

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #s:** 45-028-02-1-4-00145  
45-028-02-1-4-00151  
**Petitioner:** Whiteco Industries, Inc.  
**Respondent:** Department of Local Government Finance  
**Parcel #s:** 008081505380009  
008081505380008  
**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 the Petitioner's property tax assessment for the subject properties and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions on May 3, 2004.
3. The Board issued notices of hearing to the parties dated July 22, 2005.
4. Dalene McMillen, a special master duly appointed by the Board, held a hearing on the above referenced petitions on August 24, 2005, in Crown Point, Indiana.

### Facts

5. The subject properties are vacant land with a legal description of Lincoln Square Resub. Lot 9 Part of Block E and Lincoln Square Resub. Lot 8 Part of Block E, Merrillville, Ross Township in Lake County.
6. The Special Master did not conduct an on-site visit of the properties.
7. The assessed values of the subject properties as determined by the DLGF:

Petition #	Parcel #	Land
45-028-02-1-4-00145	008081505380009	\$ 958,500
45-028-02-1-4-00151	008081505380008	\$1,157,500

8. The assessed values of the subject properties as requested by the Petitioner at the hearing:

Petition #	Parcel #	Land
45-028-02-1-4-00145	008081505380009	\$407,900
45-028-02-1-4-00151	008081505380008	\$361,650

9. 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

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

- a) The assessed values of the subject parcels exceed their 1999 market values.
- b) The Petitioner presented a map of the subject area showing the assessed values per acre for each of the lots on the map. *Archer testimony; Pet'r Ex. 3 at 2.*<sup>1</sup> The Petitioner found the values on the assessor's website on February 3, 2005. The subject properties are identified as Lots 8 and 9. Lot 8 is 2.93 acres and it is assessed at the rate of \$448,607 per acre. Lot 9 is 3.31 acres and it is assessed at the rate of \$340,986 per acre. *Id.*
- c) The Petitioner also owns Lots 6 and 7, but it did not appeal their assessments. *Archer testimony.* Both of those parcels are vacant, bare ground. *Archer testimony.* Lot 7 is 2.82 acres with an assessed value equal to \$86,249 per acre. This lot is close in size to the subject Lot 8. *Archer testimony; Pet'r Ex. 3 at 2.* Lot 6 is 1.40 acres and has an assessed value equal to \$86,249 per acre. *Id.*
- d) Lot 4 is located to the west and north of the subject properties. Lot 4 is 1.27 acres with an assessed value equal to \$110,155 per acre. Lots 2, 10, 11, 12, and 13, all are smaller than the subject parcels, but they are assessed at a much lower rate. *Id.*
- e) The Petitioner also presented information concerning the sale of two lots that it viewed as comparable to the subject parcels. *Archer testimony; Pet'r Exs. 4, 7.* The first property is located at the Northeast corner of Virginia and 84<sup>th</sup> Avenue, just to the west and a little north of the subject parcels. *Archer testimony; Pet'r Ex. 7.* That property sold for \$344,000 on February 26, 1998. The sale price was equal to \$87,089 per acre. *Archer testimony; Pet'r Ex. 4.* The second property is identified as Lot 4 on the Petitioner's plat map. *Archer testimony; Pet'r Ex. 3 at 2.* Lot 4 is approximately 300 feet north and little west of the subject Lot 8. *Archer testimony.*

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<sup>1</sup> Given the virtual identity of the exhibits submitted by the Petitioner for the two petitions, the Board cites generally to Petitioner's exhibit numbers without differentiating between petitions.

- Lot 4 sold for \$150,000 on February 2, 2004. *Archer testimony; Pet'r Exs. 4-5.* The sale price was equal to \$118,297 per acre. *Archer testimony; Pet'r Ex. 4.* The prices per acre for those two properties are substantially lower than rate per acre for which the subject parcels are assessed. *Id.*
- f) The Petitioner also presented five pages from an appraisal prepared for another property owned by the Petitioner. *Archer testimony; Pet'r Ex. 5.* 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. 5.* 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 two parcels that sold were Lot 4 and the property at the Northeast corner of Virginia and 84<sup>th</sup> Avenue, referenced above. *Archer testimony.* 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. *Id.*
- g) The Petitioner calculated the value of the subject parcels using the rate of \$150,000 per acre set forth in the appraisal excerpt. The Petitioner multiplied that rate by 2.307 acres to arrive at a value of \$496,050<sup>2</sup> for Lot 9. The Petitioner then applied a negative influence factor of 12%, which reduced the value to \$436,524. The Petitioner used a factor of 93.4426% to trend that amount to a value of \$407,900 as of January 1, 1999. *Archer testimony.* The Petitioner went through the same process for Lot 8 to arrive at a January 1, 1999, value of \$361,700 (rounded). *Archer testimony.*
- h) The Petitioner derived the factor it used to trend the land values to January 1, 1999, from Marshall Valuation Services. *Archer testimony.* The trending factor is applicable to the geographic area in which the subject parcels are situated. *Id.*

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

- a) The Respondent presented the property record cards for the subject parcels, land value calculations, plat maps, and a corrected property record card for each parcel. *Raskosky testimony; Resp't Exs. 1-5 (Pet. No. 00145); Resp't Exs. 1-7 (Pet. No. 00151).*
- b) Lot 8 should be in neighborhood 30893, not neighborhood 00895 as shown on the property record card. The parcels to the north and south of Lot 8 are located in neighborhood 30893. Changing the neighborhood classification will change the base rate used to value the parcel. Lot 8 is classified as type 13, usable, undeveloped land.

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<sup>2</sup> This is the Petitioner's testimony. The Board notes that \$150,000 multiplied by 2.307 equals \$346,050.

The Respondent presented a corrected property record card showing a base rate of \$311,396 multiplied by 2.932 acres for an estimated value of \$913,010. The Respondent then applied a negative influence factor of 12%, which resulted in a total land value of \$803,450. *Raskosky testimony; Resp't Exs. 4-5 (Pet. No. 00151).*

- c) The Respondent found an error on the property record card for Lot 9. Lot 9 is classified as land type 11, which is primary land. Lot 9 should have been classified as land type 13, which is usable undeveloped land. The Respondent presented a corrected property record card showing a base rate of \$306,893 multiplied by 3.307 acres for an estimated value of \$1,014,890. The Respondent then applied a negative influence factor of 15%, which resulted in a total land value of \$862,700. *Raskosky testimony; Resp't Exs. 3-4 (Pet. No. 00145).*
- d) According to the Respondent, many of the purportedly comparable properties relied upon by the Petitioner are located in different assessment neighborhoods than the subject parcels. The "land order" used in assessing properties within the county has different rates for different neighborhoods. *Knee testimony.*
- e) The Respondent noted there is a distinction between the east and west side of Georgia Street. Lots on the west side, including Lots 10 and 11, are classified as secondary use. One must consider things other than proximity and the geographic neighborhood in which a property is located in assessing land. *Raskosky testimony.*
- f) Lot 7 is classified as unusable undeveloped land (land type 14), whereas the subject parcels are classified as usable undeveloped land (land type 13). The base rates applicable to the two types of land are different. *Raskosky testimony.*
- g) The Respondent was required to use sales occurring between January 1, 1998, and December 31, 1999, in determining values for the 2002 general reassessment. One of the sales relied upon by the Petitioner was from 2004, which would not have been available at the time the mass appraisal was performed. *Knee testimony.*
- h) The Respondent noted that the Petitioner did not present property record cards to support the assessed values for the various lots depicted on the plat map submitted by the Petitioner (Pet'r Ex. 3). *Knee testimony.* The Respondent further noted that townships could have made changes to assessments and that those changes could have been reflected on the website from which the Petitioner gathered its information. *Knee testimony.*

### **Record**

- 12. The official record for this matter is made up of the following:
  - a) The Petition,
  - b) The recording of the hearing,

c) Exhibits:

Petition #45-028-02-1-4-00145

Petitioner Exhibit 1 – Form 139L petition,  
Petitioner Exhibit 2 – Subject property record card,  
Petitioner Exhibit 3 – Analysis of surrounding parcels,  
Petitioner Exhibit 4 – Two land sales,  
Petitioner Exhibit 5 – Land Valuation excerpt (5 pages) from MAI appraisal  
submitted for parcel #008081504850004,  
Petitioner Exhibit 6 – Picture of subject site,  
Petitioner Exhibit 7 – Map showing subject site and MAI appraised Star Theatre<sup>3</sup>,

Respondent Exhibit 1 – Subject property record card (PRC),  
Respondent Exhibit 2 – Land Calculations/Land Summary Sheet,  
Respondent Exhibit 3 – Corrected PRC showing calculations as undeveloped  
usable,  
Respondent Exhibit 4 – Land calculations of correction,  
Respondent Exhibit 5 – Colored coded plat map,

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

Petition #45-028-02-1-4-00151

Petitioner Exhibit 1 – Form 139L petition,  
Petitioner Exhibit 2 – Subject property record card,  
Petitioner Exhibit 3 – Analysis of surrounding parcels,  
Petitioner Exhibit 4 – Two land sales,  
Petitioner Exhibit 5 – Land Valuation excerpt (5 pages) from MAI appraisal  
submitted for parcel #008081504850004,  
Petitioner Exhibit 6 – Picture of subject site,  
Petitioner Exhibit 7 – Map showing subject site and MAI appraised Star Theatre<sup>4</sup>,

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

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<sup>3</sup> Included in the folder with the Petitioner's exhibits, but not labeled as exhibits, were a copy of the hearing notice, a power of attorney, and a summary of the Petitioner's opinion of value.

<sup>4</sup> Included in the folder with the Petitioner's exhibits, but not labeled as exhibits, were a copy of the hearing notice, a power of attorney, and a summary of the Petitioner's opinion of value.

Respondent Exhibit 4 – Corrected land calculations/NBHD 30893 Land Summary Sheet,

Respondent Exhibit 5 – Corrected PRC showing calculations showing pricing changes to land,

Respondent Exhibit 6 – Neighborhood analysis Plat 15-466,

Respondent Exhibit 7 – Colored coded plat map,

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

13. 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.

14. The Petitioner did not provide sufficient evidence to support its 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 relied, in part, upon sales and assessment information regarding properties that it asserted were comparable to the subject parcels. 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>5</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.
- d) 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 location, size, shape, accessibility, geographical features, 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

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<sup>5</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.

the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71. The same principles applicable to valuation of a property under the sales comparison approach apply to a claim that comparable properties are not assessed in a uniform and equal manner.

- e) The Petitioner did not provide a meaningful comparison of the surrounding properties and the subject parcels. At most, the Petitioner presented evidence concerning the relative locations, shapes and sizes of the parcels. *Archer testimony; Pet'r Ex. 3*. The Petitioner did not compare any other relevant factors or explain how any differences between the properties with regard to those factors would affect their assessed values. Consequently, the Petitioner's evidence regarding the assessment of surrounding properties lacks probative value.
  - f) The Petitioner's evidence regarding the sales of Lot 4 and the property on the Northeast corner of Virginia Avenue suffers from the same shortcomings. Once again, the Petitioner provided some evidence concerning the relative proximity of those properties to the subject parcels. *Archer testimony; Pet'r Exs. 3, 7*. The Petitioner, however, did not compare other significant characteristics of the properties or adjust the sale prices to account for any relevant differences in those characteristics.
  - g) Finally, the Petitioner presented a five-page excerpt from an appraisal performed on another property owned by the Petitioner. *Pet'r Ex. 5*. 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. In order to demonstrate the relevance of the appraiser's opinion value, the Petitioner would have needed to establish the comparability of the subject parcels to the appraised property. The Petitioner did not attempt to do so.
  - h) Based on the foregoing, the Petitioner failed to establish a prima facie case for a reduction in the assessment of the subject parcels beyond the reductions conceded by the Respondent.
15. The Respondent recommended corrections for each of the subject parcels.
- a) The Respondent found that Lot 8 (Petition #45-028-02-1-4-00151) was valued based on an incorrect neighborhood designation. Lot 8 is in neighborhood 30893. Correcting the neighborhood designation changes the applicable base rate. This, in turn changes the total land value. The Respondent presented a corrected property record card showing the land value for Lot 8 as \$803,450. *Raskosky testimony; Resp't Exs. 4-5 (Pet. No. 000151)*.

- b) The Respondent found an error in the land classification for Lot 9 (Petition #45-028-02-1-4-00145. Lot 9 currently is classified as primary land (type 11). Lot 9 should be classified as usable undeveloped land (type 13). Once again, this changes the applicable base rate, and consequently, the total assessed value. The Respondent presented a corrected property record card showing a land value of \$862,700 for Lot 9. *Raskosky testimony; Resp't Exs. 3-4(Pet No. 000145).*
- c) The Board finds that the assessments for the subject parcels should be reduced in accordance with the Respondent's concessions.

**Conclusion**

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent and accepts its recommended corrections. The total assessment for Parcel # 008081505380008 (Petition # 45-028-02-1-4-00151) shall be \$803,450. The total assessment for Parcel #008081505380009 (Petition # 45-028-02-1-4-00145) shall be \$862,700.

**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: \_\_\_\_\_

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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>>.