

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

**Petitions #:** 84-002-02-1-3-01074, 84-002-02-1-3-01072, 84-002-02-1-3-01071  
**Petitioner:** Terre Haute Properties, Inc.  
**Respondent:** Harrison Township Assessor (Vigo County)  
**Parcels #:** 1180622183001, 1180622326002, 1180622326001  
**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 informal hearing on the assessments listed above with the Harrison Township Assessor Representative on February 8, 2004.
2. The decision of the Harrison Township Assessor was mailed on March 25, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Vigo County Assessor on April 26, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued notice of hearing to the parties dated July 16, 2004.
5. The Board held an administrative hearing on September 22, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Carla Bishop, Tax Representative  
Ellen R. Petersen, Property Manager, Terre Haute Property, Inc.
  - b) For Respondent: Larry Auler, Harrison Township Assessor

## Facts

7. The subject property is an industrial cold and dry storage facility located at 200 North Eleventh Street, Terre Haute. The subject facility is situated upon three (3) separate parcels of 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 Harrison Township Assessor:

Parcel # 1180622183001	Land: \$ 9,800	Improvements: \$59,000.
Parcel # 1180622326002	Land: \$ 20,300.	
Parcel # 1180622326001	Land: \$ 13,500.	
10. Assessed Value requested by Petitioner: Total: \$60,000.

## Issue

10. Summary of Petitioner's contentions in support of alleged error in the assessments:
  - a) The assessed value for the subject property should not exceed the purchase price. The Petitioner purchased the subject property April 1997 for \$60,000. The property sale was an arms-length transaction between the parties meeting all of the criteria for a market sale. *Bishop testimony*.
  - b) The Petitioner purchased the subject property for the purpose of leasing the subject property for dry and cold storage. The Petitioner, unable to successfully lease the subject property, attempted to sell the subject property. The subject property did not attract any buyers due to its overall poor condition. *Peterson testimony; Pet'r Ex. 4*.
  - c) The Petitioner contacted two (2) firms to evaluate the use and condition of the subject property. These firms concluded that the cost to make the necessary repairs, or "the cost to cure," exceeds the added value that would result from the repairs. *Peterson testimony; Pet'r Exs. 2 - 3*.
11. Summary of Respondent's contentions in support of the assessments:
  - a) Following an informal meeting between the Petitioner's representative and the Respondent's representative, the assessed values established for the subject property were adjusted through a reduction in grade and condition, removing the charge for sprinkler system, changing the use type to light warehouse, applying a

seventy-five percent (75%) obsolescence depreciation for the improvement and applying a negative fifty percent (50%) influence factor to the land for all three (3) parcels. *Auler testimony*.

### **Record**

12. 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 #6047.
- c) Exhibits:

Petitioner's Exhibit 1 – A summary of the issue and the Petitioner's position.

Petitioner's Exhibit 2 – A copy of a letter from Construction Alternatives, Inc. dated August 28, 2003 giving an opinion regarding the extent of needed repairs and feasibility of making the repairs.

Petitioner's Exhibit 3 – A copy of a letter from Hawk Distribution Services to Mr. Peter Jensen dated September 8, 2004 giving an opinion regarding the use and value of the subject property.

Petitioner's Exhibit 4 – A copy of a letter from Mary Nunley to Peter Jensen, Terre Haute Properties, Inc., explaining why, in her opinion, the subject property was not sellable.

Petitioner's Exhibit 5 – A copy of an Offer to Purchase in which Peter Jensen agreed to purchase the subject property for \$60,000 from Mar-Lo Brands, Inc.

- d) These Findings and Conclusions.

### **Analysis**

13. 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 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 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.”)

- c) One 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.
  - d) A taxpayer may offer evidence relevant to the fair market value-in-use of a property to rebut its assessment and to establish the actual true tax value of that property. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3. Such evidence of market value includes, but is not limited to, actual construction costs, sale information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
  - e) Indiana’s assessment regulations also provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4; See also, *Long v. Wayne Twp. Assessor*, Cause No. 49T10-0404-TA-20 at 8. If a party seeks to rely on evidence of a property’s value as of a date substantially removed from January 1, 1999, the party must explain how that evidence relates to the property’s fair market value-in-use as of January 1, 1999. See *Long*, Slip op. at 8-9 (holding that an appraisal prepared in 2003 lacked probative value regarding the property’s market value-in-use as of January 1, 1999).
14. The Petitioner provided sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner presented evidence that the subject property was purchased for \$60,000 in 1997. *Bishop testimony; Peterson testimony; Pet. Ex. 5*. The evidence further supports a finding that the purchase was the result of an arms length transaction. *Id.* A bona fide arms length sale of the subject property is typically the best evidence of the market value of that property.
  - b) However, the inquiry does not end with the purchase amount from the 1997 sale of the subject property. As the court explained in *Long*, the Petitioner must also explain how the purchase amount from the 1997 sale relates to the subject property’s value as of January 1, 1999. See *Long*, Slip op. at 8-9 (holding that an appraisal prepared in 2003 lacked probative value regarding the property’s market value-in-use as of January 1, 1999). The Petitioner provided such an explanation in this case. The Petitioner presented evidence that it was unable to resell the property for \$60,000, or any amount, despite actively marketing the property for sale on multiple occasions. *Peterson testimony; Pet. Exs. 1,4*. Thus while the

Petitioner did not present the dates the property was listed for sale, the evidence supports an inference that the property did not appreciate in value at any time after 1997. Consequently, the Petitioner provided at least some evidence that the market value-in-use of the subject property was no more than \$60,000 as of January 1, 1999.

- c) The Petitioner's evidence of the sale of the subject property in 1997 for \$60,000 coupled with its explanation relating that 1997 value to the subject property's value as of January 1, 1999, was sufficient to establish a prima facie case that the current assessment is excessive and that the correct assessment should be no more than \$60,000.
- d) The burden shifted to the Respondent to rebut or impeach the Petitioner's evidence. The Respondent did not offer any evidence to impeach the Petitioner's evidence concerning the sale of the subject property or the relation of that sale amount to the property's value as of January 1, 1999.
- e) The Respondent likewise did not present its own evidence of market value-in-use to rebut the Petitioner's evidence. Instead, the Respondent simply asserted that the assessed value of the subject property had been reduced by lowering the grade and condition, removing the sprinkler charge, changing the use type, applying seventy-five percent (75%) obsolescence depreciation adjustment to the improvement, and applying a negative fifty percent (50%) influence factor to the land value for each of the three (3) parcels of land. *Auler testimony*. The Respondent did not explain how the lowering of the adjustments it made to the original assessment related to the market value-in-use of the subject property. The Respondent's contentions therefore amount to unsubstantiated conclusory statements, which lack any probative value. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
- f) Based on the foregoing, the Respondent failed to impeach or rebut the Petitioner's evidence establishing a prima facie case.

### **Conclusion**

16. The Petitioner established a prima facie case showing that the assessment was too high and should be changed to \$60,000. The Respondent did not impeach or rebut the Petitioner's evidence. The Board finds in favor of Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for the three subject parcels, including improvements, should be changed to a total of \$60,000.

ISSUED: \_\_\_\_\_

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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.**