

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

Petitions: 55-005-07-1-4-00016
55-005-07-1-4-00016a
55-005-07-1-4-00016b
Petitioner: Labeco Properties LLC
Respondent: Morgan County Assessor
Parcels: 55-01-36-183-009.000-005
55-01-36-187-004.000-005
55-01-36-187-003.000-005
Assessment Year: 2007

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Morgan County Property Tax Assessment Board of Appeals (PTABOA) by filing three Petitions for Review of Assessment (forms 130) dated September 12, 2008.
2. The PTABOA issued notice of its decision on February 6, 2009.
3. The Petitioner appealed to the Board by filing three Petitions for Review of Assessment (Forms 131) on March 23, 2009. The Petitioner elected to have these appeals heard according to small claims procedures.
4. The Board issued notices of hearing dated August 24, 2010.
5. Administrative Law Judge Ronald Gudgel held the Board's administrative hearing on November 16, 2010.
6. The following persons were sworn and presented testimony at the hearing:

For the Petitioner— Phillip S. Kappes, attorney and manager of Labeco,
John J. Stimson, Jr., co-manager of Labeco,
Mark E. Mathis, broker and owner of Mathis Real Estate,
Jason B. Flagg, environmental engineer, Troy Risk, Inc.,

For the Respondent— Brenda Brittain, Morgan County Assessor,
Reva Brummett, PTABOA member.

Facts

7. The property under appeal is located at 111 East Harrison Street in Mooresville. It consists of a manufacturing facility, a vacant lot adjacent to the building and a parking area across the street from the building.

8. The Administrative Law Judge did not inspect the property.

9. The PTABOA determined the assessed values are:

Parcel 55-01-36-183-009.000-005	land \$63,800 and improvements \$0
Parcel 55-01-36-187-004.000-005	land \$76,100 and improvements \$197,500
Parcel 55-01-36-187-003.000-005	land \$30,500 and improvements \$3,500

10. The Petitioner claimed the assessed values should be:

Parcel 55-01-36-183-009.000-005	land \$35,000 and improvements \$0
Parcel 55-01-36-187-004.000-005	land \$75,105 and improvements \$15,030
Parcel 55-01-36-187-003.000-005	land \$15,000 and improvements \$0

Record

11. The official record for this matter contains the following:

- a. The Form 131 Petitions,
- b. Digital recording of the hearing,
- c. Petitioner Exhibit 1 – Mathis “Appraisal” (despite references to this letter as an appraisal, it is not an appraisal),
Petitioner Exhibit 2 – Mathis “Appraisal” update (despite references to this letter as an appraisal, it is not an appraisal),
Petitioner Exhibit 3 – Environmental Remedial Cost Estimate,
Petitioner Exhibit 4 – Environmental Remedial Cost Estimate (update),
Petitioner Exhibit 5 – Groundwater Plume Identification (2007),
Petitioner Exhibit 6 – Groundwater Plume Identification (2010),
Petitioner Exhibit 7 – Building diagram,
Petitioner Exhibit 8 – Building photograph,
Respondent Exhibit 1 – Form 115 Determination,
Respondent Exhibit 2 – Form 130 Petitions,
Respondent Exhibit 3 – Projected cost to clean-up by year,

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

- d. These Findings and Conclusions.

Contentions

12. Summary of the Petitioner's case:

- a. Soil and groundwater at the site are environmentally contaminated with petroleum and volatile organic compounds at levels that exceed regulatory standards. The environmental remediation process, which is being managed by the Indiana Department of Environmental Management, will take years to complete. This situation reduces the value of the subject property. *Kappes testimony; Pet'r Ex. 3, 4, 5, 6.*
- b. A groundwater plume "is a contamination that has been released from the...property, migrated through the soil, and into the groundwater beneath the site. And then from there, once it's in the groundwater beneath the site it will travel with groundwater migrating away from the site." Original remediation costs were expected to exceed \$1 million based on the existence of a single groundwater plume as shown on Ex. 5. Additional site testing has established there really are two groundwater plumes originating from the property as shown on Ex. 6. Total remediation costs are now expected to be \$2.38 million. *Flagg testimony; Pet'r Ex. 3, 4, 5, 6.*
- c. The building has been poorly maintained. It was last painted in 1980. It has a 10-year rubber roof—half of which was put on in 1985 and the other half in 2002. After the tenant allowed the gas to be shut off because he did not pay the bill, getting the service restored required more than \$5,000 to be spent just to tighten leaking pipes. Currently half of the sixteen furnaces do not work. Most of the building has been "mothballed," except for the first and second floors of the office. Doors and windows are in pretty bad condition. It would be very expensive to bring the building up to standard. *Stimson testimony.*
- d. For all practical purposes the environmental issue prevents selling the subject property. Despite its deficiencies, however, the property is rentable. *Kappes argument.*
- e. The property has been on the market for some time, trying to rent it or sell it. One person was interested in purchasing the property, but he was unable to obtain financing due to the environmental contamination. Leasing the property has been difficult because several competing properties are available and they are in much better shape. *Mathis testimony.*

- f. Mr. Mathis evaluated the entire property (all three parcels) in a letter dated September 9, 2008, and concluded it suffered from several deficiencies, including difficult ingress/egress for delivery and transport trucks, poor visibility of the facility from the street, and a lack of available space for expansion. He said the process of environmental cleanup also affects the marketability of the property, but that impact is “unknown.” The estimated September 2008 market value of the property was between \$275,000 and \$325,000. *Mathis testimony; Pet’r Ex. 1.*
 - g. In a letter dated November 15, 2010, Mr. Mathis updated his opinion, concluding the property had lost approximately 18% of its value since 2008. His revised opinion of value was \$225,000. *Mathis testimony; Pet’r Ex. 2.*
13. Summary of the Respondent’s case:
- a. The PTABOA recognized the environmental contamination at the site and awarded 17% obsolescence to account for the remediation expenses. *Brummett testimony; Resp’t Ex. 1 at 2.*
 - b. Using the 2009 remediation costs as a base figure, the Respondent divided by three (representing 2007, 2008, and 2009) and allocated \$190,460 for each year, even though no remediation costs had been incurred in 2007. This annual figure equates to 17% obsolescence. *Brummett testimony; Resp’t Ex. 3.*

Analysis

14. 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).
15. 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”).
16. The Petitioner did not make a prima facie case for any assessment change.
- a. Nobody disputed that the presence of environmental contamination has a negative impact on the true tax value of the subject property. Merely establishing the existence of environmental contamination, however, is not enough to support changing the assessment. And there is no basis for concluding that the reduction in value would be equivalent to the costs of remediation. *See Lake Co. Assessor v. U.S. Steel Corp.*, 901 N.E.2d 85, 94 (Ind. Tax Ct. 2009). To make a prima facie case, the Petitioner needed to quantify the effect of the environmental contamination and present probative evidence about what a more accurate

valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Nevertheless, the Petitioner offered no such proof and even acknowledged the contamination's "impact on the market is unknown." This point does not provide a basis for changing the assessment.

- b. The building has serious deferred maintenance issues that have existed for many years. But nothing in the record quantifies how much those problems reduce the property's value. The Petitioner failed to establish what a more accurate valuation might be based on deferred maintenance. *See Meridian Towers*, 805 N.E.2d at 478. This point also does not provide a basis for changing the assessment.
- c. Real property is assessed based on its "true tax value," which 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); 2002 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. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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. 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.
- d. The Petitioner did not offer the type of evidence that the Manual describes. It relied on Mr. Mathis' opinions about the value of the subject property. Apparently he is a real estate broker. There is no evidence that he is an appraiser and no evidence about what his qualifications might be. Although the Petitioner characterized two letters from Mr. Mathis as appraisals, they clearly are not. The statements contain no certification that the estimates of value were developed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice. The evidence contains no explanation about what generally recognized valuation approach Mr. Mathis might have used as the basis for his opinions. The record fails to support his conclusions with any substantial facts, explanation, or analysis about how he arrived at his estimated values. Therefore, those conclusory opinions are not probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Board gives no weight to such conclusions or opinions about value without somehow establishing they are based on generally accepted appraisal principles.

See Inland Steel Co. v. State Bd. of Tax Comm'rs, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

- e. Finally, a party must establish 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2007 assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3. The Petitioner needed to explain how the evidence it offered related to value as of January 1, 2006, but it did not do so. Consequently, what it presented was not probative. *See Long*, 821 N.E.2d at 471.
- f. The Petitioner failed to make a prima facie case of any change in the assessment.

- 17. When a taxpayer fails to provide probative evidence supporting the position 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*, 704 N.E.2d at 1119.

Conclusion

- 18. The Board finds in favor of the Respondent.

Final Determination

- 19. 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>