

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00150
Petitioner: Whiteco Industries, Inc.
Respondent: Department of Local Government Finance
Parcel #: 008081504850006
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 \$233,400 based on "Neighborhood changed to 30893, land repriced."
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. 45-028-02-1-4-00141¹ on August 24, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located on 1000 Approx. 80th Place, Merrillville, Ross Township in Lake County.
6. The subject property is a paved parking lot on .182 acres of 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: \$230,300 Improvements: \$3,100 Total: \$223,400

¹ The Board addresses Petition No. 45-028-02-1-4-00141 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: \$23,724 Improvements: \$3,100 Total: \$26,820

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 subject property is contiguous to an office complex known as the Twin Towers, which is the subject of a separate appeal. The subject property is used as a parking lot for the Twin Towers, which is the contiguous to the subject property along its northern border. *Archer testimony; Resp't Ex. 2.* The Petitioner's representative, Richard Archer, testified that the subject property previously supported the lot immediately to the west (Star Theatre land), but that "ownership was transferred at some point in time." *Archer testimony.* Thus, the subject property and the Twin Towers are owned by separate entities. *Archer testimony.*
- c) The Respondent made a significant adjustment to the base rate used to assess the subject property, which resulted in a rate of \$1,265,385 per acre. *Archer testimony.* The adjustment was based on the size of the subject parcel. *Id.* The Petitioner contended that it was unfair to assess the subject property at a substantially higher rate given that the two parcels are used as one property. *Archer testimony.*
- d) The Petitioner testified that an appraisal prepared for the Star Theatre, which is similarly situated to the subject property, indicates a market value of \$150,000 per acre. The Petitioner provided a copy of a portion of that appraisal (hereinafter "appraisal excerpt"). *Archer testimony; Pet'r Ex. 3.*
- e) The appraisal excerpt contains the appraiser's analysis of the value of the Star Theatre 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 Star Theatre land 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 Star Theatre land 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.*

- f) Using the rate of \$150,000 per acre, the Petitioner estimated the value of the subject land to be \$25,389 as of March 1, 2002. The Petitioner used an index factor of 93.4426% to trend that amount to reflect a value of \$23,724 as of January 1, 1999. The Petitioner added an improvement value of \$3,100 to arrive at a total value of \$26,800 (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, incorrect land calculations, corrected land calculations, and a corrected property record card. *Raskosky testimony; Resp't Exs. 1-5.*
- b) The Respondent explained the primary rate for the subject neighborhood (#30893) is \$389,700 per acre. The Respondent adjusted that rate using an incremental/decremental rate based upon the subject property's size of .182 acres. *Raskosky testimony.* Based on those calculations, the Respondent increased the rate to \$1,265,454 per acre, which yielded a total land value of \$230,313. *Raskosky testimony; Resp't Exs. 1, 3.*
- c) The Respondent submitted a corrected property record card pursuant to which it applied a negative 10% influence factor to be consistent with other parcels in the area. The final value of the subject land pursuant to the corrected property record card is \$229,400.² *Raskosky testimony; Resp't Ex. 5.*
- d) The Respondent defended the difference between the base rates applied to the subject property and to the land under the Twin Towers on grounds that the subject parcel is substantially smaller than the Twin Towers parcel. *Raskosky testimony.* The Respondent indicated that it would be to the Petitioner's advantage to ask that the parcels be combined. *Knee testimony.*
- e) The Respondent questioned whether purportedly comparable properties referenced in the appraisal excerpt were comparable in size to the subject property. *Knee testimony.* The Respondent also questioned whether the appraiser had any support for the adjustments he made to the sale and listing prices of the comparable properties. *Knee testimony.*

² In completing the corrected property record card, the Respondent increased the base rate to \$1,400,358, which resulted in an estimated value of \$254,870 prior to applying the negative influence factor. *See Resp't Ex. 5.* The Respondent did not explain the reasons for the proposed increase to the base rate. In fact, neither of the Respondent's witnesses mentioned the increase in their testimony. *See Archer testimony; Raskosky 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 #008081504850004³,

Respondent Exhibit 1 – Subject property record card (PRC),
Respondent Exhibit 2 – Plat map of the subject parcel,
Respondent Exhibit 3 – Incorrect Land Calculations for Primary Land Classification,
Respondent Exhibit 4 – Corrected Land Calculations for Primary Land Classification/ NBHD Land Summary Sheet,
Respondent Exhibit 5 – Corrected Property Record Card,

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”).

³ 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.

- 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 provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) 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 property.
- b) 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.
- c) The Petitioner presented an excerpt from the appraisal of the Star Theatre, which the Petitioner also owns. That appraisal valued the Star Theatre land, as if vacant, at the rate of \$150,000 per acre.
- d) 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.⁴ In order to demonstrate the relevance of the opinion of value set forth in an appraisal of a separate property, a taxpayer must demonstrate the comparability of the appraised property to the property that is the subject of its appeal.
- e) The Board finds that the Petitioner sufficiently demonstrated the comparability of the subject property and the Star Theatre land in this case. Mr. Archer testified that the subject property previously was used to support the Star Theatre land, although it is now used as parking for the office complex adjacent to the subject property's north border. *Archer testimony; Resp't Ex. 2*. Given the size and location of the subject property, it would have little value for any use other than as part and parcel of one of those two adjacent properties.
 - f) The relevance of the Star Theatre appraisal excerpt is heightened in light of the clear inapplicability of the \$1,265,454 per acre rate used by the Respondent to assess the subject property. That rate is based upon the notion that smaller properties, such as the subject property, tend to sell at a much higher per unit rate than larger properties. *See Raskosky testimony; Resp't Ex. 3*. Because the subject property has been treated as part and parcel of the larger adjacent parcels and that it appears to be unsuitable for any other use, application of a higher per-unit rate to value that property is unsupported.
 - g) Given the above-described facts, the Board finds that the opinion of value set forth in the appraisal excerpt is sufficient to constitute a prima facie case that the current assessment is incorrect and that the subject property should be assessed at a rate comparable to the appraised value of the Star Theatre land. The Star Theater land was appraised at the rate \$150,000 per acre as of December 31, 2004, which the Petitioner trended to a total value of \$23,700 as of January 1, 1999.
 - h) The burden therefore shifted to the Respondent to impeach or rebut the appraisal excerpt. *See Meridian Towers*, 805 N.E.2d at 479.
 - i) The Respondent attempted to rebut the appraisal excerpt through reliance on the incremental/decremental adjustment it made to the base rate used to assess the subject property based on the property's size. *Raskosky testimony' Resp't Ex. 3*. The Board has explained above its reasons for rejecting the Respondent's argument in that regard.
 - j) The Respondent also argued that the comparable properties referenced in the appraisal were much larger than the subject property. *Knee testimony*. As explained above, however, the Board accepts the notion that the subject property should be treated as essentially comparable to the Star Theatre land in size, because its only use

⁴ The Board is also reluctant to accept as probative evidence an excerpted portion of an appraisal. That concern is mitigated by the fact that the Petitioner submitted the full appraisal report in a related hearing on Petition No. 45-028-02-1-4-00133 held earlier on the same day as the instant hearing. The prior hearing involved the same parties and representatives present at the hearing on the instant petition.

is as part and parcel of a larger property. The appraiser did adjust the sale/listing prices of the comparable properties to reflect differences in size between those properties and the Star Theater land. *Pet'r Ex. 3*. Finally, the Respondent questioned whether the appraiser had any support for the various adjustments he made to the sale prices of the comparable properties listed in the appraisal excerpt. *Knee testimony*. The Respondent, however, did not present any evidence to call into question the validity of any of the appraiser's adjustments.

- k) Based on the foregoing, the Board finds that the Petitioner demonstrated by a preponderance of the evidence that the land portion of the current assessment is incorrect, and that the assessment should be reduced to \$23,700.

Conclusion

- 16. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner's prima facie case. The Board finds in favor of the Petitioner and orders that the land portion of the assessment shall be reduced to \$23,700.

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: _____

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>>.