

REPRESENTATIVE FOR PETITIONER: Eve Beckman, Tax Representative

REPRESENTATIVE FOR RESPONDENT: Frank G. Kramer, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Anchor Glass Container, Corp.,)	Petition No.: 15-016-06-1-3-00041
)	Parcel: 15-07-02-302-002.000-016
Petitioner,)	
)	
v.)	
)	
Dearborn County Assessor,)	Dearborn County
)	Lawrenceburg Township
Respondent.)	2006 Assessment

Appeal from the Final Determination of the
Dearborn County Property Tax Assessment Board of Appeals

March 16, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

The Petitioner presented a certified appraisal that concluded as of April 6, 2006, the value of the subject property (a manufacturing and warehouse facility) was only \$4,000,000. The appraiser did not testify and the Respondent objected to the appraisal as being hearsay. Did the Petitioner establish that the existing 2006 assessment of \$5,241,700 is too high and should be changed to \$4,000,000?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is an industrial complex on approximately 59 acres of land located at 200 W. Bellview Road in Lawrenceburg, Indiana.
2. On February 12, 2008, the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the 2006 assessment on the subject property is \$5,241,700. On March 12, 2008, the Petitioner filed a Form 131 Petition seeking the Board's administrative review of that determination and opted out of small claims procedures. The Petitioner contends the assessed value should be \$4,000,000.
3. The Board's designated Administrative Law Judge, Kay Schwade, held the hearing in Lawrenceburg on December 17, 2008. She did not conduct an on-site inspection of the property.
4. Eve Beckman and County Assessor Gary Hensley were sworn as witnesses and testified.
5. The Petitioner presented the following exhibits:
 - Exhibit 1 – Market value appraisal as of April 6, 2006,
 - Exhibit 2 – Land value comparison summary,
 - Exhibit 3 – Subject property record card,
 - Exhibit 4 – Summary of property record card data,
 - Exhibit 5 – Summary comparison of the appraisal and the assessment,
 - Exhibit 6 – Summary comparison of the appraisal and the assessment.
6. The Respondent did not present any exhibits.
7. The following additional items are recognized as part of the record of proceedings:
 - Board Exhibit A – The 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.

OBJECTIONS

8. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a “statement” can be either oral or written. The Respondent objected to the appraisal because it is hearsay. The Petitioner argued that the appraisal is not hearsay evidence because it represents a fair market appraisal and is relevant to proving value—points that have nothing to do with whether the appraisal is hearsay or comes within any recognized exception to the hearsay rule. The appraiser who did the appraisal did not appear at the hearing to testify and be cross examined. Consequently, the appraisal is hearsay. Nevertheless, hearsay evidence is admissible with significant limitations:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3. Therefore, the appraisal is admitted into the record. But because the Respondent objected and the Petitioner failed to establish that any recognized exception applies, the appraisal cannot serve as the sole basis for the Board’s decision.

9. The Respondent also objected to the appraisal because it lacked supporting information for the obsolescence depreciation deduction. The sufficiency of the explanation goes to the weight of the appraisal rather than its admissibility. This objection is denied.

SUMMARY OF THE PETITIONER’S CASE

10. The appraisal stands on its own merits. It was prepared by an Indiana certified appraiser according to the Uniform Standards of Professional Appraisal Practice. It estimates the fair market value of the subject property was \$4,000,000 as of April 6, 2006. On that basis, the assessment should be \$4,000,000. *Beckman testimony; Pet’r Ex. 1.*

11. The difference between the assessed land value and the appraised land value is not substantial. It is \$10,000 an acre for both the primary land and the unusable/undeveloped land. The assessment has a base rate of \$50,000 an acre for primary land and \$30,000 an acre for unusable/undeveloped land. The appraisal is based on \$40,000 an acre for primary land and \$20,000 an acre for unusable/undeveloped land. *Beckman testimony; Pet'r Ex. 2.*
12. The appraised land value is based on the sales of comparable properties. Two of the comparables are in Dearborn County—one in Aurora and one in St. Leon. The Aurora land price is between \$39,000 and \$49,000 an acre. The St. Leon land price is \$59,000 an acre. They were not given much weight in the appraisal because they were listings, not actual sales. *Beckman testimony; Pet'r Ex. 1 at 31.*
13. Because Dearborn County lacked a sufficient number of industrial land sales, it was necessary to use regional data. The LaPorte land sale, while inferior, was given the most weight in the appraisal analysis. The Indianapolis sale was given the second greatest weight. The LaPorte sale and the Indianapolis sale are actual sales of industrial land. *Beckman testimony; Pet'r Ex. 1 at 31.*
14. The building is a multi-section structure constructed in phases from 1950 through 1974. The newest portion is 30 years old. The assessment appears to have been “piecemealed” over time without updating since the buildings were originally put on the property record card. The buildings should be valued as one structure with an effective age of 30 years rather than being valued as separate components. As an example, Building 1 was constructed in 1952 and Building 2 was constructed in 1958. By valuing these buildings separately with different ages, the resulting assessment reflects differing square foot costs for buildings constructed and used in the same manner. *Beckman testimony; Pet'r Ex. 3, 4.*

15. The appraised improvement value is based on Marshall & Swift costs as well as sales data. Overall, there is only a \$2.00 per square foot difference between the assessment and the appraisal. *Beckman testimony; Pet'r Ex. 5.*
16. Based on the expert opinion of the appraiser, a lack of demand for industrial properties on a regional basis affects the value of the subject property. A summary comparing the current assessment to the requested value shows that the difference between the assessment's and the appraisal's improvement values is an additional 6% obsolescence depreciation in the appraisal. *Beckman testimony; Pet'r Ex. 6.*

SUMMARY OF THE RESPONDENT'S CASE

17. The subject property is located within a quarter of a mile of Interstate 275 and is serviced by rail. One of the comparables, the Aurora site, is not located near any interstate and does not have rail service. Another comparable, the St. Leon site, is located relatively near Interstate 74, but does not have access to rail service. Those sites are inferior to the subject property. *Hensley testimony.*
18. Rail access is relevant to establishing comparability. The appraisal made some adjustment to the sales, but with the information provided, it is not possible to determine whether the adjustments are proper. *Hensley testimony.*
19. Economic depreciation, or obsolescence, is caused by external factors negatively impacting a property's value. Without evidence showing the cause of the alleged obsolescence, it is not possible to determine if any additional amount is warranted. There is no factual basis for the claim of 18% obsolescence depreciation. In Dearborn County, very little obsolescence depreciation is applied because an analysis of property sales did not indicate that property within the county suffered a loss in value due to external factors. *Hensley testimony.*

20. The appraisal has no basis for its land analysis. While inferior industrial land sites exist in Dearborn County and they sell in a range from \$39,000 to \$59,000 an acre, the appraisal relies on a sale in LaPorte and a sale in Indianapolis. Even though the Indianapolis sale at \$75,000 an acre is most comparable to the subject site with regard to location, the appraisal gives the most weight to the LaPorte sale which is furthest from the subject property. The appraisal also lacks any basis for the amount of the obsolescence depreciation. *Kramer argument*.

ANALYSIS

21. 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).
22. In making a 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”).
23. Real property is assessed on the basis of 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 similar user, from the property.” *See Ind. Code § 6-1.1-31-6(c)*; 2002 REAL PROPERTY ASSESSMENT MANUAL (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 fair market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*. 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.

24. Although an appraisal is the type of market based evidence that could be relevant and probative to determining market value-in-use, in this case it fails to do so. As previously discussed, the Respondent correctly objected to the appraisal as hearsay. While the appraisal was admitted into the record, the rules are specific that “the resulting determination may not be based solely upon the hearsay evidence.” 52 IAC 2-7-3. The appraisal (along with Ms. Beckman’s testimony that did nothing more than reiterate and summarize it) cannot serve as the basis for a final determination that the assessment should be changed to \$4,000,000. And in this case there is no other probative evidence to support a value a value that would be less than the current assessment.
25. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2006 reassessment, a property’s assessment must reflect its value as of January 1, 2005. An appraisal (or any other evidence of value) must have some explanation as to how the evidence demonstrates or is relevant to that property’s value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
26. Even if the Respondent had not objected to it as being hearsay, the appraisal would not make the Petitioner’s case because it establishes a value as of April 6, 2006, and there is nothing relating that value to the required valuation date, which is January 1, 2005. Consequently, in this case the relevance or probative value of the appraisal was not established. *Id.*
27. Both the hearsay problem and the valuation date problem are independently fatal to the Petitioner’s case.

SUMMARY OF FINAL DETERMINATION

28. The Board finds in favor of the Respondent. The Petitioner failed to make a prima facie case for any lower assessed value. Therefore, the assessment will not be changed.

The Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

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-APPEAL RIGHTS-

You may petition for judicial review of this final determination under the provision 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>>.