

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

Petition No.: 45-016-06-1-5-00001
Petitioner: Goce Stojanovski
Respondent: Lake County Assessor
Parcel No.: 006-27-17-0083-0021
Assessment Year: 2006¹

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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 4, 2008.
2. The PTABOA issued a notice of its decision on January 15, 2010.
3. The Petitioner filed a Form 131 petition with the Board on February 9, 2010. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 6, 2010.
5. The Board held an administrative hearing on August 12, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Goce Stojanovski, Property owner,
Thomas S. Bochnowski, Appraiser,

For Respondent: Sherry Stone-Lucas, Lake County Hearing Officer,
Robert W. Metz, Lake County Hearing Officer,
Debra Johnson, Lake County Hearing Officer.

¹ The Form 131 shows the assessment year as March 1, 2007. The Form 115, however, is for the March 1, 2006, assessment date and the appraisal indicates on pages 3 and 6 that the 2006 assessment values are the values at issue.

Facts

7. The subject property is an auto sales lot located at 820 Old Ridge Road, Hobart, in Lake 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 \$27,700 for the land and \$12,200 for the improvements, for a total assessed value of \$39,900.²
10. The Petitioner requested a total assessment of \$22,500.

Issues

11. Summary of the Petitioner's contentions in support of an error in his assessment:
 - a. The Petitioner contends that the assessed value of his property for 2006 is excessive because it does not consider the effects of the property's petroleum contamination. *Bochnowski testimony*. According to the Petitioner's witness, Mr. Bochnowski, the Petitioner purchased the property for \$13,600 in 1998, knowing it was impaired. *Id.* Mr. Bochnowski testified that the previous owner remediated the contamination to a commercial level, but the property is still restricted in its use. *Id.*; *Petitioner Exhibit 1 at 22*. In order to develop the property to its highest and best use, Mr. Bochnowski contends, additional remediation would be required. *Bochnowski testimony*; *Petitioner Exhibit 1 at 23-25*. According to Mr. Bochnowski, ERS, Inc., an environmental remediation company, estimated it would cost \$163,655 to remediate the property to a residential standard and remove the deed restrictions. *Id.*
 - b. Mr. Bochnowski also contends the property is over-valued based on its market value-in-use. *Bochnowski testimony*. According to Mr. Bochnowski, he analyzed the sales prices of comparable properties, ranging from \$21,000 to \$93,500, and developed unadjusted median and mean sales prices by the area of the building and by the area of the lot. *Id.*; *Petitioner Exhibit 11-12*. Mr. Bochnowski argues that, based on the sales, the property's value in an uncontaminated state would fall in a range from \$35,000 to \$55,000. *Id.*

² A Notification of Final Determination (Form 115) dated January 15, 2010, shows values of \$27,700 for the land, and \$12,200 for the improvements, for a total assessed value of \$39,900 for the March 1, 2006, assessment date. The Respondent's representative testified that a Form 115 amended the January 15, 2010, Notification of Final Determination to the values of \$17,300 for the land and \$12,200 for the improvements. However, the Form 115 provided to the Board with those values indicates it is for the March 1, 2008, assessment year.

- d. The Petitioner's witness testified that he then reduced the sales prices of the "clean" properties by 50% to account for the subject property's limited use and contamination. *Bochnowski testimony; Petitioner Exhibit 1 at 13*. After making this adjustment, Mr. Bochnowski developed a mean sales price of \$10 per square foot of gross building area and a median sales price of \$9 per square foot. *Bochnowski testimony; Petitioner Exhibit 1 at 13-14*. Mr. Bochnowski calculated the adjusted site values to range from \$0.42 to \$4.04 per square foot, with a mean of \$2.13 per square foot and a median of \$2.10 per square foot. *Id.*
 - e. Because the structures on the comparable properties are so varied, Mr. Bochnowski argued that the best unit of comparison was sales price per square foot of lot size, adjusted for the contamination. *Bochnowski testimony*. Further, Mr. Bochnowski estimated that the Petitioner's property should be valued at \$1.50 per square foot of lot size because of its limited use and contamination. *Id.* Therefore, applying a \$1.50 per square foot value to the property's 15,000 sq.ft. lot size, Mr. Bochnowski estimated the value of the property to be \$22,500 using the sales comparison approach. *Id.*
 - f. The Petitioner's witness also contends the property is over-valued based on a broker's analysis. *Bochnowski testimony*. According to Mr. Bochnowski, a real estate broker, Mr. Buford L. Eddy, determined that the median sales price for all properties in Hobart, Indiana, increased approximately 26% between 1999 and 2007. *Id.; Petitioner Exhibit 2*. Thus, Mr. Eddy concluded that the subject property's value in 2007 would be \$17,136 based on the property's \$13,600 purchase price in 1999.³ *Id.*
 - g. Finally, the Petitioner's witness contends that the property's 2006 assessed value is not fair, accurate, or uniform. *Bochnowski testimony*. According to Mr. Bochnowski, a comparison of comparable properties shows assessed values ranged from \$26,300 to \$111,900. *Bochnowski testimony; Petitioner Exhibit 1 at 11-12*. Based on these values, Mr. Bochnowski claims there is no consistency in the assessment of properties, which he argues erodes the assessment process. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent's representative argues that the Petitioner's assessment is correct. *Stone-Lucas testimony*. According to Ms. Stone-Lucas, after the Petitioner submitted documentation that the property is contaminated, the PTABOA applied a negative 75% influence factor to the land for the 2006 assessment. *Id.; Respondent Exhibit 1*. Ms. Stone-Lucas contends that while the property may be use-restricted, the contamination is encapsulated by the

³ Mr. Bochnowski's "Consulting Service and 2006 Real Estate Assessment" identified the purchase date as March 24, 1998. Mr. Eddy's analysis, however, states that the owner "reported that he purchased the property in 1999..."

paving and the Petitioner is using the property. *Stone-Lucas testimony*. The Respondent's representative, Mr. Metz, further contends that, although a deed restriction prevents the installation of a well, the property is served by municipal utilities. *Metz testimony*. Moreover, Mr. Metz argues, a well would not be allowed within the city limits. *Id*.

- b. Ms. Stone-Lucas further contends that the Petitioner's appraisal should be given little weight. *Stone-Lucas testimony*. According to Ms. Stone-Lucas, Mr. Bochnowski included the 1998 sale of the subject property in his comparison, but the relevant sales for the 2006 assessment year are from 2004, 2005, and 2006. *Id*. In addition, she argues, the appraiser's comparable properties are located in Lake Station, which is not comparable to the subject property's location in Hobart. *Id*. Moreover, Mr. Metz argues, the appraiser offered no justification for his 50% reduction in sales price. *Metz testimony*. In fact, Mr. Metz argues, the appraiser testified that he could not verify whether the comparable properties were contaminated. *Id*
- c. Finally, the Respondent's representative contends that the Petitioner purchased the property knowing it was contaminated. *Metz testimony*. Thus, Ms. Stone-Lucas argues, the appraiser's contention that the property would not sell because of the remediation cost is nothing more than speculation. *Stone-Lucas testimony*.

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 45-016-06-1-5-00001 Stojanovski,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Consulting Service and 2006 Real Estate Assessment Market Value Valuation,
 - Petitioner Exhibit 2 – Assessment Review of Mr. Buford Eddy,
 - Respondent Exhibit 1 – County recommended assessment,
 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing, dated July 6, 2010,
 - Board Exhibit C – Hearing sign-in sheet,
 - 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish an error in his 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 FOR 2002 – VERSION A.
 - 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). 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 actual construction costs, sales

information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d. In support of his claims, the Petitioner submitted a market valuation prepared by Thomas Bochnowski that estimated the value of the property to be \$22,500 as of January 1, 2006. *Petitioner Exhibit 1*. Mr. Bochnowski is an Indiana Certified General Appraiser whose report states that he prepared his valuation in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479.
- e. Here, however, the Petitioner's appraisal significantly lacks credibility. First, Mr. Bochnowski's certification was not completed. For example, Mr. Bochnowski certified that "I have no (or the specified) present or prospective interest in the property ... and I have no (or the specified) personal interest or bias with respect to the parties involved." Similarly, Mr. Bochnowski certified that "My compensation is not (or is) contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of, this report." Thus, Mr. Bochnowski may or may not have an interest in the property; he may or may not be biased for or against one or more of the parties; and his compensation may or may not be based on obtaining a specific result in his analysis.
- f. While Mr. Bochnowski's failure to specify whether he has an interest in the property or bias towards that parties or how he was compensated may simply reflect a lack of attention to detail, the Board has no way of determining what his answers would have otherwise been. More troubling still, Mr. Bochnowski listed the purpose of his valuation as being "to receive a reduction in the subject property's 2006 real estate tax assessment." Therefore, Mr. Bochnowski's report itself suggests that his opinion of value was not, in fact, unbiased, but was instead designed to result in a lower value for the property and a tax savings for his client.
- g. In addition, Mr. Bochnowski's valuation itself is problematic. For example, while he made a negative adjustment to a comparable sale because the property's lot was 33' wider than the subject property, he failed to positively

adjust two properties' sales prices for lots that were 67' and 75' narrower respectively than the subject property. Similarly, he made an adjustment for a building that was twenty years older than the Petitioner's building, but failed to make any adjustment for a property that was 33 years older. Worse still – he reduced the sale price for the older building rather than increasing the sale price for comparison to the newer structure located on the subject property. In addition, he reported differing locations and sales dates for the same properties in different sections of his report.⁴

- h. Finally, Mr. Bochnowski provided no support for making a 50% adjustment to the sales prices of properties he merely assumed were clean. *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). Despite Mr. Bochnowski's experience as an appraiser, the Board must have some assurance that his opinions are based on true facts and reasonable conclusions.
- i. Taken together, these issues lead the Board to conclude that the Petitioner's appraisal is too lacking in credibility to provide sufficient probative evidence of the property's market value in use.
- j. The broker's "assessment review" similarly fails to raise a prima facie case that the Petitioner's property is over-valued. *Petitioner Exhibit 2*. There is no evidence that Mr. Eddy's analysis conformed to generally accepted appraisal practices. In fact, Mr. Eddy only determined the average increase in sales prices for all residential, commercial, agricultural and industrial properties in Hobart over eight years and applied that increase to the Petitioner's 1998 purchase price. Mr. Eddy's report itself stated that "this is a trend analysis only *and should not be considered an evaluation of the property.*" Moreover, Mr. Eddy's analysis established a value for the Petitioner's property using 2007 sales values. Even if the Board determined that an increase in property values experienced by all types of properties in Hobart could be used to relate the Petitioner's 1998 purchase price to the proper valuation date, that valuation date was January 1, 2006.

⁴ To the extent that Mr. Bochnowski can be seen as arguing that the Petitioner's assessment was unfair or unjust compared to comparable properties, the Board finds he also failed to raise a prima facie case. It is unclear how the assessment of properties in Lake Station, Indiana, shows that the assessment of Mr. Stojanovski's property in Hobart, Indiana, was incorrect. *See Dep't of Local Gov't Fin. v. Griffin*, 784 N.E.2d 448, 453 (Ind. 2003) (Article 10, § 1 of the Indiana Constitution, providing for a uniform and equal rate of property assessment and taxation "deals with the uniformity and equal rate of assessment and taxation of property *within the taxing district or locality in which the particular tax is levied.*" (citations omitted and emphasis added).

- k. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Here, however, the Respondent's representative testified that an "amended" Form 115 established a value of \$17,300 for the land and \$12,200 for the improvements for the Petitioner's property for 2006. Although no evidence of this amended Form 115 was presented, the Board takes Ms. Stone-Lucas' testimony as an admission that the assessment should be reduced to those values.

Conclusion

16. The Petitioner failed to raise a prima facie case that his property's assessment was incorrect. The Board therefore finds in favor of the Respondent, but reduces the property's assessed value to \$17,300 for the land and \$12,200 for the improvements based on the Respondent's representative's testimony that those values were the "amended" values established for the property.

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: _____

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>.