrial/warehouse facilities in Northwest Indiana. *See Petitioner Exhibit 1, at 100.* The appraiser used CAM expenses of \$75,978, which represented a 50% increase over the actual reported expenses of the subject property of \$.26 per square foot. *Id.* Nonetheless, the CAM expenses used by the appraiser were well within the range of expenses (\$.25/sq. ft. to \$.75/sq. ft.) that the appraiser found to be reasonable based upon data available for other properties in the area. *Id.*
- l) Both with regard to the vacancy rate and CAM expenses, the Respondent contends that values more closely aligned with the actual experience of the subject property are appropriate. The income approach to value, however, is premised upon the amount potential buyers would pay for a property based upon the rent that it will produce. *See MANUAL at 14.* Such buyers presumably are concerned with the net rent that a property will generate if it is managed with a reasonable degree of competency. Looking at the income and expenses of comparable properties helps negate the effect that a given property's current management has on its net rental income. Consequently, the appraiser's departure from the actual vacancy rate and CAM expenses of the subject property does not detract significantly from the weight to be afforded to his final estimation of value in this case.
- m) Finally, the Respondent makes the bald assertion that the cost approach is the best method by which to value the subject property and that the appraiser's failure to use the cost approach deprives his opinion of some measure of probative value. *See Knee testimony.* These are nothing more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). Moreover, the appraiser explained that, while he considered the cost approach, he did not use it in his analysis due to the difficulty in measuring accrued depreciation in improvements of the subject improvements' age and in the subject marketplace. *Petitioner Exhibit 1, at 79.*

- n) Based on the foregoing, the Petitioner established by a preponderance of the evidence that the current assessment is incorrect and that the subject property should be assessed for not more than \$2,395,000.

Conclusion

15. The Petitioner demonstrated by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment should be not more than \$2,395,000. The Board finds for the Petitioner

Final Determination

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

ISSUED: **March 3, 2006**

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>.