

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

Petition No.: 89-015-07-1-3-00648
Petitioner: Harvest Land Cooperative, LLC
Respondent: Wayne County Assessor
Parcel No.: 242420021600010
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 Wayne County Property Tax Assessment Board of Appeals (PTABOA) by written document dated March 1, 2007.
2. The PTABOA issued its decision on August 1, 2008.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition dated September 18, 2008. 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 February 4, 2009.
5. The Board held an administrative hearing on March 31, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Ronald D. Fetters, taxpayer representative
Ben Bluhm, Harvest Land Cooperative representative
 - b) For Respondent:¹ Michael P. Statzer, Wayne County Assessor
Joseph L. Kaiser, PTABOA President
Richard D. Lee, PTABOA member
Dan Williams, PTABOA member

¹ Denise Verhasselt, Wayne County Deputy Assessor, was also present to assist Mr. Statzer, but was not sworn and did not present any testimony.

Facts

7. The subject property is a grain elevator and related structures located at 1481 Germantown Road, in the town of Pershing, Jackson Township in Wayne County.
8. The Administrative Law Judge (ALJ) did not inspect the property.
9. For 2007, the PTABOA determined the assessed value of subject property to be \$51,400 for the land and \$840,600 for the improvements, for a total assessed value of \$892,000.
10. The Petitioner requested an assessed value of \$51,400 for the land and \$381,900 for the improvements, for a total assessed value of \$433,300.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessments:
 - a) The Petitioner contends that the assessed value of the property is excessive, based on calculations from the Guidelines, and sales and assessment information of other grain elevators in Indiana. *Fetters testimony*. According to the Petitioner's representative, the Petitioner is only contesting the assessments of some of the improvements and not the land value. *Id.*; *Pet. Ex. 2 and 8*.
 - b) The Petitioner's representative first argues that the property's elevator, annex and bin improvements were incorrectly priced using their individual bushel capacities instead of the total capacity of the facility. *Fetters testimony*; *Pet. Exs. 2, 8, and 9*. According to Mr. Fetters, by using the tables provided in the Guidelines for a 400,000 bushel facility, and then trending those values upward by 30%, which the Petitioner contends the County used to trend the values for 2007, the total value for those improvements would be \$498,800, or approximately \$0.88 per bushel. *Fetters testimony*; *Pet. Exs. 2, 8-13*.
 - c) The Petitioner's representative also argues that the grain elevator should not be depreciated based on a 60 year schedule despite the fact that the 2002 cost schedules changed the depreciation to 60 years from 30 years in 1995. *Fetters testimony*; *Pet. Ex. 12*. Further, Mr. Fetters argues, given the age of the improvements, and taking into consideration the other improvements and land value, obsolescence of 65% should be applied to the improvements. *Fetters testimony*; *Pet. Exs. 2 and 8*. According to Mr. Fetters, that would bring the facility's assessed value per bushel down to \$0.66. *Id.*
 - d) Finally, the Petitioner's representative presented sales and assessment information on other grain elevators in the state in an effort to show the subject property is over-valued. *Fetters testimony*. Mr. Fetters first offered the appraisal of a property in Fowler, Indiana, which estimated the value of grain elevators in 1997 to be \$0.25 to \$0.35 per bushel. *Id.*; *Pet. Exs. 14 and 15*. Mr. Fetters also offered

a number of sales that ranged from \$100 in August of 2004 for a grain elevator in Kirklin, Indiana to \$936,292 in July of 2001 for a grain elevator in Benton County. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent contends that the subject property is assessed correctly. *Statzer testimony.* According to Mr. Statzer, he used a cost basis minus depreciation to value properties like grain elevators, because sales of such properties are rare. *Statzer testimony.* Mr. Statzer testified that to trend its assessed values as required by statute in 2006, the County chose to have its cost tables updated. *Id.* In support of this contention, the Respondent presented the revised cost tables, prepared by Nexus Group. *Id.; Resp. Ex. 2.*
- b) The Respondent argues that the Petitioner failed to show the market value-in-use of the Petitioner's grain elevator in 2007. *Statzer argument.* According to Mr. Statzer, the Petitioner's representative used old cost tables rather than the current cost tables. *Id.* Further, the Petitioner's representative focused only on some of the improvements and failed to show the property's over-all value. *Id.* Thus, the Respondent concludes, the Petitioner failed to raise a prima facie case for a change in assessed value. *Id.*

Record

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

- a. The Petition and all pre-hearing and post-hearing submissions by either party.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1: Form 131 petition,
Petitioner Exhibit 2: Attachment to Form 131 petition,
Petitioner Exhibit 3: Tax representative disclosure statement,
Petitioner Exhibit 4: Power of Attorney form,
Petitioner Exhibit 5: Notice of Filing to County Assessor,
Petitioner Exhibit 6: Form 115,
Petitioner Exhibit 7: PTABOA request for review,
Petitioner Exhibit 8: Attachment to PTABOA request for review,
Petitioner Exhibit 9: 2007 Property Record Card (PRC) for the subject
property,
Petitioner Exhibit 10: REAL PROPERTY ASSESSMENT GUIDELINES FOR
2002-VERSION A, Appendix G, Schedule G,
Petitioner Exhibit 11: 1995 REAL PROPERTY ASSESSMENT MANUAL, Rule
12, p. 18,

Petitioner Exhibit 12: 1995 REAL PROPERTY ASSESSMENT MANUAL, Rule 12, p. 26,

Petitioner Exhibit 13: 1995 REAL PROPERTY ASSESSMENT MANUAL, Rule 12, p. 28,

Petitioner Exhibit 14: Summary of comparable sales and assessment information,

Petitioner Exhibit 15: Comparable sales and assessment information,

Petitioner Exhibit 16: Blackford Co. grain elevator appeal information,

Respondent Exhibit 1: Neighborhood land order,

Respondent Exhibit 2: Revised cost tables, subject property's PRC, and the Petitioner's evidence from the PTABOA hearing,

Board Exhibit A: Form 131 Petition,

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 establish a prima facie case for a reduction in the subject property's assessed value. The Board reached this decision for the following reasons:

- 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) *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 other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) The Petitioner’s representative first contends that the Assessor erred by valuing the property’s grain elevators and annexes by their individual capacities rather than by the total storage capacity of the facility. *Fetters testimony*. Mr. Fetters, however, provides an excerpt from the 1995 Guidelines in support of this contention. *Pet. Ex. 11*. While the 1995 Guidelines state that “Costs are based on total licensed bushel capacity of the elevator and/or annex facility except for steel tanks and bins which are priced on a cost per tank basis,” this language is noticeably absent from the 2002 Guidelines cost schedule for grain elevators. *Pet. Ex. 10*. The Petitioner presented no evidence to show that such a restriction applied subsequent to the 1995 Guidelines.
- d) Even if the grain elevator should have been priced based on its total capacity, Mr. Fetters failed to show what the property’s “correct assessment” should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003) (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). Mr. Fetters merely offers an alternative pricing schedule, apparently based on the 1995 cost schedules. This is insufficient to show the Petitioner’s 2007 assessment was in error.
- e) Mr. Fetters also contends that the Respondent’s method of trending by contracting for new cost schedules was somehow wrong or inappropriate because other assessors did not trend that way. *Fetters testimony*. Similarly, he contends that

the 2002 Guidelines' application of a 60 year depreciation schedule for grain elevators rather than the 30 year depreciation schedule in the prior assessment rules was ill-considered because "very few things last 60 years and don't change." *Id.* Mr. Fetters, however, presents no evidence to support these allegations. 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). While Mr. Fetters may have chosen to value the property differently, he presented no evidence to show that the method by which the Assessor valued the subject property was in error.

- f) Further, in focusing on the Guidelines-based pricing of the facility, the Petitioner is dealing strictly with the methodology of the assessment, and failing to address the property's market value-in-use. The Tax Court has repeatedly stated that even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of a property's market value-in-use in order to prevail. *See* 50 IAC 2.3-1-1(d) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (explaining that Indiana overhauled its property tax system and the new system shifts the focus from examining how the regulations were applied to examining whether a property's assessed value actually is the market value-in-use); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006) (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system). Therefore, the Petitioner's argument fails to raise a prima facie case for a change in the subject property's assessment.
- g) The Petitioner's representative also presents sales and assessment data from other grain elevators to support his claim for a reduction in value for the Petitioner's property. *Fetters testimony; Pet. Ex. 15*. While market value data on comparable properties is an effective method of showing an error in the assessment, it is up to the Petitioner to establish that the properties are truly comparable and to explain the characteristics of the subject property, how those characteristics compare to the alleged comparable properties, and how any differences affect the relevant market value-in-use of the properties. Without sufficient, meaningful facts and analysis, conclusive comparisons are not probative evidence. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Here the Petitioner simply presented sales information about other grain elevators, without any attempt to establish comparability. Further the sales ranged in value from \$100 to almost \$1,000,000 dollars for the various facilities. The Board is unable to draw any conclusions from this evidence.

- h) The Petitioner failed to raise a prima facie case that the subject property was assessed in excess of its market value-in-use for the March 1, 2007, assessment date. Where 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 assessments 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>.