

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00040
Petitioner: Mercantile Nat'l Bank Trust #2624
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0007-0003
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 in December 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$503,800. The Notice of Final Assessment was mailed to the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was held on August 24, 2004, in Crown Point, Indiana before Special Master S. Sue Mayes.
5. On February 21, 2005, the Board issued its Order for Extension of Time, extending the time within which to issue its determination through and including August 22, 2005. On or about August 22, 2005, the Board issued its second Order for Extension of Time in order to conduct a hearing on a related appeal (petition no. 45-032-1-4-00362; parcel no. 009-12-14-0007-0029). Pursuant to its second order, the Board extended the time within which to issue its determination through and including November 22, 2005.

Facts

6. The subject property is located at: 1716 Sheffield Ave., Dyer, St. John Township, Lake County.

7. On March 1, 2002, the subject property contained a 14,364 square foot building and asphalt paving situated on 5.158 acres of land.
8. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Values of subject property as determined by the DLGF:
Land \$167,200 Improvements \$336,600
 - b) Assessed Values requested by Petitioner per the Form 139L:
Land \$ 55,000 Improvements \$ -0-
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. Persons sworn in at hearing:
 - For Petitioner: Janet Furman, Manager for Trust #2624
Patrick Mysliwy, Attorney for Taxpayer
Robert Vander Heyden, Partner
 - Respondent: David M. Depp, Senior Appraiser, Cole-Layer-Trumble (CLT) for
DLGF

Issues

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

Improvements

- a. A carpenter's shed (12 feet x 20 feet) that had been torn down in 1999 and has not replaced is still shown on the subject's property record card (PRC) at a value of \$1,500. *Mysliwy testimony.*
- b. The Respondent inappropriately assessed the subject property for 18,488 square feet of asphalt paving laid on October 9, 2002, which the Respondent valued at \$35,900. *Mysliwy testimony; Petitioner Exhibit 6.*
- c. The Respondent inappropriately assessed the subject property for 1,560 square feet of concrete paving poured on October 17-18, 2002, which the Respondent valued at \$4,000. *Mysliwy testimony; Petitioner Exhibit 5.*
- d. The assessment for the subject parcel includes a Quonset building which is physically located on Parcel #009-12-14-0007-0029. *Mysliwy testimony; Petitioner Exhibit 1.* That parcel is the subject of a separate appeal.
- e. The assessment for the subject parcel also includes an office building along with 10,295 square feet of paving that is physically located on Parcel #009-12-14-0007-

0029. This building and paving were not constructed on Parcel #009-12-14-0007-0029 until October 2002. *Mysliwy testimony; Petitioner Exhibits 6-7.*
- f. The only improvements located on the subject property are a shop building (14,364 square feet) and old paving (1,440 square feet), both constructed in 1951. These improvements should be assessed at a total value of \$66,600. *Mysliwy testimony; Petitioner Exhibit 16.*
- Land
- g. The assessed value of the subject land is overstated. Two (2) acres are valued using a base rate of \$60,113 per acre and another 3.158 are valued using a base rate of \$40,875 per acre. An appraisal prepared in February 1994 on a nine (9) acre parcel that included what is now the subject parcel concluded that the value of the land was \$6,100 per acre. Based on the consumer price index, the rate of inflation between the date of the appraisal and the relevant valuation date of January 1, 1999, was 12.8%. Adjusting the appraised value of the land for inflation yields a total land value of \$35,530. *Mysliwy testimony; Petitioner Exhibits 4, 16.*
- h. A portion of the original larger parcel was sold in 2000 and became Parcel #009-12-14-0007-0042. This parcel had been part of the subject parcel and is now valued at a base rate of \$12,500 per acre for the land. Based on the \$12,500 per acre rate and applying influence factors, the subject parcel should have a total assessment of no more than \$43,505. *Mysliwy testimony; Petitioner Exhibits 1, 10, 16.*
- i. The Petitioner submitted parcel valuation reports from the Lake County Government website for parcels 009-12-14-0008-0005 and 009-12-4-0008-0007. Those two parcels are zoned industrial, but are valued at a base rate of \$11,700 per acre. The 1998 PRCs for those two parcels show that the base rate increased from \$495 to \$11,700 per acre. Also parcel 009-12-14-0008-0013 (6.56 acres) is zoned industrial and valued at a base rate of \$20,000 per acre with negative influence factors totaling 90%. *Mysliwy testimony; Petitioner Exhibits 11-13.*
- j. Although the subject property is “grandfathered in,” the Town of Dyer’s zoning ordinances for industrial use, would require 20-foot setbacks and continuation/connection of roadways should the property be sold or expanded. Given those ordinances the subject property could not be sold for the \$40,000 or \$60,000 per acre. *Mysliwy testimony; Furman testimony; Petitioner Exhibit 15.*
- k. Lake Street, which runs along the rear of the subject property, is posted for no trucks and Sheffield Avenue has restricted truck weights. *Furman testimony.*
- l. Environmental concerns also adversely impact the market value of the subject land. A pipeline runs through the property. There have been spills and the Petitioner has not received a final clearance from IDEM. *Furman testimony, Mysliwy testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent agrees that the only improvements that should be valued on the subject parcel are a shop building (14,364 square feet) and 1,440 square feet of asphalt paving. These improvements would have a total assessed value of \$66,600. *Depp testimony.*
 - b. The Respondent's representative stated that he would not defend or recommend the base rate applied to the subject land. The Respondent's representative stated that he was not involved in setting the rates nor was he privy to the information used to set the rates. *Depp testimony.*
 - c. Commercial land is far more valuable than residential land. Although the valuation report for the portion of the subject parcel that was sold off in 2000 (parcel #009-12-14-0007-0042) states it is non-residential, it is residential and is valued at residential rates. *Depp testimony.*
 - d. The Respondent could not determine or explain the difference between the subject property and parcels 009-12-14-0008-0005, -0007 and -0013 without the current PRCs for those properties. The Respondent's representative, however, stated he could determine from the valuation reports that all of the parcels were vacant land. *Depp testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition.
 - b. The tape recording of the hearing labeled BTR #147.
 - c. Exhibits:
 - Petitioner Exhibit 1: Plat survey for subject property
 - Petitioner Exhibit 2: Plat survey for excluded property
 - Petitioner Exhibit 3: Owners Title Guarantee Policy
 - Petitioner Exhibit 4: 1994 Appraisal
 - Petitioner Exhibit 5: Concrete bills
 - Petitioner Exhibit 6: Asphalt bill
 - Petitioner Exhibit 7: Building and occupancy permits
 - Petitioner Exhibit 8: Letter to IDEM
 - Petitioner Exhibit 9: Valuation record of Trust #2624, subject property
 - Petitioner Exhibit 10: Valuation record of Gregory and Angela Furman, Parcel #009-12-14-0007-0042
 - Petitioner Exhibit 11: Valuation record of Town of Dyer, Parcel #009-12-14-0008-0005 and 0007

Petitioner Exhibit 12: 1998 PRCs for Parcels #009-12-14-0008-0005 and -0007

Petitioner Exhibit 13: Valuation record for the Cotton parcels (Dyer Auto Auction), Parcel #009-12-14-0008-0013

Petitioner Exhibit 14: 1990 Air photo of Town of Dyer

Petitioner Exhibit 15: Dyer zoning map & regulations

Petitioner Exhibit 16: Summary of values

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: PRC & photograph of subject property

Board Exhibit A: Form 139 L 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 and regulations are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving 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 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 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.

Improvements

15. The Petitioner provided sufficient evidence to support its contention that the assessed value for improvements on the subject property is incorrect. This conclusion was arrived at because:
- a. The Petitioner supported its contention that it was being assessed for improvements which were not on the subject property as of March 1, 2002, with substantial

- evidence. The Petitioner contended that after all errors are corrected, the improvement value should be \$66,600.
- b. The Respondent did not rebut the Petitioner's evidence but agreed with the Petitioner that the only improvements on the subject property as of March 1, 1002, were a 14,364 square foot building and an asphalt-paved area, 20 feet x 72 feet or 1,440 square feet.
 - c. The parties agreed that the subject property should be assessed for \$66,600 of improvements for 2002. *Mysliwy testimony; Depp testimony.*

Land

16. The Petitioner did not provide sufficient evidence to support its contention that the land portion of the assessment is excessive. This conclusion was arrived at because:
 - a. Two (2) acres of the subject property are valued as primary land at \$60,113 per acre. The remaining 3.158 acres are valued as undeveloped/usable land at \$40,875 per acre. The primary land has an influence factor of 35% applied to it and the undeveloped/usable land has an influence factor of 31% applied to it.
 - b. The Petitioner makes essentially three arguments in support of its claim that the land portion of the assessment is excessive. First, the Petitioner submitted an appraisal performed in 1994, which, among other things, estimated the value a larger parcel of land to be \$6,100 per acre. *Mysliwy testimony; Petitioner Exhibit 4.* Second, the Petitioner claims that the subject property is assessed at a higher base rate than comparable properties, including a parcel that was partitioned from the subject property and sold in 2000. *Mysliwy testimony; Petitioner Exhibits 1, 10, 16.* Finally, the Petitioner contends that various factors negatively affect the market value-in-use of the subject property, including zoning restrictions, environmental concerns, and limitations on the use of the roads to which the subject property has access. *Id.*
 - c. The Board turns first to the 1994 appraisal submitted by the Petitioner. The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate 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 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual's definition of true tax value, such as appraisals conducted in accordance with generally accepted appraisal techniques, to contest a property's assessment. *See MANUAL at 5; see also Kooshtard Property VI, LLC v. White River Twp. Assessor*, No. 49T10-0412-TA-57, 2005 Ind. Tax LEXIS 76, at *5 (Ind. Tax Ct. Nov. 3, 2005). An assessor may rely on the same type of evidence to support an assessment. *See Kooshtard Property VI*, 2005 Ind. Tax LEXIS at * 11, n.6.

- d. Nonetheless, a party cannot rely exclusively on conclusory opinions to meet its burden of proof in a tax appeal to the Board. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). Thus, even the opinion of a certified appraiser may lack probative value if unsupported by sufficient explanation as to the basis underlying that opinion. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- e. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- f. The appraisal submitted by the Petitioner is not probative of the subject property's true tax value for a number of reasons. First, the appraisal is largely conclusory concerning the basis underlying its opinion that the land being appraised had a market value of \$6,100 per acre. While the appraiser indicated that he investigated sales of thirty-five (35) properties in Northwest Indiana in reaching his opinion, the appraisal does not contain any information concerning the properties upon which he relied or their respective sale prices. *Petitioner Exhibit at 12*.
- g. Moreover, the Petitioner did not sufficiently explain how the 1994 appraised value relates to the subject property's market value-in-use as of January 1, 1999. While the Petitioner submitted consumer price index information reflecting the general rate of inflation for the period between the appraisal date and the relevant valuation date of January 1, 1999, it did not present any information concerning the rate at which real property in the subject property's market appreciated during that time period.
- h. The Petitioner also contends that the subject land should be valued at the same base rate - \$12,500 – as Parcel #009-12-14-0007-0042, which had been part of the subject property until it was partitioned and sold in 2000. *Petitioner Exhibits 16; Respondent Exhibit 2*. The relationship of this parcel to the subject parcel arguably might demonstrate its comparability to the subject property without a more detailed comparison of things such as the topography, zoning, and accessibility of the two parcels.
- i. Nonetheless, the Respondent demonstrated that the two properties differ in one respect that is crucial to the determination of true tax value – the respective uses of the two parcels. The subject parcel is used for commercial purposes. The PRC for Parcel #009-12-14-0007-0042, however, shows that property as having a single-

family residence and a detached garage. *Petitioner Exhibit 10*. While the PRC also refers to the land as “non residential land” the Respondent’s representative testified that it was assessed as residential land. *Id.*; *Depp testimony*. This appears consistent with other references on the PRC as well as references on the attached Real Property Maintenance Report, which lists the property class as : “511 Res One Dwg Unplated (sic).” *Petitioner Exhibit 10*.

- i. The Petitioner also used valuation reports obtained from the township assessor’s office to compare the subject property to Parcels 009-12-14-0008-0005 and 009-12-14-0008-0007, which have a base rate of \$11,700 per acre and to parcel 009-12-14-0008-0013, which has a base rate of \$20,037.60 per acre. All three parcels are zoned industrial and are located within a ½ mile of the subject property. *Mysliwy testimony*; *Petitioner Exhibits 11, 13, 15*.
- j. The Petitioner made a start at comparing the subject property and the three properties in question by pointing to the similarity of the zoning restrictions to which the properties are subject and their relative proximity to each other. Nonetheless, the Petitioner failed to compare many other characteristics significant to market value-in-use, such as accessibility and whether the properties are developed for commercial or industrial improvements. In fact, the printouts from the Lake County Assessor’s website submitted by the Petitioner appear to indicate that the three purportedly comparable properties are vacant, do not have sidewalks, and have not been developed for access to sewer and water service. *Petitioner Exhibits 11, 13*. The subject property, by contrast, is listed as having “all” utilities, including sewer and water. *Petitioner Exhibit 9*; *Respondent Exhibit 2*.
- k. Moreover, simply asserting that a property is within ½ mile of another property does little to show that the two properties have the same market value. The difference of ½ mile could have a profound affect on the relative market values of the properties. Here, two of the three purportedly comparable properties at issue have different neighborhood codes than the code assigned to the subject property. *Petitioner Exhibit 11*. This makes the Petitioner’s failure to address the location of the properties’ with more specificity even more problematic.
- k. Finally, the Petitioner contends that several factors negatively impact the value of the subject property, including local zoning ordinances, weight restrictions on the roads accessing the subject property, and environmental concerns. *Mysliwy testimony*; *Furman testimony*. The Petitioner, however, did not present any evidence to quantify how those factors affect the market value-in-use of the subject property.

Conclusions

Improvements

16. The Petitioner established a prima facie case that the current assessment assigns values to improvements that did not exist on the subject property as of March 1, 20002. The Respondent agreed with the Petitioner that the only improvements existing on the subject property are a 14,364 square foot structure and 1,440 square feet of asphalt paving. The parties agreed that the total assessed value of the subject improvements should be \$66,600. The Board accepts the agreement of the parties on this point and finds in favor of the Petitioner.

Land

18. The Petitioner failed to establish a prima facie case that land portion of the current assessment is in error. 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 of the improvements should be reduced to \$66,600 and that the assessment on the land 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.