

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

Petition No.: 64-016-06-1-4-00236
Petitioner: Izaak Walton League of America
Respondent: Porter County Assessor
Parcel No.: 08-000287569
Assessment Year: 2006

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 Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 26, 2008.
2. The Petitioner received notice of the decision of the PTABOA on September 9, 2008.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Board on October 9, 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 July 8, 2009.
5. The Board held an administrative hearing on September 16, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner:¹ Richard Jelesky, Treasurer, Izaak Walton League,
Charles A. Siar, President, Izaak Walton League,

For Respondent: Sharon S. Meier, Hearing Officer, Porter County,
Peggy Hendron, Deputy Assessor, Porter County.

¹The Petitioner was represented by attorney Gerold L. Stout.

Facts

7. The subject property is a commercial property located at 1269 Crisman Road, Portage, in Porter County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$436,900 for the land and \$144,800 for the improvements, for a total assessed value of \$581,700.
10. The Petitioner requested an assessment of \$464,600.

Issues

11. Summary of the Petitioner's contentions in support of an error in its assessment:
 - a. The Petitioner's counsel argues that the Izaak Walton League is a non-profit organization whose purpose is the preservation, restoration, and protection of American soils, woods, water, and wildlife. *Stout argument*. According to Mr. Stout, the property at issue in this appeal is not a commercial marina, but a recreational property used strictly by the members to promote hunting, fishing, and family activities. *Id.*
 - b. Mr. Stout contends the property is subject to several restrictions that negatively impact the value of the land. *Stout testimony*. According to Mr. Stout, the property has a deed restriction for a riparian district that covers approximately 2 acres of the land. *Id.*; *Petitioner Exhibit 3*. In addition, the property is bound by an agreement between the Izaak Walton League and the Department of Natural Resources (DNR) which requires that perpendicular boat slips be removed and, if the slips are replaced, they must be parallel to the land which reduces the number of boat slips that the Petitioner can have on its property. *Petitioner Exhibit 4*; *Stout argument*. Finally, the national chapter of the Izaak Walton League limits the amount of land that can be sold at any one time to 10% and only with the approval of the national chapter. *Stout argument*.
 - c. The Petitioner also argues the property is over-valued based on an appraisal that valued the property at \$464,600 as of January 1, 2005. *Stout argument*; *Petitioner Exhibit 5*. In support of this contention, the Petitioner presented an appraisal prepared by Mr. Jeffrey R. Vale, who is a MAI and an Indiana certified general appraiser. *Petitioner Exhibit 5*. In his appraisal, Mr. Vale certified that he appraised the property in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). *Id. at 28*. In the report, Mr. Vale explained that the subject property was appraised using only the cost

approach to value with comparable sales used to develop the land value. *Id. at 7.* According to Mr. Vale, he did not use the sales comparison approach to value because he could not find any sales of recreational properties. *Id.; Stout argument.* Further, the appraiser did not use the income approach to value because of the restrictions on the property. *Id.; Petitioner Exhibit 5 at 8.* According to Mr. Vale, an income investor would not likely buy the property because the future income is very uncertain. *Id.* Mr. Stout argues that the Indiana Tax Court clearly stated that the most effective method to rebut the presumption an assessment is correct is to present a market value-in-use appraisal completed in conformance with USPAP. *Stout argument.*

- d. Finally, in his rebuttal argument, Mr. Stout contends that, while Ms. Meier presented evidence as to riparian land being classified as “type 23”, there is nothing on the property record card indicating that any of the Petitioner’s land has been classified as “type 23”, which would have a 100% influence factor. *Stout argument; Respondent Exhibits 3 and 6.*

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

- a. The Respondent’s witness, Ms. Meier, contends the subject property’s assessment is correct because the assessor considered the various land types in valuing the property. *Meier testimony.* In support of this contention, Ms. Meier submitted the definitions of commercial land categories² and the property record card. *Respondent Exhibits 3 and 7.* According to the property record card, the subject property was assessed with 2 acres of Type 11 land (primary land), 10 acres of Type 13 land (usable undeveloped), and 9.515 acres of Type 14 land (unusable undeveloped).³ *Id.* Ms. Meier further contends the riparian corridor area is 1,400 feet by 60 feet, not 2 acres as stated by Petitioner’s counsel. *Meier testimony; Respondent Exhibit 8.*
- b. Ms. Meier further contends the subject property is zoned marina waterway under the City of Portage zoning ordinance. *Meier testimony.* According to Ms. Meier, the Petitioner’s appraisal identifies this zoning as not for just recreational usage, but for medium density residential development, small

² The REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES) define the categories of commercial and industrial land as follows: primary land is the primary building or plant site, which may include land located under buildings, regularly used parking areas, roadways, regularly used yard storage, and necessary support land; secondary land is the land used for purposes that are secondary to the primary use of the land, such as parking areas and yard storage that are not used regularly; usable undeveloped land is the amount of acreage that is vacant and held for future development; and unusable undeveloped is the amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes. GUIDELINES at 85.

³ On page 93 of the GUIDELINES, the land type options for commercial and industrial acreage tracts are indicated as: “11”, commercial or industrial primary land; “12”, commercial or industrial secondary land; “13”, commercial or industrial usable undeveloped land; “14”, commercial or industrial unusable undeveloped land.

retail or offices, entertainment, and boat or waterway use. *Id;* Respondent Exhibit 9 at 11.

- c. Finally, Ms. Meier argues that the Petitioner's appraisal is flawed. *Meier argument.* According to Ms. Meier, one of the sales used by the appraiser was a rural residential property and not a commercial site like the subject property. *Meier testimony; Respondent Exhibit 9 at 14.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 64-016-06-1-4-00236 Izaak Walton,
 - c. Exhibits:

Petitioner Exhibit 1 – The property's original 2006 property record card,
Petitioner Exhibit 2 – The property's corrected property record card,
Petitioner Exhibit 3 – Natural Areas Deed Restriction Agreement,
Petitioner Exhibit 4 – Army Corps of Engineers Permit,
Petitioner Exhibit 5 – Appraisal,

Respondent Exhibit 1 – The property's original 2007 property record card,⁴
Respondent Exhibit 2 – The property's original 2006 property record card,
Respondent Exhibit 3 – The property's corrected 2006 property record card,
Respondent Exhibit 4 – Aerial view of the property,
Respondent Exhibit 5 – Additional photographs of the property,
Respondent Exhibit 6 – Chapter 2, page 102, Real Property Assessment Guidelines, Classified Land,
Respondent Exhibit 7 – Chapter 2, page 85, Real Property Assessment Guidelines, Description of Land,
Respondent Exhibit 8 – Natural Area Deed Restriction Agreement,
Respondent Exhibit 9 – Appraisal,
Respondent Exhibit 10 – Army Corps of Engineers Permit,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated July 8, 2009,
Board Exhibit C – Hearing sign-in sheet,

⁴ The Petitioner's counsel objected to the admission of Respondent Exhibit 1 on the grounds that it was immaterial to the 2006 assessment. The Board agrees that Respondent Exhibit 1 is not relevant to the Petitioner's 2006 appeal and gives it no consideration in this decision.

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 provided sufficient evidence to establish an error in its assessment. 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). Appraisers traditionally have 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. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A (the GUIDELINES).
 - b. 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). But a taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.

- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party to an appeal must explain how his 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, 2006, assessment, that valuation date is January 1, 2005. 50 IAC 21-3-3.
- d. Here the Petitioner submitted an appraisal prepared by a certified licensed appraiser. *Petitioner Exhibit 5*. The appraiser certified that he prepared the appraisal according to USPAP standards. *Id.* The appraiser estimated the market value-in-use of the property to be \$464,600 as of January 1, 2005, which is the valuation date for the March 1, 2006, assessment. An appraisal performed in accordance with generally accepted appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioner raised a prima facie case that the subject property is over-valued.
- e. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent's witness defended the county's assessment by contending that the land was properly assessed according to the categories listed in the GUIDELINES. However, in order to carry its burden, the assessor 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. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).
- f. The Respondent also contends the Board should reject the Petitioner's appraisal evidence. According to the Respondent's witness, the appraisal shows that the property's zoning allows other uses besides recreational use. Ms. Meier, however, did not present any evidence that the property was actually being used for any purpose other than recreational use. Further, she contends that one sale used by the appraiser to estimate the land value was not of commercial property but she did not go forward to explain how or why this purported "flaw" invalidates the Petitioner's evidence. "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. Russell's calculations.

Rather, he merely asked open-ended questions or made conclusory statements”).

Conclusion

16. The Petitioner raised a prima facie case that its property is over-valued. The Respondent failed to rebut or impeach the Petitioner’s evidence. The Board finds in favor of the Petitioner and holds that the market value-in-use of the subject property for 2006 is \$464,600.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: December 4, 2009

Chairman, 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>>