

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

Petition: 53-009-06-1-4-00233
Petitioner: Hoosier Outdoor Advertising Corp.
Respondent: Monroe County Assessor
Parcel: 015-26370-00
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated August 10, 2007.
2. The PTABOA mailed its decision on October 17, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on December 6, 2007, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 27, 2009.
5. Administrative Law Judge Kay Schwade held the Board’s administrative hearing on April 2, 2009. She did not conduct an inspection of the property.
6. Certified Tax Representative Gregory Poore represented the Petitioner. Attorney Marilyn Meighen represented the Respondent. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner — Greg Poore,
Joseph Hickman,
 - For the Respondent — Ken Surface,
County Assessor Judith Sharp (but she did not testify).

Facts

7. This is a case about commercial property located at 900 South Walnut Street in Bloomington.

8. The PTABOA determined the assessed value is \$779,700 for land and \$88,200 for improvements (total \$867,900).
9. The Petitioner requested an assessed value of \$361,800 for land and \$88,200 for improvements (total \$450,000).

Record

10. The official record contains the following:
 - a. The Petition with attachments,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit A – Plat map and an aerial showing the subject property,
Petitioner Exhibit C – Appraisal,¹
Respondent Exhibit A – Request for Preliminary Conference,
Respondent Exhibit B-1 – The Intec Group, Inc. v. Beaver Township Assessor
determination issued by the Board on February 7, 2003,
Respondent Exhibit B-2 – Thomas C. Reed v. Elkhart County PTABOA
determination issued by the Board on June 12, 2002,
Respondent Exhibit D – Property record card and sales disclosure form for Parcel
015-10870-00,
Respondent Exhibit G – Property record card and sales disclosure form for Parcel
015-35620-01,
Board Exhibit A – Form 131 Petition for Review of Assessment,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:
 - a. The subject property is used as the Petitioner's headquarters with a 3,200 square foot office, a 3,600 square foot repair shop, and yard storage. The subject property is a long narrow parcel with a small piece fronting on South Walnut Street. *Poore testimony.*
 - b. The storm sewer along Walnut Street ties into the drainage ditch running across the subject property. After the City of Bloomington completed the storm sewer improvements on Walnut Street, the capacity for holding water on the subject property was increased. *Poore testimony; Hickman testimony; Pet'r Ex. A.*

¹ The Petitioner identified the appraisal as containing confidential information. The Petitioner provided a redacted copy of the appraisal, which is also in the Board's file.

- c. The most significant event affecting the subject property was the spring flood in 2008. It caused the parking lot to flood so deep that Mr. Hickman was “wading up to [his] armpits” and cars were floating and hanging over the edge of the drainage ditch. As a result of that flooding, the boilers in the buildings were damaged and required replacement. The cost to repair the flood damage exceeded \$30,000. *Hickman testimony.*
- d. With the exception of the small piece that fronts on Walnut Street, the rear portion of the subject property is in a flood zone. Although the subject property has flooded in the past, the 2008 flood was the worst. The uses of property located in flood zones are limited. The rear portion of the subject property should have a big negative influence factor. *Poore testimony; Hickman testimony.*
- e. Mr. DeBruicker, president and chairman of the board for Hoosier Outdoor Advertising, employed Mr. Poore to appraise all of the Petitioner’s properties, including the subject property. The appraisals were ordered to establish value of the Petitioner’s real estate holdings for making business decisions. The appraisals were performed independently of and were not associated with the appeal process. *Poore testimony.* A statement (presumably from Mr. Poore) attached to Petitioner Exhibit A says,

The owners of HOA hired me to do an appraisal on several of their properties. The owners stated at the time that it was to be used for internal decision making purposes. They wanted to know the fair market value of the property. My appraisal has been included as evidence. The appraisal was not intended to be used in the tax appeal process. However, since it was made by me for a different purpose, the report was made as an unbiased appraiser.
- f. The general manager hired Mr. Poore as a tax representative for appeals of three properties. The tax representative work is on a contingency fee arrangement. *Poore testimony.*
- g. When he raised concerns about acting as the Petitioner’s tax representative as well as being the appraiser of the subject property, the owners told him not to worry about it. *Poore testimony.*
- h. The current assessment values the subject property at \$127 per square foot. The appraisal values the subject property at \$450,000. That amounts to \$66 per square foot. After it sold in 2008, the subject property was rented for 12 months at \$5,200 a month, which is \$9.18 per square foot. *Poore testimony.*
- i. The Petitioner’s property located at 812 South Walnut Street, which was also included as part of the appraisal assignment, sold in 2008 for less than its

appraised value. This is evidence that the appraisal is not skewed. *Poore testimony.*

- j. Even though the appraisal's October 27, 2007, date of valuation is outside the valuation "window" for the 2006 assessment, annual trending indicates that values are being adjusted upward. Therefore, back in 2006 the values would be less. The assessed value of the subject property should be \$450,000. *Poore testimony; Pet'r Ex. C.*

12. Summary of the Respondent's case:

- a. The valuation date for a 2006 assessment is January 1, 2005. The appraisal values the subject property as of October 27, 2007, which is approximately 2 years and 9 months beyond the valuation date. *Surface testimony.*
- b. For a 2006 assessment, sale data within a time period of January 1, 2004 through December 31, 2005 were analyzed. The property located at 1504 South Walnut Street is in the same neighborhood and has the same land base rate as the subject property. It sold for \$300,000 in February 2005. The property located at 901 South Walnut Street sold for \$169,000 in May 2003. These sales were analyzed and used to establish the 2006 land values. Because the area does not have any vacant land sales, the normal and customary practice of extrapolating the improvement value from the sale price was used to arrive at a land value. *Surface testimony; Resp't Ex. D, G.*
- c. The subject property has 1.80 acres compared to 0.20 acres for the 901 South Walnut Street property and 0.10 acres for the 1504 South Walnut Street property. The subject property's excessive size and lack of frontage could be a determining factor regarding land value. *Surface cross.*
- d. The 2008 flooding could not have been foreseen when the 2006 assessments were being developed. The subject property's data did not indicate that the subject property flooded or that the subject property was in a flood zone. *Surface testimony.* Even if being subject to flooding causes loss of value, the Petitioner must quantify that loss. *Meighen argument.*
- e. Although the appraisal states that all three approaches to value were considered, it also says that the cost approach was not developed due to the age of the subject property and that the appraisal's strength is in the sale and income approach. *Surface testimony; Pet'r Ex. C.*
- f. The Petitioner initiated the appeal process with a Request For Preliminary Conference—signed by Greg Poore—on August 10, 2007. *Resp't Ex. A.* The appraisal says the property was inspected on October 27, 2007. And the cover letter for the appraisal is dated December 1, 2007. *Pet'r Ex. C.* The appraisal took place approximately 2½ months after the appeal was initiated. The

Petitioner's representative is "wearing two hats." He is working as a tax representative with a contingency fee arrangement and relying on his expert work as an appraiser. This arrangement goes to the weight and credibility of the Mr. Poore's opinion as an expert. *Meighen argument.*

- g. The Tax Court has held that an expert witness whose fee is contingent upon the outcome of the case is improperly motivated to enhance his compensation and cannot be objective. The potential to enhance the compensation makes the contingency fee arrangement inappropriate for an expert. *Meighen argument.*
- h. The best way to make a prima facie case is through an appraisal, but an appraisal may not always be enough. The Board has recognized that an appraisal is not always reliable or probative. The Tax Court has held that appraisals cannot merely make conclusions and that unsupported expert testimony is conclusory. *Meighen argument.*
- i. The Petitioner must walk the Board through its analysis connecting the evidence to the claimed value. Without explaining that connection, the Petitioner's case is simply statement and conclusions. It lacks reliable evidence showing that the current assessment is incorrect and what the correct assessment should be. *Meighen testimony.*

Analysis

- 13. The Petitioner who seeks 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). In making its case, the Petitioner 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").
- 14. The Petitioner failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
 - a. 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT 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 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. 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.

- b. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Petitioner proved without any dispute that the subject property flooded in 2008, but that fact alone is not enough. The Petitioner did not establish how much the flooding negatively impacted the market value-in-use. And that point is essential to making a case. Merely suggesting some unspecified big negative influence factor based on flooding does not make a case for any assessment change.
- c. Apparently the appraisal was supposed to prove what the actual market value-in-use really was, but it is not very convincing. Although an appraisal is the type of market based evidence that often would be relevant and probative to determining market value-in-use of a property, in this case Mr. Poore's appraisal is problematic in at least three major ways.
- d. An expert's opinion (such as an appraisal) should be unbiased. Where the expert has a financial interest in the outcome of a case, such as with a contingency fee, that fact is an appropriate consideration in weighing the credibility of the expert's opinion. *See Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 876 (Ind. Tax Ct. 1993). Mr. Poore appears to have been cognizant of the issue because in his presentation he made several attempts to establish separation between his role as appraiser and his role as a tax representative. But the attempts to separate the contingency fee associated with his tax representative role from his appraisal are not convincing. And in fact, the concern and doubt about the appraisal is even greater because of how Mr. Poore presented the situation. He tried to make it appear that he did the appraisal, and subsequently got involved with the tax appeal regarding this property. The Respondent correctly pointed out, however, that the documentation proves the opposite. Mr. Poore initiated this appeal with the Request For Preliminary Conference that was dated and filed on August 10, 2007. The Power of Attorney authorizing him to represent the Petitioner in the appeal is dated even earlier, on August 6, 2007. The appraisal states on page 3, "The date of inspection was October 27, 2007. The collection process of supporting data was conducted during the months of October and November in 2007." Clearly Mr. Poore was involved in this tax appeal on a contingent fee basis before he did this appraisal. The failure to be frank and forthcoming on such an important point is extremely troubling and obviously has negative impact on the credibility of the appraisal and the rest of what Mr. Poore said.

- e. The appraisal is clearly identified on page 3 as a “Restricted Appraisal Report” that “sets forth only the appraiser’s conclusion. Supporting documentation is retained in the appraiser’s file.” On page 19, the certification says that it conforms to the Uniform Standards of Professional Appraisal Practice (“USPAP”).² Nevertheless, the credibility of the appraisal is in doubt. The appraisal states that the strength of the opinion of value resides in the sales comparison approach and the income approach. But the entirety of the appraisal and Mr. Poore’s testimony discloses nothing about the sales that were considered or the income and expense data that was considered. Furthermore, the evidence does not even disclose what value the sales approach suggested or what value the income approach suggested. It does not disclose how Mr. Poore reconciled those values. Such additional information might have reinforced the credibility of the appraisal. The lack of any such information only diminishes the credibility of the appraisal to the point where it has little or no probative value.
 - f. 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).
 - g. Beyond its diminished weight and credibility, the appraisal does not make the Petitioner’s case because it purports to establish a value as of October 27, 2007, and nothing substantial relates that value to the required valuation date, January 1, 2005. Mr. Poore’s conclusory statement that the 2006 value would have been less than his appraisal because annual trending is adjusting values upward is not probative evidence. *See Whitley Prods. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Failure to relate the appraisal to the required valuation date is a fatal problem for the Petitioner’s case. Consequently, the relevance or probative value of the appraisal was not established.
15. 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); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

² Interestingly, the certification also states “my compensation is not contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of, this report.”

Final Determination

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

ISSUED:

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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, 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>>