

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

Petition: 89-030-03-1-3-00131
Petitioner: IP Acquisition Corp
Respondent: Wayne Township Assessor (Wayne County)
Parcel: 50-01-000-221.000-29
Assessment Year: 2003

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) by written document dated March 24, 2004.
2. The PTABOA mailed notice of its decision on December 29, 2004.
3. The Petitioner appealed to the Board by filing a Form 131 on January 28, 2005, and elected small claims procedures. Duane Zishka signed the petition as the designated tax representative. He also filed a power of attorney supporting his authorization.
4. The Board issued a notice of hearing to the parties dated February 7, 2006.
5. Charles K. Todd filed an appearance for the Respondent on or about April 11, 2006.
6. Administrative Law Judge (ALJ) Paul Stultz held the hearing in Richmond on August 8, 2006.
7. Persons present and sworn as witnesses at the hearing:
For Petitioner: Lawrence Mitchell, appraiser,
Duane Zishka, tax representative,
For Respondent: Betty Smith, Wayne Township Assessor,
David Fradenburg, Wayne Township Deputy Assessor,
Marie Elstro, PTABOA member,
Joseph Kaiser, PTABOA member,
Richard Lee, PTABOA member,
Dan Williams, PTABOA member,
Michael Statzer, Wayne County Assessor.

Facts

8. The property is a manufacturing and warehouse facility in Richmond.
9. The ALJ did not conduct an inspection of the property.
10. The assessed value as determined by the PTABOA:
- | | | |
|---------------|--------------------------|-------------------|
| land \$65,900 | improvements \$2,309,000 | total \$2,374,900 |
|---------------|--------------------------|-------------------|
11. The assessed value requested by the Petitioner:
- | | | |
|---------------|---------------------------------------|-------------------|
| land \$65,900 | improvements \$1,560,000 ¹ | total \$1,625,900 |
|---------------|---------------------------------------|-------------------|

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:
- The Petitioner disputes only the assessed value of the improvements, not the land assessment. The value for all the improvements is \$1,560,000. *Zishka testimony.*
 - The building is a light manufacturing and warehousing facility. The building has 87,888 square feet. It was constructed in phases from 1985 through 1999. *Mitchell testimony.*
 - Mr. Mitchell was hired to appraise the value of the improvements on the property, but not the land. The appraisal values the building based on its condition as of March 1, 2002, with a valuation date of January 1, 1999. *Mitchell testimony; Pet'r Ex. 1 at 7.*
 - The appraisal employs the cost approach and the sales comparison approach. The appraisal did not use the income approach because there was a lack of data for that method. The decision not to use the income approach does not affect the overall value result. *Mitchell testimony; Pet'r Ex. 1 passim.*
 - The cost approach was developed using costs derived from Marshall & Swift Valuation Services (Marshall & Swift) and is detailed in the appraisal. It is factored back to 2002 using the cost index from Marshall & Swift. The resulting 2002 replacement cost new is \$2,470,000. *Mitchell testimony; Pet'r Ex. 1 at 24.*
 - Depreciation is determined by using an effective age/life method. Based on the age and size of each building section, the effective age is 11.26 years. Both the 2002 Real Property Assessment Guide and Marshall & Swift indicate the economic life expectancy of this type of building is 40 years. With that life expectancy and an effective age of 11.26 years, the estimated depreciation is \$695,000. *Mitchell testimony; Pet'r Ex. 1 at 26.*

¹ The Form 131 claimed the improvement assessed value should be \$1,390,100. At the hearing, the Petitioner's representative requested \$1,560,000 for the improvement value.

- g. The replacement cost new less depreciation factored back to 1999 results in a value of \$1,630,000. *Mitchell testimony; Pet'r Ex. 1 at 27.*
 - h. The sales comparison approach is based on the sales of five industrial properties. Sales #1 and #2 were in Richmond. Sales #3 and #4 were in Shelbyville. Sale #5 was in New Castle. Sale #2 was in 1990 and is a little old, but it is included because it is located in the Richmond market and the property is very similar to the subject property. The price of each sale was reduced by its land assessment to arrive at the price of the improvement. Each sale was also adjusted, upward or downward, by 3 percent per year to account for time. The sales were adjusted to allow for any differences in office finish. The sales were adjusted for condition based on a 40-year life expectancy. *Mitchell testimony.*
 - i. Using a time-adjusted 1995 sale is reasonable because during the 1990's through the 2000's, it was not uncommon for this type of property to be on the market for 3 to 5 years. The 3 percent adjustment for time is an aggressive adjustment and properly accounts for changes in the market over that period. *Mitchell testimony.*
 - j. Greatest weight was place on Sale #1 and #2 because they are in the Richmond market. The resulting estimated value based on the sales comparison approach is \$1,490,000. The appraiser tested this value using sales of smaller buildings in the Richmond market that showed the square foot sale price of industrial buildings is approximately \$20 a square foot. The sales of smaller facilities were not primary data used to arrive at an estimate of value. They merely support the reasonableness of the conclusion. *Mitchell testimony.*
 - k. The appraisal complies with Uniform Standards of Professional Appraisal Practice. It estimates the property's market value-in-use. *Mitchell testimony; Pet'r Ex. 1 at 2, 3.* Upon reconciling the values indicated by the cost and sales comparison approaches, the appraisal ultimately concludes the market value-in-use of the improvements was \$1,560,000 as of January 1, 1999. *Pet'r Ex. 1 at 47.*
13. Summary of the Respondent's contentions in support of the assessment:
- a. The total assessed value of the improvements includes all the structures and the paving. *Fradenburg testimony.*
 - b. The effective age of the building is based on the square footage and date of construction for each building section. It is similar to the method used in the Petitioner's appraisal. The calculation of effective age is consistent with the Guidelines. *Fradenburg testimony.*
 - c. Assessed value is determined by sketching the building using the blueprints and then visiting the building with the owner to verify the data taken from the

blueprints. The method used to value the building is consistent with the Guidelines. *Fradenburg testimony.*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Appraisal of the property,
 - Petitioner Exhibit 2 – A copy of page A-1 and A-2 of Appraisal Report of subject property,
 - Petitioner Exhibit 3 – A copy of request of rescheduling of Board hearing,
 - Respondent Exhibit 1 – Petitioner’s filing with the PTAOBA including the Form 131, the Form 115, and the request for conference on assessment,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Chapter 6, page 13, and Appendix G, pages 14 and 16, from the Real Property Assessment Guideline,
 - Respondent Exhibit 4 – Power of attorney,
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing on Petition,
 - Board Exhibit C – Hearing sign in sheet.
 - d. These Findings and Conclusions.

Analysis

15. 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 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.
16. The evidence is enough to support the Petitioner's claim. This conclusion was arrived at because:
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. An appraisal that conforms with the Uniform Standards of Professional Appraisal Practice (USPAP) has been recognized as "the most effective method to rebut the presumption that an assessment is correct." *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006) (*citing Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005)).
 - c. For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - d. Recent court cases have explained that the goal under Indiana's new assessment system is to ascertain the market value-in-use of a property and that focusing on errors in the methodology an assessor used to determine an assessment was not enough to make a prima facie case. *See O'Donnell* 854 N.E.2d at 95; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Board is skeptical that the Petitioner's case, which accepts the original assessed land value and only challenges the improvement value, conforms to the overarching goal of

determining market value-in-use for the property.² Nevertheless, the appraisal fully discloses the limited nature of the assignment and the methodology that the appraiser used to obtain comparable sales (by simply subtracting the assessed value of land) when it estimates the value-in-use of the improvements was \$1,560,000. Furthermore, the independent professional appraisal is certified as conforming to generally accepted appraisal standards. In this case, the record contains nothing that would bring that certification into doubt. Consequently, the Board will accept the appraiser's opinion as probative evidence.

- e. The Petitioner made a prima facie case and the burden shifted to the Respondent to rebut or impeach the Petitioner's evidence. *See American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- f. In *Meridian Towers*, the taxpayer introduced an appraisal to quantify obsolescence. The assessor failed to rebut that appraisal. The Board, however, determined the calculations in the appraisal were "severely flawed" based on its own interpretation of appraisal standards from a treatise that was not in the record. The Tax Court held that rejection of the appraisal was erroneous because in essence the Board exceeded its statutory authority by attempting to make the Assessor's case for him." *Id.* at 480. Therefore, the outcome of this case is significantly impacted by the fact that the Respondent made no effort to establish that removing the assessed land value from the subject property or the comparable sales in any way distorted the result or made the appraisal unreliable.
- g. The Respondent attempted to rebut the Petitioner's case by relying on the fact that the assessor inspected and valued the property in accordance with the Guidelines. That point appears to be correct, but it does little to rebut the Petitioner's evidence because the Guidelines are only a starting point for the assessment and the appraisal is one of several specifically authorized methods of proving that the assessed value established by using the Guidelines is wrong. *O'Donnell*, 854 N.E.2d at 94.
- h. The Respondent pointed to the date of construction of a 12,096 square foot addition in an attempt to impeach the appraisal. The Respondent claimed that, while the appraisal uses a construction date of 1999, the actual construction date is 2001. The Respondent failed to establish that this difference casts any substantial doubt on the appraisal.

² The Respondent at least tacitly accepted the concept of confining this case to a dispute about only the improvement value.

Conclusion

17. The Petitioner made a prima facie case that the market value-in-use of the subject improvements is \$1,560,600. The Respondent did not rebut that case in any substantial way. The Board finds in favor of Petitioner.

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>.