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

Petition: **89-030-14-1-4-10264-15**
Petitioner: **Georgia Direct Carpet, Inc.**
Respondent: **Wayne County Assessor**
Parcel: **89-18-08-240-109.000-030**
Assessment Year: **2014**

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

Procedural History

1. The Petitioner initiated its 2014 assessment appeal with the Wayne County Assessor on July 28, 2014.

2. On March 6, 2015, the Wayne County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioner.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.

4. The Board issued a notice of hearing on June 8, 2016.

5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on July 26, 2016. He did not inspect the property.

6. Certified tax representative Richard Werner appeared for the Petitioner and was sworn as a witness. Attorney Edward O. Martin appeared for the Respondent. Wayne County Assessor Betty Smith-Henson and Wayne Township Assessor Timothy G. Smith were sworn as witnesses for the Respondent.

Facts

7. The commercial property under appeal is located at 1530 South 9th Street in Richmond.

8. The PTABOA determined a total assessment of $203,000 (land $29,200 and improvements $173,800).

9. The Form 131 claimed the total assessment should be $112,700 (land $18,500 and improvements $94,200).

Record

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

    a) Form 131 with attachments,

    b) A digital recording of the hearing,

    c) Exhibits:

Petitioner Exhibit 1:	Petitioner's computation of requested value,
Petitioner Exhibit 2:	Original 2014 subject property record card,
Petitioner Exhibit 3:	Revised 2014 subject property record card.
Respondent Exhibit 1:	"2014 Commercial / Industrial Land Order,"
Respondent Exhibit 4:	"IncomeWorks" valuation of subject property,
Respondent Exhibit 5:	Wayne Township Assessor's appeal form dated September 8, 2014,[1]
Respondent Exhibit 11:	Notification of Final Assessment Determination (Form 115) dated March 6, 2015.

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated June 8, 2016,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Power of Attorney for Richard Werner,
Board Exhibit E:	Notice of Appearance for Edward O. Martin.

    d) These Findings and Conclusions.

Objections

11. Mr. Martin objected to Petitioner's Exhibit 1 on two grounds. First, he argued that the exhibit is hearsay, because Mr. Werner made "conclusions without providing underlying data." Second, Mr. Martin argued that Mr. Werner violated Rule 704(b) of the Indiana Rules of Evidence as expert witnesses "are not allowed to give opinions stating legal conclusions." In response, Mr. Werner offered to "run home and get the underlying data." The ALJ took the objections under advisement.

12. "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. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is

[1] The Petitioner initially objected to Respondent's Exhibit 5 but ultimately withdrew the objection.

> properly objected to and 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 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

13. Here, Mr. Werner, who prepared Petitioner's Exhibit 1, was present at the hearing to testify and was subject to cross-examination. Thus, the exhibit is not hearsay. As to whether Mr. Werner offered enough underlying data to substantiate his conclusion that goes to the weight of the exhibit rather than its admissibility. Therefore, the hearsay objection is overruled.

14. As to the second prong of the objection, the rules of evidence do not strictly apply in Board proceedings. *See* 52 IAC 2-7-2(a)(2) ("[T]he administrative law judge shall regulate the course of proceedings in . . . a manner without recourse to the rules of evidence."). But the rules of evidence exist for a reason, to promote determining the truth and justly resolving proceedings. *See* Ind. R. Evid.102. Those rules therefore inform the Board regarding the admissibility and weight of the evidence.

15. Rule 704(b) of the Indiana Rules of Evidence provides that, "[W]itnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions." Ind. R. Evid. 704(b). Here, Mr. Martin did not explain how that rule applied to the Board's proceedings, but argued that Mr. Werner, in concluding that the income approach was not an applicable valuation method for the subject property under the statutes or administrative guidelines, made a legal conclusion.

16. The Board is not persuaded that Rule 704(b) applies to this set of circumstances, or, even if it did, that Mr. Werner has made a legal conclusion. In determining that the income approach was not applicable, Mr. Werner made a determination that assessors, appraisers, and other valuation experts typically make when valuing property. While statute and administrative rules address components of that determination, the Board does not view Mr. Werner's determination as a legal conclusion. Accordingly, the objection is overruled and Petitioner's Exhibit 1 is admitted.

17. The Petitioner objected to Respondent's Exhibit 4 arguing "the calculations here are incorrect." The ALJ overruled the objection at the hearing stating the objection goes to the weight of the evidence rather than its admissibility. The Board adopts the ALJ's ruling and Respondent's Exhibit 4 is admitted.

Contentions

18. Summary of the Petitioner's case:

a) The property's 2014 assessment is too high. In an effort to prove this, the Petitioner presented an analysis estimating the property's value at $112,700. While the Petitioner's representative, Mr. Werner, testified he "mainly disagrees with the land assessment and the methodology used to compute it," he also appears to have requested a lower improvement value in his analysis. *Werner argument; Pet'r Ex. 1.*

b) In developing his estimate of value, Mr. Werner relied mostly on the cost approach. In computing a land value he was forced to utilize recent assessments of seven "nearby properties" as no recent commercial property sales occurred in the vicinity of the subject property. In a three-block radius Mr. Werner found assessments ranging from $22,000 per acre to $93,000 per acre. After deliberating, Mr. Werner selected five of these properties with assessments ranging from $22,000 to $43,000 per acre. The average per acre value of these properties equated to $25,000. Mr. Werner then multiplied the average acre value by the size of the subject property's lot 0.74. This calculation yielded a land value for the subject property of $18,500. *Werner testimony; Pet'r Ex. 1.*

c) As for how the improvement value was computed, Mr. Werner testified that:

> "[W]e used basically the same cost approach the county used. We came up with the same value on the cost approach for the building, pavement, and fence for a total of $84,200 on improvements."[2]

The total value indicated by Mr. Werner's cost approach would be $112,700. *Werner testimony; Pet'r Ex. 2.*

d) Mr. Werner also developed a sales-comparison approach in his analysis. Again, Mr. Werner was unable to find any local commercial property sales, so he utilized three sales that occurred in Cambridge City, Winchester, and New Castle, respectively. He applied various percentage adjustments to account for "some" differences between the properties. He determined an adjusted price per square foot of $8.40. When this amount is multiplied by the size of the subject property, 15,096 square feet, the sales-comparison approach yields a value of $128,800. *Werner testimony; Pet'r Ex. 1.*

e) Utilizing these same three sales, Mr. Werner developed an assessment comparison as well. Various "percentage adjustments" were offered to account for "some differences" between the properties. The assessment comparison approach yielded a value of $113,300. *Werner testimony; Pet'r Ex. 1.*

f) Because the subject property is not currently leased and properties with similar uses are generally not income producing properties, the income approach is not applicable. Further, the sales-comparison and assessment-comparison approaches are "less

[2] This total appears to be a typographical error, however, as the amounts shown for the building, pavement, and fence actually add up to $94,200.

applicable" as the properties utilized were not "local." Therefore, Mr. Werner determined the cost approach is the best method of valuing the property. *Werner testimony; Pet'r Ex. 1.*

g) The Respondent's analysis is flawed as the property was assessed using the income approach. The Respondent failed to provide "any supporting documentation or communicate her valuation results in a manner that is not misleading." As such, this should be viewed as a violation of the Uniform Standards of Professional Appraisal Practice (USPAP). *Werner argument; Pet'r Ex. 1.*

19. Summary of the Respondent's case:

a) The property is correctly assessed. The Petitioner's only "disagreement" is with the land value. The land value was determined through the application of the "Land Order." Specifically, a value of $140 per front foot was applied to the "entire market area." That value was then applied to the subject property to determine an accurate land value. Additionally, negative influence factor was applied. *Martin argument; Smith-Henson testimony; Resp't Ex. 1.*

b) The property was assessed via the income approach utilizing the software product "IncomeWorks." Nonetheless, several changes were made to the assessment as a result of the Petitioner's original appeal. Corrections were made to the lot size, and the negative influence factor was changed from 25% to 40%. The size of the "paving" was also corrected. The capitalization rate, originally "unloaded" at 9.75%, was corrected and "loaded" at 3% in computing the current assessment. *Smith-Henson testimony; Smith testimony; Resp't Ex. 2, 5, 11.*

c) In any event, the burden was with the Petitioner, and it failed to make a prima facie case that the 2014 assessment is incorrect. *Martin argument.*

Burden of Proof

20. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 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, 1233 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

21. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

22. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

23. Here, there was no dispute the assessment decreased from $408,000 in 2013 to $203,000 in 2014. In fact, the Petitioner's representative admitted the Petitioner has the burden of proof. The burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioner.

Analysis

24. The Petitioner failed to make a prima facie case for reducing the 2014 assessment.

a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. 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.

b) Regardless of the method used, a party must explain how the evidence relates to 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. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).

c) Here, the Petitioner mainly relied on a "cost approach" analysis prepared by its tax representative, Mr. Werner. In the context of this case, though, the term "cost approach" is a misnomer. Mr. Werner indicated, at least through his testimony, he agreed with the Respondent's cost approach for the building, pavement, and fence. He testified that he was "mainly challenging the land value." When using the cost approach, it is necessary to look to the market to develop a "value for the land as if vacant." MANUAL at 9. Mr. Werner appears to have relied on an assessment-comparison approach in attempting to do that.

d) Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of the property under appeal. Ind. Code § 6-1.1-15-18(c)(1).

But the determination of whether the properties are comparable must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150, 153 (Ind. Tax Ct. 2014). In other words, just as when relying on the sales-comparison approach, 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 two properties. *Long*, 821 N.E.2d 466 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) Mr. Werner failed to establish the properties he selected are in fact comparable to the subject property. The properties Mr. Werner selected were assessed between $22,444 and $93,333 per acre. The record does not contain any evidence indicating which property is any more or less comparable to the subject property. Additionally, Mr. Werner failed to offer any explanation as to why his indicated value of $25,000 per acre is an accurate value. This value is on the low end of his spectrum of the purportedly comparable assessments. If Mr. Werner intended to argue that the lower-valued properties are more comparable, he failed to make that case.

f) While Mr. Werner did not rely on them, he also offered a sales-comparison and assessment comparison approach utilizing three sales from other counties. This evidence also lacks probative value. Mr. Werner offered little evidence that these properties are comparable to the subject property. Further, he failed to offer any support for his percentage adjustments to account for differences between the properties.

g) Mr. Werner prepared a cost approach for the improvements. While he "agreed with the Respondent's cost approach," his indicated value is much lower than the current improvement assessment of $173,800. Mr. Werner did not specifically explain the difference. The Board concludes that it stems from the Respondent's decision to use the income approach, rather than the cost approach, to value the property.[3] Because the subject property is not currently leased and is not an income producing property, it appears Mr. Werner disagrees with valuing the property based on the income approach.

h) In addition to testifying that the subject property is not an income producing property, Mr. Werner contends that most properties of this nature are not income producing properties. The Respondent did not dispute this contention, nor explain the decision to use the income approach to value the property. Nonetheless, the overriding question is whether the value the Respondent determined is correct. The Petitioner's argument amounts to an attack on the methodology used to compute the

[3] The subject property record card contains a $95,400 adjustment increasing the value of the improvements as determined by the "cost computation on the property record card." A memorandum entry indicates that adjustment is to "arrive at target based on income approach." *Pet'r Ex. 3.*

assessment. But attacking the methodology of the assessment is not sufficient to make a prima facie case. *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a prima facie case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).

i) Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

25. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2014 assessment will not be changed.

ISSUED: October 21, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at<http://www.in.gov/judiciary/rules/tax/index.html>.