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

Petition #: **89-030-06-1-3-00350**
Petitioner: **Winandy Greenhouse Company, Inc.**
Respondent: **Wayne County Assessor**
Parcel #: **483643010100029**
Assessment Year: **2006**

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

Procedural History

1. On March 5, 2007, the Petitioner filed a written request asking the Wayne County Property Tax Assessment Board of Appeals ("PTABOA") to reduce the subject property's assessment. The PTABOA reduced the subject property's land assessment, but otherwise denied the Petitioner's request. It mailed notice of its determination on August 24, 2007.

2. The Petitioner then timely filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. It elected to proceed under the Board's rules for small claims.

3. The Board's duly appointed Administrative Law Judge, Alyson Kunack ("ALJ"), held an administrative hearing on November 27, 2007.

4. Persons present and sworn in at hearing:

    a) For Petitioner: Michael J. Doherty, Corporate Secretary

    b) For Respondent: Dan Williams, PTABOA Member
    Joseph Kaiser, PTABOA President
    Marie Elstro, PTABOA Member
    David Fradenburg, Field Appraiser, Wayne County

Charles Todd Jr. appeared as counsel for the PTABOA and the Wayne Township Assessor.[1] A deputy from the county assessor's office observed the hearing.

Facts

5. The subject property contains a one-story brick office building and two steel warehouses. It is located at 2211 Peacock Road in Richmond, Indiana.

6. The ALJ did not inspect the subject property.

7. The PTABOA assessed the subject property as follows:
Land $14,000 Improvements $202,400 Total $216,400.

8. The Petitioner requested the following assessment:
Land $9,700 Improvements $52,600 Total $62,300.

Contentions

9. Summary of the Petitioner's contentions:

a) The subject property's assessment ignores its substantial economic obsolescence. Except for a few "hot zones," Wayne Township is economically depressed. It lacks jobs, and it has a declining population. Vacant commercial, industrial, and retail properties abound. In fact, abandoned and underused facilities surround the subject property. *Doherty testimony*

b) To support its claim, the Petitioner offered property record cards showing that assessors and the PTABOA have granted economic obsolescence to properties owned by American City Steel, Rose City Business Park, LLC, and Focus Four, LLC. *Doherty testimony; Pet'r Ex. K.*

c) The Petitioner also pointed to a property located directly across the street from the subject property at 2200 Peacock Road. Bethesda Ministries bought that property from an auction in 2005. Although the property was assessed for $836,000, Bethesda paid only $217,000. The Petitioner contends that the variance between that property's sale price and assessment shows the severe economic obsolescence that properties in the area suffer from. *Doherty argument*.

d) The Bethesda property has 91,000 square feet of building space, split between a two-story brick office building, a steel-on-steel warehouse, and an older masonry

[1] Neither the Wayne Township Assessor nor the PTABOA are parties to this appeal. Public Law 219-2007 amended Ind. Code § 6-1.1-15-3 to provide that, for appeals from PTABOA determinations issued after June 30, 2007, the "county assessor is the party to the review under this section to defend the determination of the [PTABOA]." Ind. Code 6-1.1-15-3(b)(2007); P.L. 219-2007 §§ 39, 156(c). Nonetheless, two of the county assessor's employees attended the hearing and neither objected to Mr. Todd asking questions on the "Respondent's" behalf. Under those circumstances, the Board assumes that Todd was authorized to represent the Respondent, Wayne Township Assessor.

building with a flat roof. The subject property, by contrast has only a one-story brick office building and a steel-on-steel warehouse. The Bethesda property has twice the subject property's office space, and four times its total building space, and significantly more land, yet it sold for less than the subject property's original assessment. *Doherty testimony; Pet'r Ex. B.*

e) The Petitioner also pointed to a vacant lot owned by the Indiana Family and Social Services Administration ("FSSA"). That property is located just ¾ of a mile from the subject property. It is zoned M-2 Industrial and sits on a heavily traveled two-lane road. The state received a bid of $2,200 per acre for that property, and the Indiana Department of Administration has recommended accepting that bid. Undeveloped land in that area is assessed at $9,600 per acre. The FSSA-property bid therefore indicates that land in Wayne Township is over-assessed by 400%. *Doherty testimony; Pet'r Ex. J.*

f) Finally, the Petitioner pointed to what Doherty described as an unfair appeal process before the PTABOA. The Indiana Code requires township assessors to participate in an informal conference with a taxpayer that has appealed its assessment. The Wayne Township Assessor, however, told Doherty that the Petitioner would not receive an informal conference. The Petitioner's appeal instead went straight to the PTABOA. *Doherty testimony.*

g) And when it addressed the Petitioner's appeal, the PTABOA ignored the Petitioner's market evidence. It instead repeatedly demanded an appraisal. But the Governor has said that taxpayers do not need an appraisal to pursue a property tax appeal. Plus, in Doherty's view, appraisals from the period routinely overstated values. Indeed, he described appraisers as "the lemmings that just walked off the cliff and into the abyss of the realty crash that they helped create." He based that view, in part, on conversations with commercial loan officers. One loan officer referred to a "repossessed" building that appraised for more than $500,000, but that sold at a sheriff's sale for only $300,000 to $400,000. *Doherty testimony.*

h) Because of its "unseemly reliance" on appraisals, the PTABOA ignored the Petitioner's market-based evidence. It also disregarded the Bethesda property's sale price because it was from an auction. But Doherty, who attends multiple property auctions each year, testified to his belief that an auction is the only reliable way to determine a property's market value. *Doherty testimony.*

10. Summary of Respondent's contentions:

a) The Petitioner failed to meet its burden of showing either that the current assessment is incorrect or what the correct assessment should be. *Todd argument.*

b) The Petitioner compared its property to one that Bethesda Ministries bought at auction in 2005. But the Petitioner did not show that Bethesda's property was

comparable to the subject property. The Indiana Tax Court has clearly held that a taxpayer cannot prove its case by simply asserting that two properties are similar. *Todd argument.*

c) Also, the Bethesda sale is not a valid means for determining the subject property's value. Bethesda's property does not compare to the subject property. It has significantly larger buildings. Plus, it was a distressed sale; the property was largely vacant and had been listed for sale for many years before Bethesda bought it at auction. *Todd argument; Williams testimony.*

d) Taxpayers need not obtain appraisals in order to prosecute appeals. Nonetheless, the Tax Court has said that appraisals are the best evidence of value. The Board should disregard Doherty's "grandiose" and "conclusory" statements to the contrary. And despite Doherty's characterizations otherwise, the PTABOA only requested an appraisal from the Petitioner; it did not demand one. The PTABOA simply wanted more information about comparable sales. *Todd argument; Williams testimony.*

e) The subject property's assessment was based on state-issued guidelines. The PTABOA, however, discovered an error in the county's land values. It therefore lowered the Petitioner's land assessment from $37,340 to $14,000. *Resp't Ex. 1.*

Record

11. The official record for this matter is made up of the following:

a) The Petition,

b) The digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit A: Original appeal,
Petitioner Exhibit B: PTABOA Minutes attachment from 3/29/07,
Petitioner Exhibit C: PTABOA Minutes from 3/29/07, page 2,
Petitioner Exhibit D: Statzer letter dated 4/4/07,
Petitioner Exhibit E: Winandy letter dated 4/10/07,
Petitioner Exhibit F: PTABOA Minutes 4/19/07, page 1,
Petitioner Exhibit G: Statzer dated 4/20/07,
Petitioner Exhibit H: Winandy letter dated 8/1/07,
Petitioner Exhibit I: PTABOA Minutes 8/16/07, page 1,
Petitioner Exhibit J: FSSA sale 10/20/07,
Petitioner Exhibit K: Examples of economic obsolescence applied to local properties during the approximate time frame in question (American Steel City, Rose City, Focus Four),

Respondent Exhibit 1: Subject Property Record Card ("PRC"),

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign-In sheet,
Board Exhibit D: Appearance by Attorney for Respondent,

d) These Findings and Conclusions.

Objection

12. The Respondent made a hearsay objection to Doherty's testimony that Betty Smith, the Wayne Township Assessor, told him that he would not receive an informal conference. *Doherty testimony; Todd objection*. Doherty responded that the Board's small claims rules allow hearsay evidence, and that the PTABOA's Form 115 determination corroborated his testimony. *Doherty response*.

13. The Board overrules the Respondent's objection. First, it is not even clear that Doherty's testimony contained hearsay. The Indiana Rules of Evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." IND. EVIDENCE RULE 801. While Doherty referenced Ms. Smith's out-of-hearing statement, he did not necessarily offer it to prove the truth of the matter asserted in that statement. Indeed, the mere fact that Smith told Doherty that he would not receive an informal conference is relevant to the Petitioner's claims about procedural irregularities regardless of whether her assertion was true.

14. And even if the Petitioner offered Smith's statement to show the truth of the matter asserted—that she did not intend to meet informally with Doherty—her statement would be admissible under Ind. Evid. R. 803(3). That rule allows hearsay statements of the declarant's then-existing state of mind to be admitted into evidence. *See* IND. EVID. R. 803(3).[2]

15. Finally, the Board's small claims rules allow it to admit hearsay even if that evidence is not otherwise admissible under the rules of evidence. *See* IND. ADMIN. CODE, tit. 52, r. 3-1-5(b). The Board will do so if it finds that the hearsay appears to be sufficiently reliable. And Smith's statement is reliable enough to be admitted. In fact, the Form 130 petition generally corroborates Ms. Smith's statement, given that the space for the Petitioner and township assessor to summarize what happened at the informal conference is blank. *See Board Ex. A*.

[2] That rule provides an exception to the hearsay rule for "[a]statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health) . . . ." IND. EVID. R. 803(3).

Analysis

Burden of Proof

16. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and what the correct assessment should 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).

17. In making its case, the petitioner must explain how each piece of evidence relates to its 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").

18. Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Petitioner's Case

19. The Petitioner did not make a prima facie case rebutting the subject property's assessment. The Board reaches this conclusion for the following reasons:

    a) The Petitioner made two general claims—that the subject property is assessed for more than its market value, and that local officials, including the PTABOA, did not comply with statutory requirements in addressing the Petitioner's appeal. The Board examines each claim in turn.

A. Market Value-in-Use

    b) Real property is assessed based on its "true tax value," which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id*. at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

    c) A property's market value-in-use, as determined using the Guidelines, 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,* 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market-value-in-use

appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

d) The Petitioner attacked the assessment on two fronts. First, it argued that the assessment did not reflect the property's substantial economic obsolescence. Second, it pointed to the Bethesda property's sale price as evidence that the subject property's assessment greatly exceeded its market value.

1. Obsolescence

e) Doherty made several general statements about Wayne Township's economic condition. But he did little to tie those statements to specific obsolescence that the subject property experienced.

f) And he never attempted to quantify the subject property's obsolescence. At best, he compared the Bethesda property's sale price and the FSSA lot's bid price to their respective assessments and attributed the difference to economic obsolescence. In doing so, Doherty presumably argued that the subject property suffered from the same degree of obsolescence.

g) Doherty, however, did not show that his approach conformed to generally accepted appraisal principles. Indeed, the Guidelines do not recognize that approach as appropriate. *See* GUIDELINES, App. F at 14-16 (Setting forth two methods for measuring external obsolescence: the paired-sales and capitalization-of-income methods). Plus, Doherty's approach assumed that the Bethesda and FSSA properties were comparable to the subject property. As discussed below, however, Doherty failed to support that assumption.[3]

h) Finally, Doherty's reference to three other properties that received obsolescence adjustments also lacks probative value. He did not explain what those obsolescence adjustments were for, much less how they related to any obsolescence that the subject property experienced.

2. Sales-comparison approach

i) Next, Doherty attempted to establish the subject property's market value-in-use through the sales-comparison approach. That valuation approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property that already exists in the market place. MANUAL at 13-14. A person applying the sales-comparison approach must first identify comparable improved properties that have sold. *Id.* He or she must

[3] The discussion below centers on the Bethesda property. But Doherty did even less to show how the subject property compared to the FSSA lot, aside from describing the relative sizes and locations of the two properties.

then adjust those properties' sale prices to reflect the subject property's total value. *Id.* The adjustments reflect differences between the subject and comparable properties that affect value. And those adjustments must be quantified using objectively verifiable market evidence. *Id.*

j) Thus, in order to use the sales-comparison approach as evidence in a property assessment appeal, a party must show that the properties being examined are comparable to each other. Conclusory statements that two properties are "similar" or "comparable" to each other are not probative. *Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the subject property's relevant characteristics and explain how those characteristics compare to each purportedly comparable property's characteristics. *Id.* at 471. Similarly, the party must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.

k) Doherty did little to compare the subject property to the Bethesda property beyond describing their respective sizes, locations, and construction materials. And the Petitioner offered scant information from which the Board could make its own comparison. Even if it had, the Petitioner—not the Board—was responsible for explaining how the properties were comparable. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers].").

l) Plus, Doherty did not even attempt to adjust the Bethesda property's sale prices to reflect the relevant ways in which it differed from the subject property. For example, Bethesda's buildings were significantly larger than the Petitioner's buildings.

m) The Board recognizes that at least some of the differences between the subject and Bethesda properties tend to show that the subject property is the less valuable of the two. Thus, it arguably should not be assessed for only $600 less than the Bethesda property's sale price. Of course, without a more thorough comparison, the Board cannot determine whether other differences would tend to support the opposite conclusion. But even if they did not, the Bethesda property's sale price would address only the first prong of the Petitioner's burden of proof—that the subject property's assessment is incorrect. Because Doherty failed to quantify any adjustments to the Bethesda property's sale price, he did not show what the subject property's correct assessment should be.

B. Proceedings Below

n) Doherty spent much of the hearing highlighting what he viewed as shortcomings in the proceedings below. More than anything, he attacked what he described as the PTABOA's "unseemly reliance" on appraisals. And if the PTABOA had actually refused to consider any probative market-based evidence other than an

appraisal, that refusal would have been improper. But that does not appear to be what happened.

o) More importantly, whether or not the PTABOA improperly insisted on an appraisal is irrelevant to the current proceedings before the Board. So is the Wayne Township Assessor's purported refusal to meet informally with the Petitioner. Proceedings before the Board are *de novo*. *See* Ind. Code § 6-1.1-15-4(m).[4] Thus, the Petitioner had adequate opportunity to present its case to the Board regardless of what happened in the proceedings below.

Conclusion

20. The Petitioner failed to make a prima facie case. 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 should not be changed.

ISSUED: _____

_____
Commissioner,
Indiana Board of Tax Review

[4] "A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals." Ind. Code § 6-1.1-15-4(m).

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>