

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00352
Petitioner: Edward Rose Development Company, LLC
Respondent: Department of Local Government Finance
Parcel #: 008-43-53-0112-0001
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 on December 2, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$15,825,600 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated June 20, 2005.
4. Special Master Jennifer Bippus held the hearing on July 20, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 2000 Dogwood Trail, Merrillville, in Ross Township.
6. The subject property is a 234 apartment unit complex known as Huntington Cove Apartments located on 64.789 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$1,501,200 for the land and \$14,324,400 for the improvements, for a total assessed value of \$15,825,600.
9. The Petitioner requested an assessment of \$1,501,200 for the land and \$11,898,800 for the improvements, for a total assessed value of \$13,400,000.

10. David Rice, a real estate appraiser with the Petitioner, and Terry Knee, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) The Petitioner contends that the assessment exceeds the market value-in-use for the subject property. *Rice testimony*. In support of this contention, the Petitioner submitted an appraisal prepared by a licensed, certified appraiser dated July 20, 2005, which determined the market value for the subject property to be \$13,400,000 as of January 1, 1999. *Petitioner Exhibit 5*.
 - b) The Petitioner argues that the income approach to value is the most appropriate method of appraising an investment property. *Rice testimony*. The Petitioner testified as to the basis for the appraisal valuation including how potential gross income was estimated and how the capitalization rate was determined. *Id.*; *Petitioner Exhibit 5 at 17-30*. Using the income approach to value, the Petitioner estimated the value of the subject property to be \$13,273,200. *Petitioner Exhibit 5 at 29*. In response to a question asked by the Respondent of the Petitioner regarding capitalization rates in the appraisal, the Petitioner responded that the real estate taxes were included in the expenses, but that the taxes would not have to be taken out because the net operating income for those properties would have been less than what was used in the same comparison for Huntington Cove (subject property), because the Petitioner was not using taxes as an expense and are boosting up the operating income to correspondingly use the effective tax rate. *Rice response*. In further response to a question, the Petitioner testified that extrapolation was used and value was applied to the partially constructed buildings. *Rice response; Petitioner Exhibit 5 at 29*. According to the Petitioner, the partially completed buildings, building 7 (40%), building 8 (40%) and building 11 (95%), were included in the appraisal. *Id.*
 - c) In addition to the income approach, the appraisal presented by the Petitioner also used the cost approach. *Rice testimony; Petitioner Exhibit 5 at 31-45*. According to the Petitioner, when comparing the value of the subject property estimated by the income approach to the assessed value of \$15,825,600, a 19% difference exists. *Petitioner Exhibit 5 at 29*. The Petitioner alleges that this is external obsolescence caused by the differences in rent levels and costs of construction in the area. *Id.* Thus, in using the cost approach, the Petitioner applied a 20% obsolescence factor to the improvements on the subject property. *Petitioner Exhibit 5 at 33-44*. Using the cost approach, the Petitioner estimated the value of the subject property to be \$13,277,450. *Petitioner Exhibit 5 at 32*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends that the current assessment is correct. The Respondent submitted into evidence the subject property's property record cards (PRC);

- photographs of the subject property; the Incremental/Decremental Land Pricing in Lake County; Commercial/Industrial Land Valuation Form; and a plat map. *Knee testimony; Respondent Exhibits 1- 4.*
- b) The Respondent questioned the Petitioner regarding the appraisal, as to how the capitalization rates were determined and if property taxes were included. In addition, the Respondent asked if there was anything in the income approach method for the incomplete buildings. *Knee inquiry.*
 - c) Finally, the Respondent argued that on the current PRCs there are eight buildings completed and two buildings 60% (Building 7) and 65% (Building 8) incomplete. *Knee testimony; Respondent Exhibit 1.*
13. The official record for this matter is made up of the following:
- a) The Petition.
 - b) The tape recording of the hearing labeled Lake Co. #1629.
 - c) Exhibits:
 - Petitioner Exhibit 1: Notice of Final Assessment Determination
 - Petitioner Exhibit 2: Form 139L Petition
 - Petitioner Exhibit 3: Summary of Petitioner’s Arguments
 - Petitioner Exhibit 4: Construction Expenditures Report
 - Petitioner Exhibit 5: Appraisal for subject property

 - Respondent Exhibit 1: Subject PRC
 - Respondent Exhibit 2: Subject photograph
 - Respondent Exhibit 3: Incremental/Decremental Land Pricing in Lake County and Commercial/Industrial Neighborhood Valuation Form
 - Respondent Exhibit 4: Plat map

 - Board Exhibit A: Form 139L Petition
 - Board Exhibit B: Notice of Hearing on Petition
 - Board Exhibit C: 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Board of Tax Commissioners*, 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 Township 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 provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a) The Petitioner contends that the assessed value attributed to the subject property is excessive. The Petitioner submitted an appraisal completed by a certified licensed appraiser, dated July 20, 2005, which determined the value for the subject property as of January 1, 1999, to be \$13,400,000. *See Petitioner Exhibit 5*.
 - b) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*
 - c) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - d) Here, the Petitioner submitted an appraisal as of January 1, 1999, performed by a licensed appraiser. *Petitioner Exhibit 5*. The appraiser attests the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraiser used both the income and cost approaches to value. *Id.* An appraisal performed in accordance with generally recognized appraisal

principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.

- e) Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent asked questions of the Petitioner attempting to point out potential flaws within the Petitioner's evidence such as how the capitalization rate was determined and whether the incomplete buildings were included in the value. However, this type of testimony did not go forward to explain why or how these "flaws" invalidate the Petitioner's evidence. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioner's case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel's calculations. Rather, he merely asked open-ended questions or made conclusory statements.").
- f) Further, the Respondent's submission of the subject's PRCs, photographs, Incremental/Decremental pricing, Neighborhood Valuation Form or a plat map (Respondent Exhibits 1-4) do nothing for the Respondent's attempt to rebut the Petitioner's prima facie case. The subject property's PRCs merely show the mechanics used to value the subject for the 2002 Reassessment period. The Incremental/Decremental pricing along with the Neighborhood Valuation Form explained how the subject's land was valued which was not an issue at this hearing. The plat map shows the subject's location. This information does not explain why the value determined by the DLGF is correct. It is not enough to simply assert that the property was assessed correctly to rebut a prima facie case. The Respondent must bring forth evidence justifying its decision and make an authoritative explanation of its determination. *See Meridian Towers*, 805 N.E.2d at 479; *Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 948 (Ind. Tax Ct. 2001).
- g) The Board finds that the Respondent failed to show that the appraisal or the actions taken by the appraiser were not within the standards set by USPAP or that they were outside standard appraisal practices. The Board, therefore, finds in favor of the Petitioner and holds that the value of the subject property is \$13,400,000 on the basis of the appraisal.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case that the subject property is overvalued. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and determines that the assessment should be \$13,400,000.

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.