

INDIANA BOARD OF TAX REVIEW
Small Claims
Amended Final Determination
Findings and Conclusions

Petition #: 66-015-02-1-4-00002
Petitioner: 6001 Limited Partnership
Respondent: Tippecanoe Township Assessor (Pulaski County)
Parcel #: 0150027000
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 Petitioners initiated an assessment appeal with the Pulaski County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 14, 2003.
2. The Petitioners received notice of the decision of the PTABOA on November 7, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on December 4, 2003.
4. The Board issued a notice of hearing to the parties dated December 16, 2003.
5. The Board held an administrative hearing on February 2, 2004, before the duly appointed Administrative Law Judge Dalene McMillen.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Charles Schafer, Owner/Director
Robert L. Minarik, Personal Secretary
 - b) For Respondent: Jennifer Becker, Tippecanoe Township Representative

Facts

7. The property is classified as residential, as is shown on the property record card for parcel #0150027000
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Pulaski County PTABOA: Land \$2,000, Improvements \$34,000.
10. Assessed Value requested by Petitioner: Land \$2,000 Improvements \$7,400.

Issues

11. Summary of Petitioner's contentions in support of assessment:
 - a) Petitioner contends the subject property (land and two Quonset buildings) was purchased on July 7, 1999, for \$10,000.
 - b) Petitioner presented a letter of value from Dee Williams, an Indiana Certified Residential Appraiser, indicating the market value of the subject property is \$10,000.
 - c) Petitioner contends the Assessed Value should be changed to \$2,000 for land, and \$7,400 for improvements, or a total Assessed Value of \$9,400.
12. Summary of Respondent's contentions in support of alleged error in assessment:
 - a) The Respondent opines the difference in the value from the appraiser and their value is in the depreciation applied to the Quonset buildings.
 - b) The Respondent testified that according to the 2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION 'A' at 2, (incorporated by reference in 50 IAC 2.3-1-1(b)) (the "Guidelines") the depreciation is 60% and 55%. The appraiser used 95% and 90%.
 - c) The Respondent contends the appraiser did not support his opinion of value by explaining how the 95% and 90% depreciation was calculated. The Respondent concluded that the appraisal was unsupported and no documentation explaining where the values came from was provided.
 - d) Respondent testified that without this supporting documentation proving to the contrary, that the value determined by following the Guidelines is correct.

Record

13. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR #5732
 - c) Exhibits:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of the Quit-Claim Deed between Cargill, Inc. and 6001 Limited Partnership, dated July 12, 1999.

Petitioner's Exhibit 2 – A copy of the Disclosure of Sales Information between Cargill, Inc. and 6001 Limited Partnership, dated July 1, 1999.

Petitioner's Exhibit 3 – A letter from Lorena H. VanDerAa, Secretary of the PTABOA to 6001 Limited Partnership granting a continuance on the PTABOA hearing scheduled August 27, 2003.

Petitioner's Exhibit 4 – A copy of the Certificate of Indiana Partnership approved by the Indiana Secretary of State, dated January 13, 1999.

Petitioner's Exhibit 5 – A copy of Indiana Code § 23-16-3-2 “Certificate of limited partnership.”

Petitioner's Exhibit 6 – A copy of the closing statement for real estate located in Monterey, Indiana, dated July 1, 1999.

Petitioner's Exhibit 7 – A copy of two cancelled checks to Cargill, Inc., dated May 19, 1999 and June 30, 1999.

Petitioner's Exhibit 8 – A copy of a letter of opinion of market value from Williams Appraisal Service to Cargill Ag Horizons, dated June 24, 1998.

Petitioner's Exhibit 9 – A copy of a letter of opinion of market value from Williams Appraisal Service to Cargill Ag Horizons, dated June 24, 1998.

Petitioner's Exhibit 10 – A copy of V. Dee Williams, Williams Appraisal Service education and work experience.

Petitioner's Exhibit 11 – A copy of the sale and purchase of property agreement between Cargill, Inc. and 6001 Limited Partnership, dated May 25, 1999 (Eleven pages).

Petitioner's Exhibit 12 – A copy of a Corrective Deed from 6001 Limited Partnership to 6001 Limited Partnership, dated October 8, 2003.

Petitioner's Exhibit 13 – A list of witnesses and a power of attorney from Charles Schafer, 6001 Limited Partnership to Robert L. Minarik, dated February 6, 2004.

Petitioner's Exhibit 14 – A copy of the letter of authorization from Lorena H. VanDerAa received by the Petitioner with the person being authorized left blank, dated February 13, 2004.

For the Respondent:

Respondent's Exhibit 1 – A copy of the letter authorization for representation between Lorena H. VanDerAa for Connie Myers, Tippecanoe Township Assessor to Jennifer Becker, Indiana Assessment Service, dated February 13, 2004.

Respondent's Exhibit 2 – A copy of 6001 Limited Partnership's 2002 property record card.

Respondent's Exhibit 3 – A copy of the Form 115, Notification of Final Assessment, dated November 7, 2003.

Respondent's Exhibit 4 – A copy of page 1 of Version A – Real Property Assessment Guideline “glossary.”

Respondent's Exhibit 5 – Twenty interior and exterior photographs of the subject Quonset buildings.

Respondent's Exhibit 6 – A copy of page 60 of Version A- Real Property Assessment Guideline “Residential and Agricultural Grade.”

Respondent's Exhibit 7 – A copy of page 53, Appendix A of Version A- Real Estate Assessment Guideline “Assigning Grades to Residential and Agricultural Yard Structures.”

Respondent's Exhibit 8 – A copy of page 24, Appendix C of Version A-Real Property Assessment Guideline “Residential and Agricultural Cost Schedules”.

Respondent's Exhibit 9 – A copy of pages 17, 18, 19, 20, & 21, Appendix B of Version A-Real Property Assessment Guideline “Residential and Agricultural Depreciation”.

Respondent's Exhibit 10 – A copy of the letter of opinion of market value from Williams Appraisal Service and Cargill Ag Horizons, dated June 24, 1998, a copy of V. Dee Williams education and work experience and the front page of the sale and purchase of property agreement between Cargill, Inc. and 6001 Limited Partnership.

Respondent's Exhibit 11 – The Township Assessor's response to the Petitioner's issue (three pages).

Respondent's Exhibit 12 – A transcript of the PTABOA hearing on 6001 Limited Partnership, dated October 10, 2003.

- d) These Findings and Conclusions.

Analysis

14. The most applicable case law governing this issue is:

- a) The Board will not change the determination of the PTABOA unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence prove (1) that the current assessed value is incorrect, and (2) that the specific assessed value the Petitioner seeks, is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]
- b) Once the petitioner has established a prima facie case the burden is on the respondent, not the Board, to rebut petitioner's prima facie case. *Meridian Towers East & West v. Washington Twp. Assessor*, 801 N.E.2d 788 (Ind. Tax Ct. 2003).
- c) The Petitioner “must sufficiently explain the connection between the evidence and the petitioner's assertions in order for it to be considered material to the facts.” Conclusory statements are of no value to the Board in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax 1999).

15. The Petitioner provided sufficient evidence to support its contentions. The Respondent did not rebut this evidence. This conclusion was arrived at because:

- a) The purchase agreement between the Petitioner and the seller of the property is evidence that a willing buyer and a willing seller agreed that \$10,000 is a fair value for the property – thus it is evidence of the property’s “market value.” *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 10, (incorporated by reference in 50 IAC 2.3-1-1(a)). Further questioning by the administrative law judge revealed that the buyer and seller were unrelated entities acting in their own best interests. *Minarik testimony; Schafer testimony. See also Petitioner Ex. 2, 6, 11.* In the absence of rebuttal evidence by the assessor, the Board accepts this value as probative evidence of the true value of the property.
- b) The “estimate of market value” letter by Dee Williams, Indiana Certified Residential Appraiser on behalf of the previous owner (Cargill), has no supporting documentation, and amounts to nothing more than a conclusory statement of opinion. *See Pet. Ex. 8.* The Respondent pointed out that the letter uses replacement cost values and depreciation percentages that are not explained. *Becker testimony.* The only portion of the letter that the Board finds to be relevant to this determination is the fact that there is a lack of sales data for this type of property in that area. *Pet. Ex. 8; c.f. Becker testimony.* Lack of sales data leaves the sale of the subject property as the best and only market evidence regarding this property. The Petitioner has made a prima facie case regarding the value of the property.
- c) Respondent sufficiently rebutted the “estimate of market value” letter, but did not address the sale.¹ Respondent flatly asserts that they followed the guidelines and that the guidelines cost information should control. However, the Board finds the sale price to be better evidence of the market value of the property, and Respondent has not rebutted that evidence. The Board finds that the value of the property should be changed to \$10,000.²

Objections

16. At the hearing, the Petitioner and Respondent made certain objections to evidence and/or testimony. All objections to evidence and testimony presented at the hearing are hereby overruled, and the evidence and testimony is admitted.

¹ The parties both acknowledge that the sale price of the property from Cargill to 6001 Ltd. was at least partially based on the “estimate of value letter.” The record is unclear as to what other factors may have gone into setting the sale price. Although the letter may be insufficient to be probative evidence for these proceedings, that fact does not impair the finding that the sale price is good evidence of the property’s market value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 10, (incorporated by reference in 50 IAC 2.3-1-1(a)).

² As there was no dispute as to the land value, the Board finds that the land value of \$2,000 is proper, and that the improvements thus comprise the remaining \$8,000. *See Board Ex. A at 2; Becker testimony.*

17. Petitioner also objected to certain events at the PTABOA hearing and requested a remand. This objection is also overruled. All five (5) members of the PTABOA were present at the Petitioner’s hearing. No evidence was presented indicating anyone other than those five (5) individuals took part in the actual decision making in this case.
18. Petitioner also objected to the PTABOA hearing because the hearing was closed before the Petitioner could present certain evidence. This was a violation of due process on behalf of the PTABOA. Generally, all evidence should be accepted when presented by a party and it is up to the PTABOA to determine the weight to give that evidence. However, the objection is overruled as irrelevant because the proceedings before this Board are “de novo,” and Petitioner had a full and fair opportunity to, and in fact did present all of his evidence to the Board – including evidence that the PTABOA did not consider. *See generally*, Ind. Code § 6-1.1-15-4(k).

Conclusions

19. The Petitioners presented a prima facie case that the value of the property should be \$10,000. The Respondent did not rebut Petitioner’s evidence. The Board finds in favor of Petitioner. There is a change in the assessment as a result of this appeal.

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.