

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-028-02-1-4-00149  
**Petitioner:** Whiteco Industries, Inc.  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 008081505560004  
**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 received a Notice of Department Assessed Value Determination issued by the Department of Local Government Finance (the "DLGF") on March 31, 2004. The DLGF determined the Petitioner's assessment to be \$740,800 based on "Neighborhood changed to 30893, land repriced."
2. The Petitioner filed its 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 hearing in this matter hearing on August 24, 2005, in Crown Point, Indiana.

### Facts

5. The subject property has a legal description of Westlake Plaza Unit 2 Sw'ly PT Lot 1 (2.298 AC), Merrillville, Ross Township in Lake County.
6. The subject property is vacant commercial land.
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: \$740,800
9. The assessed value of the subject property as requested by the Petitioner at the hearing:  
Land: \$322,100

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 subject property is assessed at the rate of \$322,352 per acre. *Raskosky testimony*. The assessment exceeds the 1999 market value of the subject property. *Archer testimony*.
- b) In support of its position, the Petitioner submitted a portion of an appraisal prepared for another property owned by the Petitioner (hereinafter referred to as the "appraisal excerpt"). *Archer testimony; Pet'r Ex. 3*.
- 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 subject 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 subject 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) The Petitioner relied upon the unadjusted sale prices of two of the comparable properties. *Archer testimony; Pet'r Ex. 3*. Those unadjusted prices were \$118,297 per acre and \$87,089 per acre, respectively. *Id*. The Petitioner presented a map to show the location of the subject property in relation to the two sold properties. The subject property is located on the east side of Interstate 65 (I-65) and the two sold properties are located on the west side of I-65. *Archer testimony; Pet'r Exs. 3, 4*. The subject property is located in neighborhood 30983, which includes properties on both sides of I-65. Consequently, sales of properties from the other side of I-65 are relevant to a valuation of the subject property. *Archer testimony*.
- e) There are few sales of properties along I-65 and Highway 30 Corridor where the subject property is located. *Janick testimony*.

f) The Petitioner requested a value of \$150,000 per acre, as set forth in the appraisal excerpt. The Petitioner multiplied that amount by 2.298 (the number of acres contained in the subject property) to arrive at a total value of \$344,700 as of March 1, 2002. *Archer testimony*. The Petitioner then trended that value back to January 1, 1999, using an index factor of 93.4426%, for a true tax value of \$322,100. *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 the land calculations it used to assess the subject property. *Raskosky testimony; Resp't Exs. 1-3*.
- b) The subject property is located in neighborhood 30893 and is classified as land type 13, undeveloped usable. The base rate for type 13 land in the subject neighborhood is \$388,120 per acre. The respondent then adjusted that amount using an incremental/decremental rate based on the size of the subject property to adjust the base rate to \$322,352 per acre. This resulted in an extended value of \$740,800. *Raskosky testimony; Resp't Exs. 1, 3*.
- c) The Respondent determined land values based upon sales that occurred between January 1, 1998, and December 31, 1999. The Respondent noted that one of the sales relied upon by the Petitioner took place outside that timeframe. The Respondent also noted that both of the purportedly comparable properties upon which the Petitioner relied were located on the opposite side of I-65 from the subject property. *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 (5 pages) from MAI appraisal submitted for parcel #008081504850004,  
Petitioner Exhibit 4 – Map showing the subject and the MAI appraised Star Theatre,<sup>1</sup>

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<sup>1</sup> 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.

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

### 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; *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 offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *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].”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- d) As an initial matter, it is unclear whether the Petitioner based its contentions upon the appraised value of the property that was the subject of the appraisal excerpt, or upon information concerning the sales of two purportedly comparable properties referenced in the excerpt. On one hand, the Petitioner requested a value for the subject property of \$150,000 per acre, which is the value estimated by the appraiser for the appraised property. On the other hand, the Petitioner’s representative did not describe the appraised property, but instead focused on the location and sale prices of two of the properties referenced in the appraisal. Both of those properties sold for substantially less than \$150,000 per acre.
- e) The Board will first address the Petitioner’s reliance on the opinion of value set forth in the appraisal excerpt. As explained above, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See* MANUAL at 5; *see also Kooshtard Property VI*, 836 N.E.2d at 505-06 n.1. 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.
- f) Nonetheless, the Petitioner also apparently relied upon information set forth in the appraisal excerpt apart from the appraiser’s opinion of value. In doing so, the Petitioner sought to value to subject property using the sales comparison approach to value. The sales comparison approach is based on the assumption that potential buyers will pay no more for the subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market

- place. MANUAL at 13. The appraiser locates sales of comparable improved<sup>2</sup> properties and adjusts the selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.
- g) Thus, in order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. When seeking to establish comparability of land, the relevant characteristics to compare include things such as size, accessibility and topography. See *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.
- h) The Petitioner relied upon the unadjusted sale prices of two properties referenced in the appraisal excerpt. The Petitioner, however, did little to compare those properties to the subject property other than to explain that they were located on the opposite side of I-65 from the subject property. *Archer testimony; Pet'r Ex. 4*. While this is at least some evidence showing comparability of location, especially in light of the fact that the assessment neighborhood in which the subject property is located encompasses properties on either side of I-65, it falls short of the type of analysis described in the Manual and contemplated by the Court in *Long*. Those authorities contemplate that an appraiser will consider all differences between the subject property and the properties to which he seeks to compare it, and that he will use objectively verifiable evidence to determine which of those items has an affect on market value. MANUAL at 13-14. The Petitioner, by contrast, has simply seized on one factor that affects market value to the exclusion of all others.
- i) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

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<sup>2</sup> The methodology also applies where one seeks to determine the value of an improved tract of land as if it were vacant for purposes of applying the cost approach.

**Conclusion**

- j) 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: \_\_\_\_\_

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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](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>>.