

PETITIONER REPRESENTATIVE:

Michael Duff, Tax Representative, DuCharme, McMillen & Associates, Inc.

RESPONDENT REPRESENTATIVE:

Charles Simons, Contractor for the Vanderburgh County Assessor

INDIANA BOARD OF TAX REVIEW

City of Evansville c/o Sunbeam	)	Petition Nos.:	82-019-07-1-3-00947
Plastics, dba Rexam Closures, ¹	)		82-019-08-1-3-03640
)		
Petitioner,	)	Parcel No.:	02-030-02-124-017
)		
v.)		
	)	County:	Vanderburgh
Vanderburgh County Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Years:	2007 and 2008

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

January 15, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

¹ The Petitions and the property record card list the owner of the property as City of Evansville c/o Sunbeam Plastics. The witnesses for the Petitioner, however, testified that the business operating at the industrial property at 3245 Kansas Road was purchased in 1972 by a British Corporation named Rexam Closures.

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated based on the appraised value of the property.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner's representative Michael Duff, Senior Tax Manager with DuCharme, McMillen & Associates, Inc., filed Form 130 Petitions to the Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) for review of the property's 2007 and 2008 assessments on May 12, 2008. Form 115, Notification of Final Assessment Determinations, were mailed to City of Evansville c/o Sunbeam Plastics, for both tax years on April 17, 2009. The Petitioner subsequently filed Form 131 Petitions to the Board to conduct a review of the PTABOA's decisions for 2007 and 2008 on May 14, 2009.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a consolidated hearing on August 26, 2009, in Evansville, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Michael Duff, DuCharme, McMillen & Associates, Inc.,
Ron Allen, Galloway Appraisal, appraiser,
Kevin A. Schepers, Rexam controller,

For the Respondent:

Charles Simons, Contractor for the Vanderburgh County Assessor,
Candy Wells, Hearing Officer for the Vanderburgh County Assessor,
Tiffany Collins, Administration Assistant for the Vanderburgh PTABOA.

Jacqueline L. Doty-Fox, Real Estate Deputy for Vanderburgh County,

5. The Petitioner presented the following evidence:
 - Petitioner Exhibit 1 – Appraisal report of the subject property,
 - Petitioner Exhibit 2 – Excerpt of the 2002 Real Property Assessment Manual,
 - Petitioner Exhibit 3 – Summary sheet and list of comparable properties from the appraisal,
 - Petitioner Exhibit 4 – Property record card (PRC) for the appealed property,
6. The Respondent presented the following evidence:²
 - Respondent Exhibit 1 – Recommendation to the PTABOA,
 - Respondent Exhibit 2 – PRC of the appealed property,
 - Respondent Exhibit 3 – Vanderburgh industrial ratio study for 2007 and 2008,
 - Respondent Exhibit 4 – List of Vanderburgh County property sales,
 - Respondent Exhibit 5 – List of Vanderburgh County interest rates 2005-2007,
 - Respondent Exhibit 6 – Excerpts from *Property Appraisal and Assessment Administration*.
7. In addition to the digital recording of the hearing, the following items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 petitions with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
8. The property under appeal is an improved industrial parcel located at 3245 Kansas Road, Vanderburgh County, in Evansville, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For both 2007 and 2008, the PTABOA determined the assessed value of the property to be \$1,044,800 for the land and \$5,519,000 for the improvements, for a total assessed value of \$6,563,800. *Board Exhibit A*.

² The Respondent entered into evidence identical packets of six exhibits relating to the year of each appeal.

11. The Petitioner requested a total assessed value of \$5,035,000 for 2007 and 2008. *Board Exhibit A; Petitioner Exhibit 1.*

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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).
14. 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. Wash. 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”).
15. 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.

PETITIONER'S CONTENTIONS

16. The Petitioner contends that the 2007 and 2008 assessed values of its manufacturing facility are over-stated. *Duff testimony*. In support of its contention, the Petitioner presented an appraisal report prepared by Ronnie L. Galloway, MAI, of Galloway Appraisal, an Indiana Certified General Real Estate Appraiser, with the assistance of Ronald N. Allen, of Galloway Appraisal *Petitioner Exhibit 1*. Mr. Allen testified that he has worked with Galloway Appraisal for fifteen years and performed the research used by Mr. Galloway in preparing the appraisal. *Allen testimony; Petitioner Exhibit 1*. The appraisers certified that the report was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Standards of Professional Practice and Code of Professional Ethics of the Appraisal Institute. *Petitioner Exhibit 1*. The appraisal estimates the market value-in-use of the Petitioner's property to be \$5,035,000 as of January 1, 2006. *Id.*

17. The Petitioner's appraiser, Mr. Allen, testified that Galloway Appraisal considered the three approaches to value – the cost approach, the income approach and the sales comparison approach – and determined that the sales comparison approach was the most appropriate method of estimating the market value-in-use of the subject property. *Allen testimony; Petitioner Exhibit 1*. According to Mr. Allen, he determined the cost approach was not a reliable indicator of value because the property was built in 1978. *Id.* Mr. Allen testified that it is difficult to estimate physical depreciation in properties that are older than 10 years of age. *Id.* Further, Mr. Allen testified that the income approach to value was equally unreliable because there was insufficient market data regarding rental rates, vacancy rates, expense ratios, and capitalization rates for owner-operated properties in the Evansville area. *Id.* Therefore, Mr. Allen, concluded, the sales comparison approach to value is the preferred method of establishing the market value-in-use of the property. *Id.*

18. In calculating the property's value using the sales comparison approach, Mr. Allen testified that the appraisers considered sales of both land and comparable manufacturing properties. *Allen testimony; Petitioner Exhibit 1.* The appraisers identified three sales of land in Evansville to reach a value for the land. *Id.* The land sales ranged from \$0.90 per square foot to \$1.18 per square foot. *Id.* From these sales, the appraisers determined a value of \$1.00 per square foot for the land and estimated a value of the lot to be \$910,000. *Id.*
19. In determining comparable sales for the facility, the appraisers reviewed the market area of southwest Indiana and western Kentucky. *Allen testimony; Petitioner Exhibit 1.* According to Mr. Allen, he identified five sales of comparable properties which Mr. Galloway used to build the sales comparison grid. *Id.* After Mr. Galloway's adjustments, the sales prices per square foot of the five facilities ranged from a low of \$14.57 to a high of \$27.10 per square foot. *Id.* Based on these sales, the appraisers estimated the value of the subject property to be \$22.00 per square foot or \$5,035,000. *Id.*
20. Mr. Allen testified that the appraisers valued the Petitioner's property based on a January 1, 2006, valuation date for the 2007 assessment. *Petitioner Exhibit 1; Allen testimony.* Mr. Allen admitted that the 2008 assessment is based on a January 1, 2007, valuation date. *Id.* However, Mr. Allen argues that the property's 2008 value-in-use would likely be less than its 2007 value because of the downturn in the U.S. economy. *Id.* For the purposes of its appeal, Mr. Allen testified, the Petitioner agreed to use a value of \$5,035,000 for both 2007 and 2008. *Id.*
21. In response to the Respondent's questions, Mr. Allen testified that a 33,942-square-foot addition to the facility's 194,966-square-feet was constructed in 2006 and completed after the January 1, 2006, valuation date. *Allen testimony; Petitioner Exhibit 1.* According to Mr. Allen, the area of the addition was included in the appraisers' value calculation and valued as if it existed on the valuation date. *Id.*

22. Finally, in response to the Respondent's arguments, the Petitioner's representative argued that the Respondent failed to show the comparability of the sales that it presented. *Duff argument*. Further, Mr. Duff argues, the Respondent's ratio study only shows the accuracy of the county's assessments over all. *Duff argument*. It does not validate any individual assessment in the study. *Id.* Thus, Mr. Duff concludes, the Respondent's ratio study does not verify that the subject property's assessment is correct. *Id.*

RESPONDENT'S CONTENTIONS

23. The Respondent's representative contends that the 2007 and 2008 assessments of the subject property are correct. *Simons testimony*. According to Mr. Simons, the county assessed the subject property using the state-mandated procedures and cost tables. *Id.* In support of his contention, the Respondent's representative submitted a copy of the Vanderburgh County Assessor Hearing Officer's recommendation to the PTABOA for no change in value for each year. *Id.*; *Respondent Exhibit 1*.
24. Mr. Simons also contends that the Vanderburgh County Industrial Property Ratio Studies showed that using the existing cost tables resulted in assessments eight to fifteen percent below sales values. *Id.* Therefore, Mr. Simons argues, the subject property's assessment was adjusted to reflect those increased costs. *Id.* In support of this contention, the Respondent's representative offered the property record card for the appealed property. *Respondent Exhibit 2*.
25. In addition, the Respondent's representative argues that the Ratio Studies support the assessments, indicating a value of \$31.56 per square foot. *Simons testimony*; *Respondent Exhibit 3*. According to Mr. Simons, the Petitioner's appraisal is only based on five sales, but the valuations prepared for Vanderburgh County were based on a wide spectrum of sales during the relevant time period. *Simons testimony*. In support of this

contention, the Respondent's representative submitted an excerpt from *Property Appraisal and Assessment Administration. Respondent Exhibit 6.*

26. Further, the Respondent's representative argues that other comparable sales support the property's assessed value. *Simons testimony.* According to Mr. Simons, an industrial facility located at 1323 Burch Drive in Evansville sold in January of 2006 for \$31.24 per square foot. *Id; Respondent Exhibit 4.* Similarly, a property at 8233 Baumgart Road in Evansville sold in February of 2006 for \$29.66 per square foot and a property at 2007 Saint George Road in Evansville sold for \$24.20 per square foot in December of 2005. *Id.* Moreover, Mr. Simons argues, the Petitioner's facility has humidity control which the Respondent's comparable properties do not. *Id.* This increases the value of the Petitioner's property. *Id.*
27. Finally, the Respondent's representative contends that the Board should give little weight to the Petitioner's appraisal because it used vacant facilities as comparable properties. *Simons testimony.* According to Mr. Simons, vacant properties have deferred maintenance which drives down the value of the properties. *Id.* Mr. Simons argues that if the Petitioner's appraisers had used the comparable sales that he identified, the appraised value would have been in line with the property's assessed value. *Id.*

ANALYSIS

28. Indiana assesses real property 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 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). 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. *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 (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).

29. 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); *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). A taxpayer, however, 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 property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
30. Regardless of the method used to rebut an assessment's presumption of accuracy, a party to an appeal must explain how his or her evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3. Similarly, for the March 1, 2008, assessment, that valuation date is January 1, 2007. *Id.*
31. Here the Petitioner presented an appraisal dated July 30, 2009, that estimated the value of the Petitioner's facility to be \$5,035,000 as of January 1, 2006. *Petitioner Exhibit 1*. The Petitioner's appraiser argued that the property's 2008 market value-in-use would be less than the property's 2006 value because of the downturn in the U.S. economy. *Allen testimony*. The Petitioner, however, agreed to use the same value of \$5,035,000 for both 2007 and 2008. *Id.* The Petitioner's appraiser is an Indiana certified appraiser who prepared the appraisal report in accordance with USPAP standards. *Petitioner Exhibit 1*. The appraisal conforms to the appropriate date for the 2007 appeal and offers some

evidence relating the property's January 1, 2006, appraised value to the January 1, 2007, valuation date for the 2008 tax year. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Therefore the Board finds that the Petitioner raised a prima facie case that its property is over-assessed.

32. Once the Petitioner has established a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Company v. Maley* 803 N.E.2d 276 (Ind. Tax Court 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
33. Here the Respondent contends it assessed the property correctly. According to Mr. Simons, the county followed the rules of the DLGF and the IAAO in its assessment and in its ratio study. *Simons testimony*. In order to carry its burden, however, the county must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. 1998) (mere recitation of expertise insufficient to rebut prima facie case). Further, while a ratio study may provide some evidence of the quality or accuracy of a county's assessment over-all, by itself it is not probative evidence that any individual assessment was correct.
34. The Respondent also argues that the assessments were correct based on the sales prices of other comparable properties. *Simons testimony*. In support of this contention, the Respondent's representative introduced the county's list of sales from its sales database and cited three Evansville sales, including one that was used by the Petitioner as a comparable sale. *Respondent Exhibit 4*. Mr. Simons argued that the sales prices per square foot for the three properties support the higher assessed value of the Petitioner's property. *Id.* The Respondent's representative, however, made no attempt to compare the properties to the subject property. As the Indiana Tax Court stated in *Fidelity Federal*

Savings & Loan v. Jennings County Assessor, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), “the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.” 836 N.E.2d at 1082 (citations omitted). Thus, the Respondent’s “comparable analysis” fails to rebut the Petitioner’s case.

35. Further, the Respondent argues that the Board should give little weight to the Petitioner’s appraisal. In support of this contention, the Respondent’s representative alleged that various properties were vacant at the time of their sale and asked the Petitioner’s appraiser if the properties had deferred maintenance to make them operational. “Open-ended questions” and “conclusory statements” are not sufficient to rebut the Petitioner’s case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) (“In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel’s calculations. Rather, he merely asked open-ended questions or made conclusory statements”). Notably, Mr. Simons presented no evidence that any facility was, in fact, vacant or that deferred maintenance existed on the Petitioner’s comparable properties. Mr. Simons merely testified, for example, that “one source said they thought the property was vacant at the time of the sale” or “I was told it was vacant” and “property vacant for some time has deferred maintenance costs to bring the building back to operational condition.” Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

36. Moreover, it is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal will be deemed reasonable. Here, the Respondent contends that the Petitioner's appraisal somehow fails to account for deferred maintenance. The Board notes that – to the contrary – the appraisal observed that one property's sprinklers were out of service at the time of the sale. The appraisers identified the age and condition of the property as inferior to the subject property and adjusted the sale price 20% to account for the property's inferior age and condition. Therefore, the Respondent's contentions fail to impeach the Petitioner's appraisal.
37. Finally, Mr. Simons argues that if the Petitioner's appraisers added more sales, the appraisal's comparable sales analysis would support the assessed value. The Board is not persuaded by this argument. While the Respondent could have presented its own appraisal, merely arguing that adding additional sales to the Petitioner's appraisal would support the assessed value of the Petitioner's property is insufficient to rebut the Petitioner's case.

SUMMARY OF FINAL DETERMINATION

38. The Petitioner raised a prima facie case that the 2007 and 2008 assessed values of its property are overstated. The Respondent failed to rebut or impeach the Petitioner's case. The Board finds in favor of the Petitioner and holds that the property's 2007 and 2008 assessed values should be changed to \$5,035,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.