

REPRESENTATIVE FOR PETITIONER:
Carla D. Bishop, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Jeff Kiess, Authorized County Consultant

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Micromatic Hone Corporation,	)	Petition:	01-010-06-1-3-00002
)		
Petitioner,	)	Parcel:	01-08-33-400-033.000-010
)		
v.	)	County:	Adams
)		
Adams County Assessor,	)	Township:	Monroe
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of the
Adams County Property Tax Assessment Board of Appeals

December 2, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE AND SHORT ANSWER

1. In this assessment appeal, Micromatic Hone Corporation offered a certified appraisal report prepared in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) in which the appraiser estimated the subject property’s value at nearly \$200,000 less than its current assessment. While the Assessor attempted to impeach the appraisal and provided an alternative value estimate, we find the appraiser’s estimate more persuasive.

PROCEDURAL HISTORY

2. On February 4, 2008, Micromatic filed a notice with the Adams County Assessor contesting the subject property’s 2006 assessment. On April 4, 2008, the Adams County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering that assessment, but not to the level that Micromatic requested. On April 21, 2008, Micromatic filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. We have jurisdiction over Micromatic’s appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On September 9, 2008, our Administrative Law Judge (“ALJ”), Patti Kindler held a hearing on Micromatic’s appeal. Neither the Board nor the ALJ inspected the subject property.

4. The following people were sworn in as witnesses:

For Micromatic:

Carla D. Bishop, Certified Tax Representative

For the Assessor:

Judy Affolder, Adams County Assessor

Jeff Kiess, consultant

5. Micromatic submitted the following exhibits:
 - Petitioner's Exhibit 1: Summary of issues
 - Petitioner's Exhibit 2: Appraisal Report by Verne Mitchell, III, effective February 3, 2005
 - Petitioner's Exhibit 3: Form 131 petition

6. The Assessor submitted the following exhibits:
 - Respondent's Exhibit 1: Summary of discussion
 - Respondent's Exhibit 2: Subject property record card,
 - Respondent's Exhibit 3: Pictures of the subject property
 - Respondent's Exhibit 4: Competing comparable sales grid analysis
 - Respondent's Exhibit 5: Picture and data for Assessor's Comparable #1
 - Respondent's Exhibit 6: Picture and data for Assessor's Comparable #2
 - Respondent's Exhibit 7: Form 115
 - Respondent's Exhibit 8: Notice of Appearance of Consultant

7. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A: The Form 131 petition with attachments
 - Board Exhibit B: Notice of hearing
 - Board Exhibit C: Hearing sign-in sheet
 - Board Exhibit D: Micromatic's witness and exhibit list
 - Board Exhibit E: The Assessor's witness and exhibit list

8. The subject property contains an industrial building. It is located at 525 Berne Street in Berne.

9. It is unclear how much land the property contains. The Assessor's unsigned "Summary of Discussion," refers to the subject property as having had only 6.39 acres "at the time of the appeal." *Resp't Ex. 1*. It appears from the property record card that the subject property, or at least part of it, previously was identified under parcel number 019-130-00002200 but that the property under that parcel number was combined with another parcel sometime before the 2007 assessment. *Resp't Ex. 2*. The property record card further shows that the combined parcels are listed under the parcel number appearing in our caption. *See Resp't Ex. 2*. The combined parcel is 7.7 acres. *Id.* The Form 11

Notice of Assessment of Land and Structures from which Micromatic appealed uses the current parcel number. Given these facts the Board finds that the parcel at issue consists of 7.7 acres.

10. The PTABOA determined that the assessed value of the subject property is \$122,800 for the land and \$1,271,100 for the improvements for a total assessment of \$1,393,900.
11. Micromatic requests a total assessment of \$1,200,000.

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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. If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence to impeach or rebut the taxpayer’s evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

A. Micromatic's Contentions

15. Micromatic offered a complete summary appraisal report prepared by Verne V. Mitchell, III, a Member of the Appraisal Institute ("MAI") and Indiana Certified General Appraiser. *Pet'r Ex. 2*. Mr. Mitchell estimated the property's market value at \$1,200,000 as of February 3, 2005, which is just one month after the January 1, 2005, valuation date for the 2006 assessment. *Id. at 17*. Mr. Mitchell found that the property's highest and best use is its current industrial use. *Id.* He prepared the appraisal in accordance with USPAP, and he considered all three approaches to value: the cost approach, the sales-comparison approach, and the income approach. *Pet'r Ex. 2 at 2; Bishop testimony*.
16. Mr. Mitchell ultimately used only the sales-comparison and income approaches. He felt that the subject building's age made the cost-approach less reliable. *Pet'r Ex. 2 at 39*. He also explained that the cost approach does not "assimilate a typical purchaser's decision process" for older industrial properties. *Id.*
17. In his sales-comparison analysis, Mr. Mitchell examined eight sales of industrial properties that he believed were comparable to the subject property. *Pet'r Ex. 2 at 40-53*. He adjusted their sale prices to reflect relevant differences between those properties and the subject property. Thus, he adjusted for differences in things like building size, external features, and age. *Id. at 41, 51-53*. He did not adjust for time-related differences in sale prices, finding instead that market conditions were the same between the effective appraisal date and the respective sale dates for the comparable properties. *See id. at 51* (using a 1.00 adjustment factor for "market conditions"). Based on the comparable properties' adjusted sale prices, Mr. Mitchell estimated that the subject property was worth \$11.00 per square foot of building area or \$1,225,000. *Id. at 53*.

18. In his income-approach analysis, Mr. Mitchell looked to the market to estimate the property's net operating income and an appropriate capitalization rate. *See Pet'r Ex. 2 at 54-66.* He arrived at an estimate of \$1,170,000. *Id. at 66.* After reconciling his estimates under the sales-comparison and income approaches, Mr. Mitchell believed that the subject property was worth \$1,200,000. *Id. at 67.*
19. While the Assessor offered a revised sales-comparison analysis using two additional sales, those sales were from May 2006 and January 2007 and therefore were not timely. They occurred well beyond both the appraisal's February 3, 2005, valuation date, and the January 1, 2005, valuation date required by the Department of Local Government Finance's rules. *Bishop argument.*

B. The Assessor's Contentions

20. The Assessor agreed that Mr. Mitchell's appraisal was timely and that it included fairly good comparable industrial sales. *Kiess testimony.* Nonetheless, the Assessor, through its representative, Mr. Kiess, offered three reasons for disputing the reliability of Mr. Mitchell's sales-comparison analysis.
21. First, Micromatic ordered Mr. Mitchell's appraisal for internal decision-making purposes only. The appraisal report says that no other party should benefit from it. *Pet'r Ex. 2 at 18.* Thus, the appraisal report should not be used in an assessment appeal. *Kiess argument.* And because it was not meant for an assessment appeal, the appraisal estimates the subject property's market value rather than its market value-in-use. *Id.*
22. Second, there is a math error on the appraisal report's sales-comparison grid. The report lists the preliminary adjusted sale price for Mr. Mitchell's second comparable sale—4419 Ardmore Avenue— as \$13.85. The actual price was \$15.39. *Keiss testimony; Pet'r Ex. 2 at 41.* That error affected the final value that Mr. Mitchell assigned to that comparable sale. *Kiess testimony.* Ms. Bishop agreed that there was a clerical error, but she argued that it did not affect Mr. Mitchell's ultimate valuation opinion. *Bishop testimony.*

23. Finally, despite the fact that his comparable sales ranged from July 1999 to October 2004, Mr. Mitchell failed to adjust any of those sale prices to reflect time-related value differences. *Kiess argument; Pet'r Ex. 2 at 41.* The Department of Local Government Finance ("DLGF") provided calculations to use in trending Adams County's industrial property. Those calculations showed a 6% increase from January 1999 to January 2005, or 1% per year. *Kiess testimony; Resp't Ex. 1.*
24. Mr. Kiess developed his own sales-comparison estimate by adding two more recent sales to the eight sales that Mr. Mitchell used. *Resp't Ex. 4.* Those two sales involved a 64,796-square-foot plant in Berne, which sold in May of 2006, and a 135,268-square-foot plant in Ossian, which sold in January of 2007. *Id.; Resp't Exs. 5, 6.* Mr. Kiess applied the DLGF's 1% time adjustment to all 10 sales. *Id.; Kiess testimony.* Mr. Kiess then threw out two of Mr. Mitchell's sales as "outliers" because each was less than \$11.00 per square foot of building area. *Kiess testimony; Pet'r Ex. 2; Resp't Ex. 4.*
25. Mr. Kiess's revised grid showed adjusted sale prices ranging from \$11.41 to \$13.46 per square foot of building area. *Kiess testimony; Resp't Ex. 4.* The mean was \$12.42 and the median was \$12.56. Those numbers indicate a value for the subject property in the range of \$12.50 per square foot of building area. *Id.* Thus, the subject property's current assessment of \$12.38 per square-foot of building area is "in the ballpark." *Kiess testimony.*

Discussion

26. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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, sales-comparison, and income approaches. *Id.* at 3, 13-15.

Indiana assessing officials generally use the mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

27. 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) *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 USPAP often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
28. Regardless of the method used to rebut the assessment's presumption of accuracy, a party must explain how its evidence relates to the subject 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. IND. ADMIN. CODE tit. 50, r. 21-3-3.

A. Micromatic Made a Prima Facie Case

29. Micromatic offered precisely the type of market-based evidence contemplated by the Manual and Tax Court. Micromatic offered an appraisal prepared by Verne V. Mitchell, a Certified General Appraiser, and MAI. Mr. Mitchell certified that he prepared his appraisal in conformity with USPAP, and he considered all three generally accepted valuation approaches in estimating the subject property's market value at \$1,200,000.
30. Because of that, and because Mr. Mitchell estimated the property's value as of February 3, 2005—barely more than one month after the relevant January 1, 2005, valuation

date—Mr. Mitchell’s appraisal constitutes prima facie evidence that subject property’s assessment should be reduced to \$1,200,000.

31. We recognize that Mr. Mitchell actually valued four parcels—the subject property and three contiguous parcels—totaling 9.7 acres. *Pet’r Ex. 2 at 20-21*. Thus, it is possible that the subject property’s contribution to Mr. Mitchell’s overall value estimate might actually have been less than \$1,200,000. Because Micromatic offered no evidence to apportion Mr. Mitchell’s estimate between the subject property and the other parcels, however, we find only that Micromatic made a prima facie case that the subject property should be assessed for \$1,200,000.

B. The Assessor did not Impeach or Rebut Mr. Mitchell’s Appraisal

32. The burden therefore shifted to the Assessor to impeach or rebut Mr. Mitchell’s appraisal. *Meridian Towers*, 805 N.E.2d at 479. The Assessor sought to do both. But she did not succeed in doing either.
33. The Assessor tried to impeach Mr. Mitchell’s appraisal on three grounds: (1) Mr. Mitchell prepared the appraisal for internal decision making purposes and did not authorize Micromatic to use it in an assessment appeal; (2) a math error affected Mr. Mitchell’s sales-comparison analysis; and (3) Mr. Mitchell did not adjust any of his comparable sale prices to account for time-related value differences. We address each of those points in turn.
34. First, the Assessor correctly notes that Mr. Mitchell’s appraisal report contains the limiting condition that the report “may not be used for any purpose other than the party to whom it is addressed, without the written consent of the appraiser.” *Pet’r Ex. 2 at 15*. We need not decide if, or how much, a party’s use of an appraisal for purposes not authorized by the appraiser serves to impeach its credibility. Mr. Mitchell did not purport to limit the ways in which Micromatic could use the appraisal. He did say that it was for internal decision-making purposes. But that fact actually makes his opinion even more

persuasive than if he had prepared the appraisal for Micromatic to use in its assessment appeal.

35. True, because Micromatic did not order the appraisal specifically for an assessment appeal, Mr. Mitchell estimated its market value rather than its market value-in-use. But there is no reason to think that the two are any different in this case. Mr. Mitchell viewed the property's highest and best use as its current industrial use, and that is the use upon which he based his value estimate. *Pet'r Ex. 2 at 35-36.*
36. Second, we find that Mr. Mitchell's math error did little to affect the reliability of his ultimate valuation opinion. It affected only one of his eight comparable sales. Even with Mr. Kiess's correction, the adjusted sale price for that property was only \$11.70 per square foot of building area—not far from the \$11.00 per square foot that Mr. Mitchell ultimately used to estimate the subject property's value.
37. Finally, the Assessor's concern about Mr. Mitchell's decision against adjusting his comparable sale prices to reflect time-related value differences does not sway us. The Assessor claimed only that the DLGF had instructed Adams County to increase industrial-property assessments by 1% per year to reflect market differences between 1999 and 2005. But the Assessor did not offer any evidence to show what the DLGF's instructions were based on or how it arrived at the 1%-per-year figure.
38. Thus, while Mr. Mitchell's appraisal may have some minor weaknesses, it is still compelling evidence of the subject property's true tax value.
39. Of course, the Assessor did not merely attack the credibility of Mr. Mitchell's appraisal; she offered Mr. Kiess's competing valuation opinion. We therefore must weigh Mr. Kiess's opinion against Mr. Mitchell's opinion to see which of the two is more persuasive.

40. Mr. Kiess arrived at his opinion largely by revising Mr. Mitchell's sales-comparison analysis to correct what Mr. Kiess viewed as flaws in that analysis. Even without looking at Mr. Kiess's individual corrections, we question his methodology. Mr. Kiess used Mr. Mitchell's sales-comparison analysis as his starting point, but made his own changes where he did not agree with Mr. Mitchell's calculations or choices. That, however, seriously risks distorting Mr. Mitchell's analysis. His analysis was not purely mathematical—once cannot simply plug in different data and automatically say what result he would have reached had he used that revised data.
41. Beyond our basic skepticism about Mr. Kiess's overall approach, Mr. Kiess did not support his decision to throw out the two adjusted sale prices that were below \$11.00 per square foot. Mr. Kiess called the two lowest sales "outliers," but he offered no statistical reason to explain why they should be excluded. True, those two sale prices (\$9.12 and \$9.02) were the furthest from the mean (\$12.50 using Mr. Kiess's revised data). But they are not strikingly further from the mean than the highest adjusted sale price (\$13.32).
42. Also, Mr. Kiess did not support his revised sales-comparison analysis with an analysis under any other accepted valuation approach. Mr. Mitchell, by contrast, analyzed the subject property's value under the income approach, which closely supported his ultimate valuation conclusion.
43. Thus, we find Mr. Mitchell's USPAP-compliant appraisal more persuasive than Mr. Kiess's suspect revision of that appraisal's sales-comparison analysis.

SUMMARY OF FINAL DETERMINATION

44. Micromatic made a prima facie case for a change in the subject property's 2006 assessment. The Assessor failed to impeach or rebut Micromatic's evidence. We therefore find for Micromatic.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

Commissioner,
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>>