

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00141
Petitioner: Whiteco Industries, Inc.
Respondent: Department of Local Government Finance
Parcel #: 008081504850003
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 February 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessment for the subject property was \$1,223,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated July 22, 2005.
4. Dalene McMillen, a special master duly appointed by the Board (Special Master) held a consolidated hearing for the above captioned matter and Petition No. 45-028-02-1-4-00150¹ on August 24, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located on 1000 East 80th Place, Merrillville, Ross Township in Lake County.
6. The subject property is a paved parking lot on 3.885 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land: \$1,171,900 Improvements: \$51,900 Total: \$1,223,800

¹ The Board addresses Petition No. 45-028-02-1-4-00150 pursuant to a separate Final Determination, Findings and Conclusions

9. The assessed value of the subject property as requested by the Petitioner at the hearing:
Land: \$544,537 Improvements: \$51,900 Total: \$596,440

10. The following persons were present and sworn in at the hearing:

For Petitioner: Richard Archer, Tax Representative
 Thomas Janik, Witness

For Respondent: Terry Knee, Assessor/Auditor, DLGF
 Phillip Raskosky II, Assessor/Auditor, DLGF

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The assessed value of the subject property exceeds its 1999 market value.
- b) The Petitioner submitted a one-page excerpt from an appraisal of the Star Theatre, which is also owned by the Petitioner. *Archer testimony; Pet'r Ex. 3*. The Petitioner contended that the subject land is similarly situated to the land under the Star Theatre. *Archer testimony*.
- c) The appraisal excerpt contains the appraiser's analysis of the value of the appraised land, as vacant, using the sales comparison approach to value. *Pet'r Ex. 3*. The appraiser analyzed the sale prices for two parcels of land and listing prices for five parcels of land that he determined to be comparable to the appraised property. *Id.* The sale/listing prices ranged from \$48,828 per acre to \$435,484 per acre. *Id.* The appraiser adjusted the listing prices downward by amounts ranging from 20% to 30%. *Id.* The appraiser also considered whether the comparable properties differed from the appraised property in terms of location, size, shape, zoning, topography and utilities. *Id.* The appraiser adjusted the sale/listing prices of several of the properties based upon differences between those properties and the appraised property in terms of size and location. *Id.* The appraiser ultimately concluded that the appraised property should be valued at the rate of \$150,000 per acre. *Pet'r Ex. 3*.
- d) Using \$150,000 per acre, the Petitioner estimated the value of the subject land to be \$582,750 as of March 1, 2002. The Petitioner indexed that value using an index factor of 93.4426% to relate the March 1, 2002, value to a value as of January 1, 1999, of \$544,537. *Archer testimony*. The Petitioner then added the assessed improvement value of \$51,900 to arrive at a total value of \$594,400 (rounded). *Archer testimony*.

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

- a) The Respondent presented the subject property record card, a plat map of the area, and land calculations. *Raskosky testimony; Resp't Exs. 1-3*.

- b) The Respondent explained the primary rate for the subject neighborhood (#30893) is \$431,244 per acre. Based on the size of the subject parcel, the Respondent reduced that rate to \$335,171 per acre. The extended value for the subject land is \$1,032,120. The Respondent then applied 10% negative influence factor, which reduced the land value to \$1,171,900. *Raskosky testimony; Resp't Ex. 3.*
- c) The subject land is classified as primary land because it is used for parking in conjunction with other properties owned by the Petitioner. *Knee testimony.*
- d) The Respondent questioned whether the properties referenced in the appraisal excerpt were comparable to the subject land. The Respondent also questioned whether there was any support for the adjustments he made to the sale/listing prices of the purportedly comparable properties. *Knee testimony.*

Record

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

- a) The Petition,
- b) The recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1 – Form 139L petition,
Petitioner Exhibit 2 – Subject property record card,
Petitioner Exhibit 3 – Land Valuation excerpt (1 page) from MAI appraisal submitted for parcel #008081504850004,²

Respondent Exhibit 1 – Subject property record card (PRC),
Respondent Exhibit 2 – Plat map of the subject parcel,
Respondent Exhibit 3 – Land Calculations/Land Summary Sheet,

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,

- d) These Findings and Conclusions.

² The following items were included in the folder with the Petitioner's exhibits, but were not labeled as exhibits: a copy of the hearing notice, a power of attorney, and a summary of the Petitioner's opinion of value.

Analysis

14. The most applicable 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 its contentions. This conclusion was arrived at because:
- a) The Petitioner contends the subject land should be valued at \$150,000 per acre based on an excerpt from appraisal prepared for another property owned by the Petitioner. *Archer testimony; Pet'r Ex. 3*.
 - b) 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.
 - 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; *see also*, *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 to rebut the presumption that an assessment is correct. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505-06 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].”).

- d) This general rule, however, presupposes that the appraisal upon which the taxpayer relies addresses the property that is the subject of the taxpayer’s appeal. That is not the case with regard to the appraisal excerpt submitted by the Petitioner. In an apparent effort to overcome this deficiency, the Petitioner’s representative, Mr. Archer, testified that the subject land was “similarly situated” to the land under the Star Theatre. *Archer testimony*. Mr. Archer, however, did not provide any support for that conclusory statement. Conclusory 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); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005)(holding that conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties).
- e) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

Conclusion

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: _____

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>>.