

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-026-02-1-4-00417
45-026-02-1-4-00420
Petitioner: Bank of Highland Trust 13-3085
Respondent: The Department of Local Government Finance
Parcel #s: 007-16-27-0379-0006
007-16-27-0379-0001
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held in December 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$33,700 for parcel number 007-16-27-0379-0006 (Lot 6) and \$572,000 for 007-16-27-0379-0001 (Lot 1) and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on each property on April 29, 2004.
3. The Board issued hearing notices to the parties dated September 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 11:00 A.M. on November 1, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are contiguous properties located at 9640 Saric Court and 3235 45th Street, Highland, in North Township.
6. Lot 6 consists of a 4,269 square foot commercial parking lot and Lot 1 is a 9,500 square foot commercial parcel with a two-story, brick, commercial office building.
7. The Special Master did not conduct an on-site visit of the properties.

8. The DLGF determined the assessed value of subject property to be \$32,200 for the land and \$1,500 for the improvements, for a total assessed value of \$33,700 for Lot 6 and \$158,600 for the land and \$413,400 for the improvements, for a total assessed value of \$572,000 for Lot 1.
9. The Petitioner requested an assessment of \$1,500 for Lot 6 and \$375,000 for Lot 6.
10. Michael L. Muenich, Attorney and Petitioner's Trust Beneficiary, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

13. Summary of Petitioner's contentions in support of an error in the assessment:
 - a) The Petitioner contends the total assessed value of both properties should be \$375,000. In support of this contention, the Petitioner presented a series of documents from various real estate brokers that offered summaries of value for the purposes of marketing the subject properties. These documents range in time from May 31, 1988, to September 6, 2005. They offer a range in value from \$540,000 to \$279,000. *Petitioner Exhibits 2 - 6; Muenich testimony.* According to the Petitioner, the documents presented are evidence of a conflict between certain of the partners' opinions of value versus outside opinions of value. *Petitioner Exhibit 2- 6.* The Petitioner further presented a grid showing the value range of these appraisals from the first one in 1988, shortly after the Petitioner purchased the properties, to the latest one done in 2005 for this hearing. *Id; Petitioner Exhibit 7; Muenich testimony.* The Petitioner contends that the latest McCabe appraisal value of \$390,000 is the most representative of the market value of both properties combined.¹ *Petitioner Exhibit 2; Muenich testimony.*
 - b) The Petitioner also testified that certain partners of the ownership trust offered the subject properties for sale several times over the years, most specifically from 2000 to 2002. According to the Petitioner, the asking price ranged from \$595,000 to \$400,000. *Muenich testimony.* However, the only offer received for the subject properties in that time frame had been for \$350,000 or \$375,000 but that offer was rejected. *Id.*
14. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent argues that the assessment is correct. According to the Respondent, all of the information as to building use and square footage has been confirmed as accurate by the Petitioner. *Respondent Exhibit 1; Elliott testimony; Muenich testimony.*

¹ The Petitioner noted that an addendum was submitted by McCabe explaining that though the 2005 appraisal only lists one parcel number, both were considered in the appraisal. (Attached to rear cover of Petitioner Exhibit 2)

- b) Further, the Respondent contends that the total current assessment of the subject properties, \$605,000, is representative of the Petitioner's asking price of \$595,000 in 2000. *Respondent Exhibit 1; Elliott testimony.*

Record

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

- a) The Petitions,
b) The tape recording of the hearing labeled Lake County 1680,
c) Exhibits:

Petitioner Exhibit 1a – Form 139L Petition for 007-16-27-0379-0001,
Petitioner Exhibit 1b – Form 139L Petition for 007-16-27-0379-0006,
Petitioner Exhibit 2 – McCabe appraisal dated September 6, 2005,
Petitioner Exhibit 3 – McCabe appraisal dated November 10, 1996,
Petitioner Exhibit 4 – Cyrus & Associates letter/appraisal dated April 30, 1996,
Petitioner Exhibit 5 – McCabe appraisal dated October 23, 1990,
Petitioner Exhibit 6 – Vernon E. Lee & Associates letter/appraisal dated June 7,
1988,

Petitioner Exhibit 7 – Compiled graph,
Petitioner Exhibit 8 – Letter of direction and authorization,

Respondent Exhibit 1 – Subject property record cards,
Respondent Exhibit 2 – Subject photographs,
Respondent Exhibit 3 – Commercial & Industrial Neighborhood Valuation,
Respondent Exhibit 4 – Incremental/Decremental land summaries,
Respondent Exhibit 5 – Plat map,

Board Exhibit A - Form 139Ls,
Board Exhibit B - Notices of Hearing,
Board Exhibit C – Hearing Sign in Sheet,

- d) These Findings and Conclusions.

Analysis

16. 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.
17. The Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) The Petitioner contends that the assessed values of the subject properties are overstated. In support of this contention, the Petitioner submitted several appraisals dating from 1988 to 2005. *Petitioner Exhibits 2-6*.
 - b) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 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 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). 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. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereafter GUIDELINES). The value established by use of the GUIDELINES, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. That 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) 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. *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). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.

- d) Here the Petitioner presented an assortment of documents from various real estate brokers that offered summaries and/or arguments of value for marketing purposes from 1988 to 2005. *Petitioner Exhibits 2 through 6*. The first document from Vernon E. Lee & Associates, dated May 31, 1988, estimated the value of the subject properties to be \$525,000.² *Petitioner Exhibit 6*. The second appraisal is dated October 23, 1990, and valued the property for \$540,000.³ *Petitioner Exhibit 5*. In 1996, Cyrus and Associates stated in a letter that the property would only be worth \$250,000 through the income approach, but could be worth \$370,000 to \$380,000 if the owners raised rents to the recommended level.⁴ *Petitioner Exhibit 4*. A November 11, 1996, appraisal, however, shows the property to be valued at \$630,000 through the cost approach, \$445,000 through the income approach, and \$561,000 through the market approach, for a final estimated value of \$475,000. *Petitioner Exhibit 3*. In 1997, Cyrus and Associates again argues that the listing price for the properties of \$400,000 to \$575,000 is too high and that the 1997 income only supports a value of \$279,000 to \$304,000. *Petitioner Exhibit 4*. Finally, in 2005, the Petitioner had an appraisal prepared that valued the property for \$483,800 through the cost approach, \$450,500 through the income approach, and \$326,000 through the market approach, for a final estimated value of \$390,000 as of September 6, 2005. *Petitioner Exhibit 2*.
- e) Here, the Petitioner submitted multiple documents with contradictory values. In none of these documents did the appraiser attest that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). Further, none of the appraisals valued the subject properties as of the January 1, 1999, valuation date. As part of making its prima facie case, a Petitioner must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d 1018, 1022. In other words, the Petitioner cannot expect to establish a prima facie case by offering conflicting evidence as though the evidence speaks for itself. In the case at bar, it was not the Board's responsibility to review all the documentation submitted by the Petitioner and determine whose

² The appraisal estimated the value of the property to be \$545,000 through the cost approach, \$530,500 through the market approach, and \$518,700 through the income approach, for a final estimate of value of \$525,000. *Petitioner Exhibit 6*.

³ The McCabe appraisal estimated the properties' value to be \$564,910 through the cost approach, and \$520,000 through the income approach, for a final estimate of value of \$540,000. *Petitioner Exhibit 5*.

⁴ Cyrus & Associates' letter from April 30, 1996, argues that the "current" listing price of \$595,000 is too high and its letter of October 28, 1996, states that the income approach using existing income and expenses determines a value of only \$250,000 but that an income approach using recommended income and expenses would show a value of \$370,000 to \$380,000 for the properties. *Petitioner Exhibit 4*.

opinion of value at any given time was most accurate. That duty rested with the Petitioner. Furthermore, the Petitioner failed to show the relevance of any of the appraisal valuations to the statutory valuation date of January 1, 1999. Thus, the Board holds that the Petitioner failed to raise a prima facie case that the assessed value of the subject properties exceeds the market value.

- f) Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds for the 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: April 28, 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 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>>. 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 days of the date of this notice.