

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

Petition No.: 41-004-07-1-4-00001
Petitioner: Amos-Hill Associates
Respondent: Johnson County Assessor
Parcel No.: 41-12-34-024-044.000-002
Assessment Year: 2007

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 Petitioner initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated November 25, 2008.
2. The PTABOA issued its decision on June 1, 2009.
3. The Petitioner filed a Form 131 petition with the Board on July 13, 2009. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 10, 2009.
5. The Board held an administrative hearing on October 20, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Dave Schaadt, Integrity Tax Consulting
 - b) For Respondent: Michael Watkins, Johnson County Assessor's Office¹

Facts

7. The property is an industrial manufacturing facility located at 112 Shelby Avenue in the city of Edinburgh, in Johnson County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

¹ Mr. Watkins is a full-time employee of the Johnson County Assessor.

9. For 2006, the PTABOA determined the assessed value of subject property to be \$147,800 for the land and \$691,100 for the improvements, for a total assessed value of \$838,900.
10. The Petitioner requests an assessed value of \$147,800 for the land and \$503,000 for the improvements, for a total assessed value of \$650,800.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner argues that its property is over-valued based on the property's market value. *Schaadt argument*. The Petitioner's representative presented a market value analysis comparing the subject property to three sales and one listing of comparable industrial properties that were sold or listed between 2005 and 2008. *Schaadt testimony; Petitioner Exhibit 1*. Mr. Schaadt testified that he adjusted the sales and listing prices 3% per year for the time of sale, 1% per year for the age of the structure, 1% per foot for the building's wall height, 2% per point for the land to building ratio and 20% for the facility's location. *Id.* Based on these adjustments, Mr. Schaadt determined the price per square foot for each property ranged from \$3.03 to \$6.60, with an average of \$5.25 per square foot. *Id.* Therefore, Mr. Schaadt concludes the subject property should be assessed for \$5.50 per square foot rather than its current assessed value of \$8.43 per square foot. *Id.*
 - b) The Petitioner further contends the assessed value of the subject property is excessive based on the property's design and construction. *Schaadt argument; Petitioner Exhibit 1*. According to the Petitioner's representative, the property is an urban industrial facility located in a residential area. *Id.* Mr. Schaadt argues that the intersection where the main entrance to the property is located further limits access for semi trucks. *Id.* Moreover, a railroad line splits the property which makes access to one of the warehouses more difficult. *Id.* Mr. Schaadt also argues that the facility was initially constructed in the 1940s, with additions being made through the years. *Id.* The buildings are mostly comprised of pole-type construction with metal siding, much of which is rusting. *Id.* In addition, the various additions have multiple floor heights which impede product flow and cause functional obsolescence. *Id.* Finally, Mr. Schaadt contends, many of the buildings lack heating and a sprinkler system. *Id.*
12. The Respondent's representative contends that the Petitioner's representative's analysis was too vague and that insufficient information was provided to determine if the properties offered as comparables were truly comparable to the subject property. *Watkins testimony*. Further, Mr. Watkins argues, Mr. Schaadt failed to explain the basis of his adjustments. *Id.*

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 digital recording of the hearing.
 - c. Exhibits:²

Petitioner Exhibit 1: Assessment analysis and supporting documentation,

Board Exhibit A: Form 131 Petitions,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing 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 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.
15. The Petitioner failed to provide sufficient evidence to raise a prima facie case for a reduction in its assessed value. The Board reached this decision for the following reasons:

² The Respondent chose not to offer any exhibits.

- a) The 2002 Real Property Assessment Manual defines “true tax value” 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). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
- b) A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d) The Petitioner first argues that its property is over-valued and offers an “Assessment Analysis” in support of its contention. *Schaadt testimony; Petitioner Exhibit 1*. In providing his analysis, the Petitioner’s representative essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* MANUAL at 3 (stating that 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.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- e) In reaching his conclusion of value, Mr. Schaadt testified that he adjusted the sales and listing prices 3% per year for the time of sale, 1% per year for the age of the structure,³ 1% per foot for the building's wall height, 2% per point for the land to building ratio and 20% for the facilities' location. *Schaadt testimony*. Mr. Schaadt, however, provided no support for these adjustments. There is no evidence in the record, for example, that the sales prices of industrial facilities increased 3% per year in Johnson County or that structures lose 1% per year in value based on the age of their construction.
- f) While the adjustments in Mr. Schaadt's analysis may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. There is no evidence that Mr. Schaadt is a licensed appraiser in Indiana. Moreover, he did not certify that the opinion he prepared for the Petitioner complied with USPAP in performing his valuation analysis. The Board therefore finds that the Petitioner's sales comparable analysis is insufficiently reliable to be probative of the property's market value-in-use.
- g) The Petitioner's representative further identified several issues with the condition and location of the subject property, including floor height differences that impact product flow, deferred maintenance issues, and a lack of heating and sprinkler systems in the buildings. *Schaadt testimony*. To the extent that Mr. Schaadt can be seen to be arguing that the property suffers from obsolescence, the Board finds the Petitioner's argument also fails to raise a prima facie case.
- h) The Guidelines provide for the determination of the replacement cost new of structures through reference to cost tables. GUIDELINES, intro at 1. The Guidelines also requires that accrued depreciation be accounted for in valuing an improvement. GUIDELINES, app. F at 4. The Guidelines account for normal obsolescence through the assignment of typical life expectancies and structure condition classifications. GUIDELINES, app. F at 4 – 7. Any additional loss in value from atypical forms of obsolescence will be referred to as abnormal obsolescence and is estimated separately from normal depreciation. *Id.*
- i) For a Petitioner to show that he is entitled to receive an adjustment for obsolescence, however, the Petitioner must both identify the causes of obsolescence he believes is present in his improvement and also quantify the

³ While the analysis is entitled "Assessment Analysis as of March 1, 2007," Mr. Schaadt's age adjustment purports to value property "3% per year ... to account for the listing/sale date versus the 2006 valuation date under review." Thus, there is some evidence that the property was valued to the proper valuation date despite the fact that Mr. Schaadt failed to indicate the effective date of his valuation.

amount of obsolescence he believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are resulting in an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property's improvements to suffer an actual loss in value. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001). Here, the Petitioner needed to show how the building's condition, design and location caused a loss in the property's value. In failing to provide this evidence, the Petitioner failed to quantify the obsolescence to which it is entitled. Thus the Petitioner failed to raise a prima facie case that the subject property's assessment should be reduced.

- j) The Petitioner failed to raise a prima facie case that its property was assessed in excess of its market value-in-use. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to raise 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: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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>.