

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

Petition #: 54-016-02-1-1-00072
Petitioner: Myrtle F. Ward Farms, Inc.
Respondent: Madison Township Assessor, Montgomery County
Parcel #: 0120500210
Assessment Year: 2002

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 Montgomery County Property Tax Assessment Board of Appeals (the "PTABOA") by written document dated August 21, 2003.
2. The Petitioner received notice of the decision of the PTABOA on November 28, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 19, 2003. The Petitioner elected to have this case heard in small claims.
4. The Board issued notice of hearing to the parties dated April 8, 2004.
5. The Board held an administrative hearing on June 9, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Richard D. Ward, Taxpayer
Richard H. Ward, Taxpayer
J. Lamont Harris, Attorney
 - b) For Respondent: Peggy Hudson, Montgomery County Assessor
Brian Thomas, Consultant to Montgomery County

Facts

7. The subject property is a farrow to finish building belonging to a large hog production facility, as shown on the property record card for parcel #0120500210. The subject property is located on leased land.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Montgomery County PTABOA: Improvements \$ 70,000.
10. Assessed Value requested by the Petitioner: Improvements \$ 41,280.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property is entitled to the application of economic obsolescence due to the decline in the hog market. *Pet. Ex. 6; Ward testimony.*
 - b) The farrow to finish building was originally constructed in 1990 and expanded in 1997. The decision to expand was based on the historical behavior of the hog industry in relation to the economy. *Ward testimony.*
 - c) The hog market decline, which was unforeseen, began in the fall of 1998. The decline was the result of a dramatic increase in importation from Canada combined with a limited number of packaging plants. Industry forecasters were unable to predict how greatly the Canadian imports would impact the market. *Ward testimony.*
 - d) The industry decline caused hog prices to drop as low as \$8.00 per 100-pound hog. During this decline in the market prices, the cost of production averaged \$40.00 per 100-pound hog. As a result, producers were selling market ready hogs, which weigh approximately 200 to 250 pounds, for \$20.00 with a production cost of \$100.00. *Ward testimony.*
 - e) Although the market low of \$8.00 per 100-pound hog lasted only 4-6 weeks, the downward trend continued. Since 1998, overall the industry has seen only 18 months of profitable operation. *Ward testimony.*
 - f) As a result of this downward turn, the county went from approximately 500 independent pork producers to three producers – one of which is Myrtle F. Ward Farms, Inc. The other producers either left the business completely, letting facilities stand empty, or contracted with large corporate production firms, such as Swift Foods. *Ward testimony.*

- g) Due to the economic conditions of the industry, the subject property has no value on the open market. Because the hog industry is not profitable, there are no buyers in the market for pork production operations. The property has value only to the owners because they use it. *Ward testimony.*
- h) The facility consists of specialized use buildings, like the farrow to finish building, which bar any alternative uses. Other uses have been explored, but have been found to be cost prohibitive with one such prospective use bearing an estimated \$1,000,000 in expenses. *Ward testimony.*
- i) The Petitioner is seeking economic obsolescence depreciation. The farrow to finish building has suffered a loss in value due to the extreme adverse conditions of the hog market. As of January 1, 1999, the subject property was only worth 20 percent¹ of the cost to build as stated in the appraisal. *Pet. Ex. 1.*

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

- a) The valuation follows the guidelines outlined in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, including the application of all multipliers, neighborhood factors, and obsolescence depreciation on the farrow to finish building under the PTABOA approved obsolescence chart. *Thomas testimony.*
- b) The appraisal provided by the Petitioner does not meet the standards under Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal is not the same appraisal presented to the PTABOA. Among other things, it has been altered to reflect a different valuation date. *Thomas testimony.* The alteration does not conform to the Reporting Requirements under USPAP Advisory Opinion AO-3 regarding the three methods by which an appraisal can be updated. The appraisal presented fails to follow any of these three methods. In addition, the altered appraisal is missing photographs and pages that were present in the original appraisal submitted to the PTABOA. *Thomas testimony.*
- c) The appraisal presented by the Petitioner is flawed for many reasons. The sales used by the appraiser in the Market Data (or Sales Comparison) Approach have had no adjustments made for variation in characteristics. The information for Sale #1 used by the appraiser fails to provide a selling price. Additionally, some of the sales do not disclose the amount of land involved in the sale. The appraisal does not include any calculations showing how the 20 percent capitalization rate was developed or how the price per pig used in the income approach was determined. The depreciation applied in the Cost Approach, while purportedly derived from Marshall & Swift Valuation Service, does not follow any of the depreciation charts published by Marshall & Swift Valuation Service. In

¹ The Petitioner's evidence concludes that the value of the farrow to finish building is only 20% of the replacement cost new, which equates to 80% obsolescence depreciation.

completing the appraisal, the appraiser used a “pick and choose” method to value the property rather than doing a complete appraisal. *Thomas testimony.*

- d) Sale #1 represented in the Petitioner’s appraisal is a property in Clinton County, Indiana. Sale #1 appears to be comparable to the subject property based on the written descriptions of the properties. A comparison of the assessments for the two properties show that the method used by the local assessing officials, following the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, establishes a sufficient cost-in-use for the subject property. *Thomas testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #6004.
- c) Exhibits:
 - Petitioner’s Exhibit 1 - An appraisal prepared by Halderman Real Estate Services for Myrtle Ward Farms, Inc. & Edgewood Farms, Inc. Hog Facilities.
 - Petitioner’s Exhibit 2 - A Reconciliation of Appraiser’s Building Descriptions to Property Assessment Cards.
 - Petitioner’s Exhibit 3 - Comparison of Appraiser’s Values to PTABOA Values.
 - Petitioner’s Exhibit 4 - Notice of Appearance by Attorney filed by Mr. J. Lamont Harris, Attorney.
 - Petitioner’s Exhibit 5 - Request for Documentary Evidence and Witness List dated May 4, 2004.
 - Petitioner’s Exhibit 6 - Petitioner’s Hearing Brief.

Respondent’s Exhibit 1 – Respondent’s Witness List, Response to Petitioner’s Claims & Conclusion, Respondents List of Exhibits as follows:

- A) Page 12, 2002 Real Property Assessment Manual, Glossary.
- B) Section 97, Pages 16 & 17, Depreciation – Residential Properties from Marshall Swift Valuation Services.
- C) Page 13 & 14, 2002 Real Property Assessment Manual, Overview of Mass Appraisal Methods and Models.

Respondent's Exhibit 2² – A letter of rebuttal submitted in response to the Petitioner's evidence with the following exhibits attached:

- 1A) The original appraisal presented to the PTABOA.
- 2A) The appraisal submitted prior to the Board hearing.
- 3A) The property record card for Parcel #0030305130/A&H Pork, Inc.
- 4A) A comparison of the subject parcel and Parcel #0030305130/A&H Pork, Inc.

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. *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 order to make a prima facie case for obsolescence, a taxpayer bears the burden of identifying causes of obsolescence as well as quantifying the amount of obsolescence to be applied to its improvements. *Clark v. State Bd. of Tax Comm'rs*, 742 N.E.2d 46, 51 (Ind. Tax Ct. 2001).
- c) By introducing an appraisal quantifying obsolescence in accordance with generally recognized appraisal principles, a taxpayer establishes a prima facie case that its improvements are entitled to an obsolescence depreciation adjustment. *Meridian Towers East & West, LLC v. Washington Twp. Assessor*, 805 N.E.2d 475 (Ind. Tax Ct. 2003).
- d) Once the petitioner has established a prima facie case, the burden shifts to the respondent to rebut the petitioner's evidence and justify its determination with substantial evidence. The respondent must do more than simply assert that the property was assessed correctly; rather, the respondent must give an authoritative explanation of its decision to rebut the petitioner's prima facie case. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *Miller*

² The Petitioner raised an objection to the submission of Respondent's Exhibit 2 under 52 IAC 3-1-5. Upon review of the content of Respondent's Ex. 2, the exhibits offered by the Respondent are basically resubmissions of the Petitioner's own evidence. The comparison made by the Respondent of the subject property to the A&H Pork property was also made in the Petitioner's appraisals. The letter of rebuttal presented by the Respondent is essentially the Respondent's arguments in written form. The Board will allow the evidence to be entered into the record for what it is worth.

Structures, Inc. v. State Bd. of Tax Comm'rs, 748 N.E.2d 943 (Ind. Tax Ct. 2001). 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 established a prima facie case regarding the amount of obsolescence depreciation by the presentation of an appraisal for the subject property. *See Meridian Towers*, 805 N.E.2d at 479. The appraisal demonstrates that, due to long term adverse conditions in the hog market, the value of the farrow to finish building is only 20 percent of its cost to construct. *Pet. Ex. 1 at 11-15; Ward testimony*. The appraisal uses all three approaches to valuation to arrive at this figure. *Pet. Ex. 1*. The burden shifted to Respondent to rebut Petitioner's evidence.
16. Respondent rebutted Petitioner's prima facie case by exposing major flaws in the appraisal and diminishing its probative value.
 - a) The Respondent raised questions regarding the lack of data to support the development of the capitalization rate and the price per pig utilized in the appraiser's income capitalization approach. *Resp't Ex. 2.; Thomas testimony*. The Respondent noted that the appraisal lacks any background or supporting information to substantiate the 20 percent capitalization rate (and the \$3.60 per pig cost) utilized in the appraisal. *Resp't Ex. 1; Thomas testimony*. The development of the capitalization rate is critical in the income approach to value. Because the appraisal lacks any supportive explanation regarding the development of the capitalization rate, the appraiser's assumption of a 20 percent capitalization rate is a merely conclusory statement and the Board assigns it no weight. *See Inland Steel v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (stating that testimony of a recognized appraisal expert without explanation is conclusory and lacks probative value). The Respondent successfully impeached the income approach portion of the Petitioner's appraisal by exposing the lack of supportive data and analysis.
 - b) The Respondent also challenged the market data (or sales comparison) approach used within the appraisal. *Thomas testimony*. The Respondent pointed out that the methodology used in the market data approach was flawed for several reasons, such as the lack of adjustments to the sales prices of the comparables for differences in size, type of operation and date of sale. *Resp't Ex. 1; Thomas testimony*. The appraiser did not demonstrate how the properties listed in the appraisal were comparable, how the "% RCN" was developed, and why the "% RCN" indicated a 20 percent contributory value for the subject buildings. *Thomas testimony; c.f., Pet. Ex. 1*. The appraiser failed to explain the methodology used, the abstracted values used, or the estimated replacement costs. *Pet. Ex 1*. The Petitioner is required to explain the calculations and methodology used in developing its value. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis." *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). The

Respondent has successfully impeached the credibility of the market data portion of the Petitioner's appraisal.

- c) Additionally, the Respondent raised questions regarding the manner of recording the amount and type of depreciation suffered by the subject property. *Thomas testimony*. While the appraisal discusses a cause of economic obsolescence (the declining business environment of the hog industry), it utterly fails to quantify and connect that cause to a loss in value in the subject property. *Lake County Trust v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1253, 1257 (Ind. Tax Ct. 1998). The appraisal does not present any coherent analysis of functional obsolescence.³ The Respondent effectively impeached the reliability of the cost approach analysis in the appraisal.
- d) The Respondent also complained that the Petitioner used a "pick and choose" method in the assessment challenge. *Thomas testimony; Pet'r Ex. 1*. The Respondent contended that it is inappropriate to challenge the assessment of only certain structures rather than the entire facility as a whole because the operation was assessed as one unit. On this point the Respondent is in error. Taxpayers have the right to challenge only those portions of the assessment they assert is in error. For example, a taxpayer can choose to challenge only the value assigned to land and not challenge the value assigned to any improvements. The mere fact that property is assessed as one unit does not mean the assessed value cannot be reviewed in separate components.
- e) Additionally, the Respondent challenges the validity and credibility of the entire revised appraisal submitted by the Petitioner.⁴ The Respondent argued that the revised appraisal fails to conform to the accepted standards of appraisal practice. *Thomas testimony (citing USPAP Advisory Opinion AO-3)*. Upon further examination, it is clear that Pet'r Ex. 1 is not a new appraisal. Even after removing certain sales from the market data approach and revising the effective date, the final value is exactly the same. Furthermore, even though each appraisal has a different effective date, both appraisals reflect that they were prepared on the same date. *See Pet'r Ex. 1 at 5.; Resp't Ex 1A*. Resp. Ex. 1A was revised by simply removing certain sales and rewording the narrative to "rely" on different sales then submitted as Pet. Ex. 1. *Thomas testimony*. The appraiser did not make any adjustment to account for the environment of the hog market over the four years between the effective date of Resp't Ex. 1A and Pet'r Ex. 1 – a time period the Petitioner's own witness describes as extremely volatile. *Ward testimony*. This casts doubt on the integrity of the entire appraisal and, coupled with the other factors described above, the Board finds the Respondent to have

³ The sole page dedicated to the cost approach analysis shows a chart with columns for "Physical Deprec." and "Fun/Ext. Deprec." *Pet'r Ex. 1 at 12*. The appraisal shows nothing in the Fun/Ext. Deprec. Column and shows values ranging between 80-100% in the Physical Deprec. column. *Id*. This chart does not correspond to the testimony presented and was not explained further at the hearing. *See Ward testimony*.

⁴ Respondent notes that the appraisal submitted to the Board (Pet'r Ex. 1) is nearly identical to the appraisal submitted to the PTABOA (Pet'r Ex. 2) other than the removal of thirty-three comparable sales and a change to the effective date. *Resp't Ex. 2; Thomas testimony*.

successfully impeached the Petitioner's prima facie case and gives no weight to the appraisal.

Conclusion

17. The Petitioner established a prima facie case regarding the obsolescence depreciation challenge by presenting an appraisal. The Respondent successfully impeached the Petitioner's appraisal and rebutted the Petitioner's 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 assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.