

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-026-02-1-4-01102
45-026-02-1-4-01103
45-026-02-1-4-01104
45-026-02-1-4-01105
45-026-02-1-4-01106

Petitioner: Beckman, Kelly & Smith

Respondent: The Department of Local Government Finance

Parcel #s: 007-26-34-0145-0043
007-26-34-0145-0042
007-26-34-0145-0041
007-26-34-0144-0006
007-26-34-0144-0005

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 hearings as described in Ind. Code § 6-1.1-4-33 were held December 16, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$13,500, \$14,600, \$14,600, \$20,800, and \$754,400 respectively and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on each parcel on April 30, 2004.
3. The Board issued a notice of hearing for each parcel to the parties. The notices were dated June 2, 2005.
4. Special Master Kathy J. Clark held a joint hearing for all parcels at 8:15 A. M. on July 6, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are all located in Hammond. The location is in North Township. Their respective street addresses are: Parcel #0043 – 48 Waltham Street; Parcel #0042 – 46 Waltham Street; Parcel #0041 – 44 Waltham Street; Parcel #0006 – 51/53 Waltham Street; Parcel #0005 – 5914/5922 Hohman Avenue.

6. The subject properties under appeal consist of the following:

Parcel #s 0043, 0042, 0041: Three commercial lots, each containing 3,000 square feet of land, and each having specific amounts of asphalt paving and chain link fencing. They are contiguous to each other and are classified as parking lots.

Parcel #0006: A commercial lot containing 6,540 square feet of land with asphalt paving that is classified as a parking lot.

Parcel #0005: A 22,800 square foot commercial lot improved with a 17,712 square foot, one story brick and frame structure assessed as general office, general retail, and utility storage.

7. The Special Master did not conduct an on-site visit of the properties.

8. Assessed values of subject properties as determined by the DLGF:

<u>Parcel #0043</u> : Land	\$8,400	Improvements	\$5,100	Total	\$13,500,
<u>Parcel #0042</u> : Land	\$8,400	Improvements	\$6,200	Total	\$14,600,
<u>Parcel #0041</u> : Land	\$8,400	Improvements	\$6,200	Total	\$14,600,
<u>Parcel #0006</u> : Land	\$18,300	Improvements	\$2,500	Total	\$20,800,
<u>Parcel #0005</u> : Land	\$151,200	Improvements	\$603,200	Total	\$754,400.

9. Assessed values requested by Petitioner are:

<u>Parcel #0043</u> : Land	\$3,150,				
<u>Parcel #0042</u> : Land	\$3,150,				
<u>Parcel #0041</u> : Land	\$3,150,				
<u>Parcel #0006</u> : Land	\$6,600,				
<u>Parcel #0005</u> : Land	\$46,000	Improvements	\$484,000	Total	\$530,000.

10. Persons sworn in as witnesses at the hearing:

Stephen Sullivan, Attorney with the law firm of Beckman, Kelly & Smith, Owner,
Thomas S. Bochnowski, Real Estate Appraiser, Witness for Owner,
Lori Harmon, Assistant Director, Assessment Division, DLGF.

Issues

11. Summary of Petitioner's contentions in support of errors in the assessments:

Parcel #0005

- a. A Restricted Appraisal was completed December 10, 2003, by Richard E. Weiss of the Richard Weiss Company, Inc. The appraiser's opinion, stated in the December 2003 appraisal, is that the most probable adjusted unit value range is \$38.00 to \$42.00 per square foot, including land and land improvements. Considering all issues, the December 2003 appraisal determined that the low end of the indicated range would be the most probable indicator of value for the subject and therefore the subject's market value would be \$680,000 as of January 1, 1999. *Petitioner Exhibit 4, pgs 3 and 4.*
- b. When the Notice of Hearing was received and the Petitioner questioned the original appraiser on a couple of items contained in the December 2003 Restricted Appraisal, the Petitioner was told that he (the original appraiser) was no longer in business and would not represent them at the hearing. *Sullivan testimony.*
- c. Mr. Thomas S. Bochnowski (Witness) of Bochnowski Appraisal Company was then hired by the Petitioner to review the December 2003 appraisal and testify at this hearing. *Sullivan testimony.*
- d. The Witness stated that his report amounts to a Verbal Appraisal, that it is well documented and compliant with the Uniform Standards of Professional Appraisal Practice (USPAP). The oral presentation is both Limited and Restricted and is an independent appraisal. It utilizes two approved approaches to value and is what his client (the Petitioner) asked him to do. The Witness testified that he is a Certified General Appraiser licensed by the State of Indiana. *Petitioner Exhibits 5 and 6; Bochnowski testimony.*
- e. The Witness testified that after reviewing the December 2003 appraisal it was his opinion that that appraisal's value was too high because some of the information to be presented at this hearing was not available to the original appraiser. *Petitioner Exhibits 4 and 5; Id.*
- f. The Witness based his income approach on data from six properties. *Petitioner Exhibit 5, pg 2.* A per square foot income value of \$8.00 was established for the finished area of the subject building and a \$4.00 per square foot rate was established for the unfinished area. Normal expenses were deducted and a common capitalization rate of 10% was applied. The value of the subject property determined

by the income approach was \$520,000. *Petitioner Exhibit 5, pgs 1 and 2; Bochnowski testimony.*

- g. The Witness utilized some of the sales used in the December 2003 appraisal along with some additional sales for his sales comparison approach. The most comparable sales gave an adjusted per square foot range of \$25.00 to \$32.00. Using a \$30.00 per square foot market value, instead of the incorrect \$38.00 per square foot used in the December 2003 appraisal, the subject's total value is determined to be \$531,000.
- h. The Witness testified that, of the two approaches he used, the sales approach best represents the subject's value and that \$46,000 should be allocated to the land and \$484,000 to the building. *Petitioner Exhibit 4 and Petitioner Exhibit 5, pg 2; Bochnowski testimony.*

Parcels #0006, #0041, #0042, and #0043

- i. The assessed values placed on these parcels are wrong and astronomically high. All four lots are zoned R-2, residential, and are only permitted to be used as parking lots because of the existence of a variance granting that use. The highest and best use of these lots is as residential building lots and they were appraised this way as required by the USPAP. *Bochnowski testimony.*
- j. Nine sales of vacant lots were analyzed; the first seven of those sales are of residential lots and the last two are commercial. The per square foot market value of the first four residential lots ranges from \$.83 to \$1.56; the next three residential lots, which are a bit out of the subject's neighborhood but similar, range from \$2.37 to \$3.33. The analysis supports the Witness' opinion that, after adjustments, \$1.00 per square foot is the market value rate that should be used for the subject properties. *Petitioner Exhibit 6; Bochnowski testimony.*
- k. Parcels #0041, #0042 and #0043 each measure 25' by 126'. At \$1.00 per square foot the highest and best use value for each lot would be \$3,150. *Petitioner Exhibit 6; Bochnowski testimony.*
- l. Parcel #0006 consists of two platted lots, one measuring 29.5' by 120' and one measuring 25.5' by 120'. Multiplying the 6,600 total square feet of this parcel by the \$1.00 per square foot market rate determines a highest and best use value for the parcel of \$6,600. *Petitioner Exhibit 6; Bochnowski testimony.*

12. Summary of Respondent's contentions in support of the assessment:

Parcel #0005

- a. During the informal hearing process the DLGF's contractor reviewed the December 2003 Restricted Appraisal, which was supplied to them with the 139L Petition. The first page of that report, and the last paragraph on page 4, states "As a Restricted Appraisal, my findings are stated so that this report may not be properly understood without the review of additional data, information, analyses and conclusions contained within my workfile." *Petitioner Exhibit 4*. When the contractor tried to enter into negotiations for a possible stipulated offer, they requested the appraiser's workfile from the Petitioner in order to perform a full review and were unsuccessful in obtaining said workfile. The Respondent contends this is, at least partially, what the Petitioner (Sullivan) was referring to earlier in this hearing when he (Sullivan) alluded to certain reasons why the first appraiser had dropped out of the case. *Harmon testimony*.
- b. The Respondent further contends that several issues severely cloud the December 2003 Restricted Appraisal, not the least of which is the aforementioned inability to produce the original appraiser's workfile. *Id.*
- c. The December 2003 Restricted Appraisal's opening sentence clearly states it is "an estimate of the most probable market value in use". The word appraisal is never mentioned in the document. *Petitioner Exhibit 4; Harmon testimony*.
- d. The same opening statement is extremely confusing as to what date the appraiser is actually putting forth as the value date "as of January 1, 1999, for the March 1, 2002 through March 1, 2004 assessment dates. It is my opinion the most probable market value of the structure and all land/land improvements as of the indicated date is..." The Respondent is unsure what date represents the "indicated date" mentioned by the original appraiser. *Id.*
- e. No where in the Restricted Appraisal does the appraiser invoke the Departure Provision as required by the USPAP.
- f. It is the Respondent's position that the December 2003 document is not compliant with the USPAP. It is conclusory in its opinions, unsupported by probative documents, and the Respondent requests that it not be considered in the Board's final determination. *Petitioner Exhibit 4; Harmon testimony*.
- g. The Witness began his presentation by stating that his assignment (for the Petitioner) was to review the December 2003 appraisal. Under the USPAP review and/or critique standards "redoing" an existing appraisal is outside the scope of permitted professional services. *Bochnowski testimony; Harmon testimony*.

- h. The Respondent further contends that the testimony and other evidence presented by the Witness are incomplete and not compliant under USPAP to meet the standards required of an oral or verbal appraisal. *Petitioner Exhibits 5 and 6; Bochnowski testimony; Harmon testimony.*
- i. In the restricted income approach, the vacancy rate of 10% used seems high because the majority of the space is a law office. Real estate taxes are included in the expenses when it is traditional to include them in the capitalization rate. No support has been offered for the 10% capitalization rate used. *Petitioner Exhibit 5, pg 1; Harmon testimony.*
- j. In the rental comparables section, the Witness uses the Bank One building at 5930 Hohman. The Respondent contends that the rent seems low and the reliability of the data is questionable due to the fact, which was confirmed by the appraiser, that Bank One has been a long time tenant of the multiple use building and now, in fact, owns the building. No leases were made available for review.
- k. The Respondent questions both the level of sales verification conducted by the Witness and the transfer and property information contained in the restricted sales approach. The Respondent's concerns include the following:
1. 1247 169th Avenue was taken from the December 2003 Restricted Appraisal (also #1) and was not verified by the Witness. *Petitioner Exhibits 4 and 5; Bochnowski testimony; Harmon testimony.*
 2. 5233 Hohman Avenue (#4 in December 2003 Restricted Appraisal): This property was listed in the first appraisal as having sold in October 1995 for \$350,000. It is listed in Petitioner Exhibit 5 as having sold in November 1998 for \$150,000. No information has been made available in any format, written or oral, about any considerations that may have been involved in the latest purchase or why the sale three years after the first was so low in comparison to the first. *Id.*
 3. 2440 169th Street (#5 in December 2003 Restricted Appraisal): The Witness testified that this sale was included from the first appraisal and he believed it to have been verified then. *Id.*
 4. 5930 Hohman Avenue (#6 in December 2003 Restricted Appraisal): Bank One, the most recent buyer according to the Witness, is one of the multiple tenants in this building and has been a tenant for some time (confirmed by the Witness). While listed in the first appraisal as having transferred in September 1992 for a sum of \$395,000, the Witness used a June 2005 transfer for a sum of \$650,000 and did not include the first sale. No information has been made

available in any format, written or oral, about any considerations that may have been involved in the latest purchase. *Id.*

5. 5217-5219 Hohman Avenue is a multi-story building with multiple tenants. The subject building is only one story. *Petitioner Exhibit 5; Bochnowski testimony; Harmon testimony.*

Parcels #0006, #0041, #0042, and #0043

- l. The basis for assessment in Indiana is a combination of market value and value-in-use, not highest and best use as appraised by the Witness. Value-in-use allows for consideration of the current utility of the property that is being appraised or assessed. *Bochnowski testimony; Harmon testimony.*
- m. No value has been given by the Witness for the paving and fencing that currently exist on these properties. *Harmon testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. Two tape recordings of the hearing labeled Lake County 1602 (Tape 1) and 1600 (Tape 2),
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petitions,
 - Petitioner Exhibit 2: Notices of Final Assessment,
 - Petitioner Exhibit 3: Notices of Hearings,
 - Petitioner Exhibit 4: Appraisal of subject properties by Richard Weiss,
 - Petitioner Exhibit 5: Bochnowski Appraisal Company, Valuation,
 - Petitioner Exhibit 6: Bochnowski Land Analysis,
 - Respondent Exhibit 1: Subject property record cards,
 - Respondent Exhibit 2: Subject photographs,
 - Respondent Exhibit 3: Plat map pages,
 - Respondent Exhibit 4: Land calculations, Neighborhood Land Summary,
 - Respondent Exhibit 5: Neighborhood land rates for secondary land,
 - Board Exhibit A: Form 139Ls,
 - Board Exhibit B: Notices of Hearings,
 - 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 Respondent raised several issues about both appraisals failing to meet the USPAP and the ability of the Board to rely on them in making its determination. The following is the Board’s analysis of the contentions regarding the December 10, 2003, Restricted Appraisal Report:
- a. Standards Rule 2-2(c): “The Restricted Appraisal Report must:
 - (i) identify the real estate being appraised;
 - (ii) state the real property interest being appraised;
 - (iii) state the purpose and intended use of the appraisal;
 - (iv) state and reference a definition of the value to be estimated;
 - (v) state the effective date of the appraisal and the date of the report;
 - (vi) describe the extent of the process of collecting, confirming, and reporting data;
 - (vii) state all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;
 - (viii) state the appraisal procedures followed, state the value conclusion and reference the existence of specific file information in support of the conclusion;
 - (ix) state the appraiser’s opinion of the highest and best use of the real estate, when such an opinion is necessary and appropriate;
 - (x) state the exclusion of any of the usual valuation approaches;

- (xi) contain a prominent use restriction that limits reliance on the report to the client and warns that the report cannot be understood properly without additional information in the workfile of the appraiser, and identify and explain any permitted departure from the specific guidelines of Standard 1;
 - (xii) include a signed certification in accordance with Standards Rule 2-3.” Uniform Standards of Professional Appraisal Practice (USPAP), The Appraisal Foundation, 1998, page 22. .
- b. The Departure Provision states in part “An appraiser may enter into an agreement to perform an assignment that calls for something less than, or different from, the work that would otherwise be required by the specific guidelines, provided that...prior to entering such an agreement:
- 1. the appraiser has determined that the appraisal or consulting process to be performed is not so limited that the resulting assignment would tend to mislead or confuse the client or intended users of the report;
 - 2. the appraiser has advised the client that the assignment calls for something less than , or different from, the work required by the specific guidelines and that the report will clearly identify and explain the departures; and
 - 3. the client has agreed that the performance of a limited appraisal or consulting service would be appropriate.” USPAP, at 6.
- c. No where in the December 2003 Restricted Appraisal does the appraiser invoke the Departure Provision. *Harmon testimony*.
- d. The Board finds that the following items included in the December 2003 Restricted Appraisal report combine to meet the Departure Provision requirements: The first, second, and last paragraph of the written narrative report (pgs 1 through 4) repeatedly confirm that the report is restricted and that the client (Petitioner) requested this type of report; numbers 5 and 6 of the Certification statement (pg 5) certify compliance. While a boilerplate listing of limiting conditions may be the norm in written appraisal reports, it is not mandatory under USPAP. The Board determines that the Departure Provision requirements have been met. *Petitioner Exhibit 4*.
- e. The December 2003 Restricted Appraisal’s opening sentence clearly states it (the report) is “an estimate of the most probable market value in use”. The word appraisal is never mentioned in the document. *Harmon testimony*.
- f. Limited Appraisal Standard 1-“The act or process of estimating value or an estimate of value performed under and resulting from invoking the Departure Provision. USPAP at 9. .
- g. The Board first determined that the Departure Provision requirements have been met. The Board further determines that Standard 1 considers an appraisal to be an “estimate” of value; the use of this phrase in the written report is acceptable.

- h. The Respondent contends that the date of the value expressed in the report is unclear. *Harmon testimony.*
 - i. The Board finds that the cover page of the written Restricted Appraisal report clearly identifies that the value contained within the report is “as of” January 1, 1999. *Petitioner Exhibit 4.*
 - j. The Board determines that all of the requirements of Standards Rule 2-2(c), which sets forth standards specifically required for a Restricted Appraisal Report, have been met by the December 10, 2003, Restricted Appraisal. It is probative on its face. It determines a value for the subject property through the use of the sales approach to be \$680,000 as of January 1, 1999. USPAP; *Petitioner Exhibit 4.*
16. The following is the Board’s analysis of the contentions regarding the July 6, 2005, Oral Real Property Appraisal Report:
- a. The Respondent contends that USPAP does not allow a Review Appraisal to include the “redoing” of the appraisal under review. A Review Appraisal is outside the scope of professional services as stated in USPAP. *Harmon testimony*
 - b. Standard 3- Review Appraisal: “In reviewing an appraisal and reporting the results of that review, an appraiser must form an opinion as to the adequacy and appropriateness of the report being reviewed and must clearly disclose the nature of the review process undertaken.” USPAP at 27.
 - c. The Witness stated at the beginning of testimony that he reviewed the December 2003 appraisal, as requested by his client (the Petitioner), and found its value conclusion to be incorrect due to the lack of certain information that was not available to the original appraiser in December 2003. *Bochnowski testimony.*
 - d. The Board determines that review of the December 2003 appraisal does meet USPAP. *Bochnowski testimony.*
 - e. The Witness testified that his report is both Limited and Restricted and is an independent appraisal. It utilizes two approved approaches to value and is what his client (the Petitioner) asked him to do. *Petitioner Exhibits 5 and 6; Bochnowski testimony.*
 - f. The Respondent raised three issues in regard to the form of the presentation: 1) an oral appraisal is not acceptable in these circumstances; 2) the level of detail is insufficient and incomplete and does not meet the standards required of an oral appraisal under USPAP; and 3) USPAP certification requirements have not been met. *Harmon testimony.*

- g. Standards Rule 2-1: Each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading, contain sufficient information to enable the persons who are expected to receive or rely on the report to understand it properly, and clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.. USPAP at 17.
- h. Standards Rule 2-4: “To the extent that it is both possible and appropriate, each oral real property appraisal report (including expert testimony) must address the substantive matters set forth in Standards Rule 2-2(b).” USPAP at 24.
- i. Standards Rule 2-2(b): “The Summary Appraisal Report must:
 - (i) identify and provide a summary description of the real estate being appraised;
 - (ii) state the real property interest being appraised;
 - (iii) state the purpose and intended use of the appraisal;
 - (iv) define the value to be estimated;
 - (v) state the effective date of the appraisal and the date of the report;
 - (vi) summarize the extent of the process of collecting, confirming, and reporting date;
 - (vii) state all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;
 - (viii) summarize the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;
 - (ix) summarize the appraiser’s opinion of the highest and best use of the real estate, when such and opinion is necessary and appropriate;
 - (x) explain and support the exclusion of any of the usual valuation approaches;
 - (xi) summarize any additional information that may be appropriate to show compliance with, or clearly identify and explain permitted departures from the specific guidelines of Standard 1;
 - (xii) include a signed certification in accordance with Standards Rule 2-3.” USPAP at 20-22.
- j. Jurisdictional Exception: “If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.” USPAP at 7.
- k. Indiana Code does not contain any jurisdictional restrictions as to the acceptability of an oral appraisal. The Board determines the form is allowable.
- l. Based on the Board’s review of the complete testimony of the Witness the Board determines that all substantive matters as set forth in Standards Rule 2-2(b) have been met. *Lake County Tapes 1600 and 1602.*

- m. The Witness testified that he is a Certified General Appraiser licensed by the State of Indiana. This is determined by the Board to be acceptable in meeting USPAP certification requirements when the appraisal form is an Oral Appraisal. *Bochnowski testimony. USPAP, Standards Rule 2-4.*
 - n. The Board determines that the July 7, 2005, Oral Appraisal was presented by a licensed appraiser certified by the State of Indiana. It adheres to the USPAP in both its appraisal process and appraisal reporting. It is probative on its face. It determines a value for the subject property through the use of the Sales Approach to be \$531,000.
17. The Petitioner provided sufficient evidence to establish a prima facie case for one parcel under appeal. This conclusion was arrived at because:

Parcel #0005

- a. The December 10, 2003 Restricted Appraisal is probative on its face. The appraisal relied exclusively on an analysis of comparable office building sales in the area with an attempt made to identify sales that are similar in size to the subject. A total of eight sales that transferred between September 1992 and December 2002 were analyzed. The appraiser noted that sale #6 (sold 9/92) is older but included it in the analysis because it sits directly south of the subject property. The other seven sales have transfer dates ranging from October 1995 to December 2002. Sales #1 and #2 are single story office buildings like the subject, the remaining are multiple story buildings. Considering differences in location, size, condition of the interior improvements, quality of construction and degree of deferred maintenance, the appraiser's opinion, stated in the December 2003 appraisal, is that the most probable adjusted unit value range is \$38.00 to \$42.00 per square foot, including land and land improvements. Considering all issues, the 2003 appraisal determined that the low end of the indicated range would be the most probable indicator of value for the subject properties and therefore the market value for all five parcels would be \$680,000 as of January 1, 1999. *Petitioner Exhibit 4.* The Respondent failed to rebut the Petitioner's evidence.
- b. The December 2003 appraisal did not use the income approach because the building is partially owner-occupied and also because the appraiser determined that because there is insufficient demand for rental office space there was not enough available information to reliably estimate the most probable net operating income. The 2003 appraisal did not contain the cost approach because the appraiser determined that due to the age of the building and the difficulty of estimating total loss from all sources it would be unreliable. *Petitioner Exhibit 4, pgs 3 and 4.*
- c. Mr. Bochnowski presented an oral appraisal at the July 6th, 2005 hearing. It was supported by a written document (with a FAX date of July 5, 2005) outlining both a

Restricted Income Capitalization Approach and Restricted Sales Comparison Approach. *Petitioner Exhibit 5; Bochnowski testimony.*

d. The following is an analysis of the sales information supplied by both appraisals:

- #1: 1247 169th Avenue was taken from the December 2003 Restricted Appraisal (also #1) and while not verified independently by the Witness is assumed to have been verified using normal professional methods by the first appraiser for the December 2003 report. *Petitioner Exhibits 4 and 5; Bochnowski testimony.*

- #2: 5233 Hohman Avenue (#4 in December 2003 Restricted Appraisal): This property was listed in the first appraisal as having sold in October 1995 for \$350,000. It is listed in Petitioner Exhibit 5 as having sold in November 1998 for \$150,000. The Witness stated that the sale recorded in November 1998 was more representative and closer to the assessment date so he used it instead in his analysis. No information was made available in any format, written or oral, by the Witness about any considerations that may have been involved in the latest purchase or why the sale three years after the first was so low in comparison to the first. *Id.*

- #3: 2440 169th Street (#5 in December 2003 Restricted Appraisal): The Witness testified that this sale was included from the first appraisal and he believed it to have been verified then. *Id. Harmon testimony.*

- #4: 5930 Hohman Avenue (#6 in December 2003 Restricted Appraisal): Bank One, the most recent buyer according to the Witness, is one of the multiple tenants in this building and has been a tenant for some time (confirmed by the Witness). While listed in the first appraisal as having transferred in September 1992 for a sum of \$395,000, the Witness used a June 2005 transfer for a sum of \$650,000 and did not include the first sale. The Witness testified that he verified by normal means the most recent sale with a principal of the corporation that sold the property in June 2005 but did not have any direct details of the sale. The Witness testified that he thinks that Bank One purchased the building but added that he may be wrong.” No information has been made available in any format, written or oral, about any considerations that may have been involved in the latest purchase. *Id.*

- #5: 5217-5219 Hohman Avenue is a multi-story, elevatored building containing multiple tenants. The subject building is only one story. Hohman Square, the eventual buyer, has rented space for some time here but the building is mostly vacant. While the Witness testified that he spoke with the broker who sold the property, he also testified that this sale was not really relied upon in his analysis. *Petitioner Exhibit 5; Bochnowski testimony; Harmon testimony.*

e. The conclusion of the July 2005 report was that the sales approach best represented the subject’s value in use and that that value was \$531,000. The Witness stated that

Sale #5 was “not really relied upon” in his analysis. That leaves four sales used to support the July 6, 2005, oral appraisal. Two sales had double transfers, 5233 Hohman and 5930 Hohman. The Witness used the 1998 sale of 5233 Hohman because it was closer to the valuation date. 5930 Hohman, the closest in size to the subject building, was sold in 2005; this information was not available to the original appraiser.

- f. The Witness included an income approach to value that estimated the value of the property. The Witness calculated a net operating income for the subject and used the customary capitalization rate of 10%; this approach resulted in a value of \$521,000. This approach supports the estimate of value from the sales approach.
- g. The Petitioner submitted two appraisals. These appraisals indicate the subject property is over-assessed. The Petitioner established a prima facie case.
- h. 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. The Respondent failed to rebut the Petitioner’s evidence or offer sufficient evidence in support of the current assessment.
- i. In weighing the evidence, the Board finds the 2005 appraisal to carry the most weight as to the market value-in-use of the subject property as of January 1, 1999, because it considered this parcel separately. The 2003 appraisal valued all the properties as one. The Board finds for the Petitioner. The subject’s value should be changed to a total of \$531,000.

Parcels #0006, #0041, #0042, and #0043

- j. The Petitioner contends the land value is excessive. The subject properties should be valued as residential lots because they are zoned R-2.
- k. The Petitioner submitted the oral appraisal of Mr. Bochnowski. The appraisal included a list of comparable land sales and an estimate of value for the subject properties. The appraisal claims that the highest and best use of the properties is as residential and the land sales support a value of \$1.00 per square foot.
- l. Though USPAP stresses “highest and best use” as the common final value point, an appraiser is directed to develop the concept “to the extent that is required for a proper solution of the appraisal problem being considered.” Thus, while not “requiring” a highest and best use analysis in every appraisal assignment, the USPAP does direct the appraiser to undertake such an analysis when appropriate. USPAP at 23.

- m. The value goal of the January 1, 1999, assessment is defined 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. It is this definition, therefore, that sets the standard upon which assessments may be judged. 2002 REAL PROPERTY ASSESSMENT MANUAL at2 (incorporated by reference at 50 IAC 2.3.1.2).
- n. While all four lots may be zoned R-2, residential, they are currently used as parking lots due to the existence of a variance granting special use. *Bochnowski testimony*. They do include paving and fencing in various amounts. *Respondent Exhibit 1b through 1e; Harmon testimony*.
- o. The utility received by the Petitioner is as a commercial parking lot; therefore the market value in use for the subject properties is commercial.
- p. The Board also notes that three of the subject parcels had transfer dates in 2000 and again in 2004. No information was submitted concerning the transfers or the value of the properties at the time of transfer. The Board finds the lack of information that is specific to the subject properties an unusual omission.
- q. The Board finds for the Respondent. The current assessed values for parcels #0006, #0041, #0042, and #0043 shall remain unchanged.

Conclusion

18. The Petitioner provided sufficient evidence to establish a prima facie case in the matter of parcel #0005. The Respondent failed to rebut the Petitioner’s case with substantial evidence. The Board finds in favor of the Petitioner in regard to that parcel.

The Petitioner provided sufficient evidence to establish a prima facie case in regards to parcels #0006, #0041, #0042, and #0043. The Respondent successfully rebutted the Petitioner’s evidence. The Board finds in favor of the Respondent in regard to the four land parcels.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for parcel #0005 should be changed. The assessments for parcels #0006, #0041, #0042, and #0043 should not be changed.

ISSUED: _____

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>.