

PETITIONER REPRESENTATIVE:

Michael Duff, Tax Representative, DuCharme, McMillen & Associates, Inc.

RESPONDENT REPRESENTATIVE:

Charles Simons, Contractor for the Vanderburgh County Assessor

INDIANA BOARD OF TAX REVIEW

Whirlpool Corporation,	)	Petition Nos.:	82-020-06-1-3-10435
	)		82-020-07-1-3-00372
Petitioner,)		
	)	Parcel No.:	12-240-34-298-004
v.)		
	)	County:	Vanderburgh
Vanderburgh County Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Years:	2006 and 2007

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

October 21, 2009

FINAL DETERMINATION

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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated based on the appraised value of the property.

PROCEDURAL HISTORY

- Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner's representative Michael Duff, Senior Tax Manager with DuCharme, McMillen & Associates, Inc., filed a Form 130 Petition to the Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) for review of the property's 2006 assessment on April 12, 2007. Mr. Duff filed a Form 130 for review of the property's 2007 assessment on April 17, 2008. A Form 115, Notification of Final Assessment Determination, was mailed to Whirlpool for both tax years 2006 and 2007 on February 18, 2009. The Petitioner subsequently filed Form 131 Petitions to the Board to conduct reviews of the PTABOA's decisions for 2006 and 2007 on February 26, 2009.

HEARING FACTS AND OTHER MATTERS OF RECORD

- Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a consolidated hearing on July 21, 2009, in Evansville, Indiana.

- The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Michael Duff, DuCharme, McMillen & Associates, Inc.,
Shawn W. Wilson, Don R., Scheidt Co., Inc., appraiser,
Don R. Scheidt, Don R. Scheidt Co., Inc., appraiser,
Paul Coburn, Whirlpool Corp., finance manager
James Peterman, Whirlpool Corp., facility manager

For the Respondent:

Charles Simons, Contractor for Vanderburgh County Assessor,
Candy Wells, Hearing Officer for Vanderburgh County Assessor,
Tiffany Collins, Administration Assistant for Vanderburgh PTABOA.

- The Petitioner presented the following evidence:

Petitioner Exhibit 1 – Appraisal report of the subject property,

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Petitioner Exhibit 2 – Excerpt of the 2002 Real Property Assessment Manual,
Petitioner Exhibit 3 – Summary sheet and list of comparable properties from the appraisal,

Respondent Exhibit 1 – Recommendation to the PTABOA,
Respondent Exhibit 2 – Property record card (PRC) of the appealed property,
Respondent Exhibit 3 – Vanderburgh County industrial ratio study for 2006,
Respondent Exhibit 4 – Sales disclosure and PRC for adjoining Whirlpool property from 2007,
Respondent Exhibit 5 – Comparable sales used for the appraisal of a Pillsbury facility in New Albany,¹
Respondent Exhibit 6 – Excerpts from *Property Appraisal and Assessment Administration*.

6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

7. The property under appeal is an improved industrial parcel located along U.S. Highway 41 North at St. George Road, Center Township, Vanderburgh County, in Evansville, Indiana.

8. The ALJ did not conduct an on-site inspection of the subject property.

9. For 2006, the PTABOA determined the assessed value of the property to be \$4,704,500 for the land and \$10,829,000 for the improvements, for a total assessed value of \$15,533,500. *Board Exhibit A*. For 2007 the PTABOA determined the assessed value of the property to be \$3,528,400 for the land and \$11,990,200 for the improvements, for a total assessed value of \$15,518,600. *Id.*

¹ The Petitioner's representative objected to the introduction of this evidence because, he argued, the use of comparable properties separate from the appraisal for which they were prepared is a violation of USPAP rules. *Duff argument*. Judge Barter over-ruled the objection and admitted the comparable sales information.

10. The Petitioner requested a total assessed value of \$10,700,000 for 2006 and 2007. *Board Exhibits A; Petitioner Exhibit 1.*

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. 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).
13. 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. Wash. 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. 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 evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

15. The Petitioner contends that the 2006 and 2007 assessed values of its manufacturing property are over-stated. *Duff testimony*. In support of its contention, the Petitioner presented an appraisal report prepared by Shawn W. Wilson, an Indiana Certified General Real Estate Appraiser (ICGREA), and Don R. Scheidt, ICGREA, MAI, CCIM, of Don R. Scheidt & Co., Inc. *Petitioner Exhibit 1*. The appraisal calculates a market value-in-use for the land and improvements of \$10,700,000 as of January 1, 2005. *Id.* The appraisers certified that the report was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Standards of Professional Practice and Code of Professional Ethics of the Appraisal Institute. *Id.*
16. The Petitioner's appraiser, Mr. Wilson, testified that because of the age and uniqueness of the Whirlpool property, which was built for the construction of aircraft in 1942 and converted into a refrigerator manufacturing plant after World War II, the sales comparison approach to value is the preferred method of establishing the market value-in-use of the property. *Wilson testimony*. The appraisers also partially developed an income capitalization valuation to test the value of the property that they determined using the sales comparison approach. *Id.* Because of the age of the Whirlpool facility, however, the appraisers determined the cost approach would not result in a reliable indication of value and did not develop it.² *Id.*
17. In calculating the property's value using the sales comparison approach, Mr. Wilson testified that they considered sales in a three-state area including Indiana, Kentucky and Ohio. *Petitioner Exhibit 1; Wilson testimony*. According to Mr. Wilson, the appraisers identified seven comparable industrial properties that they used in building their sales comparison approach grid. *Id.* Of those seven sales, the appraisers determined that two sales were the most comparable to the subject property: Comparable No. 2, a former Otis

² The Petitioner's appraisers valued the land as if it was vacant using the sales comparison approach. However, because the appraisers did not develop a cost approach valuation, the vacant land valuation was not incorporated into any of the appraiser's analyses.

Elevator plant in Bloomington, Indiana; and Comparable No. 5, a former RCA plant, also in Bloomington. *Id.* The sales prices per square foot of the seven facilities ranged from a low of \$2.64 to a high of \$8.43 for Comparable No. 5. Comparable No. 2 was sold for \$5.95 per square foot. *Id.* Based on the sales, the appraisers estimated the value of the subject property to be \$7.00 to \$7.50 per square foot or \$10,700,000. *Id.*

18. Next, the appraisers partially developed an income capitalization approach to value to indicate the relationship between the property's income producing potential and its market value. *Petitioner Exhibit 1; Wilson testimony.* Using the direct capitalization method, the appraisers determined a value of \$1.40 per square foot and a capitalization rate between 10.0 and 11.0%, resulting in a value of \$10,500,000. *Id.* According to Mr. Wilson, the value of the property estimated by the income approach was within 1.9% of the property's sales comparison approach value, thereby supporting the appraisers' \$10,700,000 value for the property. *Id.*
19. Finally, Mr. Scheidt contends his company appraised the Whirlpool property based on a January 1, 2005, valuation date for the 2006 assessment. *Petitioner Exhibit 1; Scheidt testimony.* Mr. Scheidt admitted that the 2007 assessment is based on a January 1, 2006, tax valuation date. *Id.* Mr. Scheidt, however, argues that the 2007 value-in-use would probably be less than the 2006 value because of the downturn in the U.S. economy and the continued aging and deterioration of the Whirlpool property. *Id.* For the purposes of its appeal, the Petitioner agreed to use the same value of \$10,700,000 for both 2006 and 2007. *Id.*

RESPONDENT'S CONTENTIONS

20. The Respondent contends that the 2006 and 2007 assessments of the subject property are correct. *Simons testimony.* In support of his contention, the Respondent's representative entered into evidence a copy of the Vanderburgh County Assessor Hearing Officer's recommendation to the PTABOA for no change in value. *Respondent Exhibit 1.* Mr.

Simons admitted that the facility “suffers severe obsolescence, almost real bad.” *Simons testimony*. However, Mr. Simons argues that the county accounted for the age and obsolescence of the facility. *Respondent Exhibit 2; Simons testimony*. In support of this contention, the Respondent’s representative offered the property record card for the Whirlpool property. *Id.*

21. Mr. Simons also argues that the 2006-pay-2007 Vanderburgh County Industrial Property Ratio Study supports the assessment, indicating a value of \$10.47 per square foot. *Respondent Exhibit 3; Simons testimony*. According to Mr. Simons, the Petitioner’s appraisal is only based on seven sales, but the valuations prepared for Vanderburgh County were based on a wide spectrum of sales during the relevant time period. *Simons testimony*. In support of this contention, the Respondent’s representative submitted an excerpt from *Property Appraisal and Assessment Administration*. *Respondent Exhibit 6*.

22. The Respondent further argues that other sales support the property’s assessed value. *Simons testimony*. According to Mr. Simons, Whirlpool sold a nearby warehouse property in December of 2005 for \$11,356,243 or \$24 a square foot to STAG Capital Partners. *Respondent Exhibit 4; Simons testimony*. Mr. Simons argues that this sale supports the property’s 2006 and 2007 assessed values, even though it is a newer facility that is not used for manufacturing. *Simons testimony*. Similarly, sales comparables from an appraisal prepared for Pillsbury Company in New Albany, Indiana, support the Whirlpool assessments under appeal. *Simons argument*. According to Mr. Simons, six manufacturing facilities in Indiana and Kentucky sold between December 1, 2004, and June 1, 2007, for sales prices ranging from \$11.11 to \$12.94 per square foot *Respondent Exhibit 5; Simons testimony*.

ANALYSIS

23. 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 (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
24. 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). 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 the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
25. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his or her evidence relates to the 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. 50 IAC 21-3-3. Similarly, for the March 1, 2007, assessment, that valuation date is January 1, 2006. *Id.*

26. Here the Petitioner presented an appraisal dated June 25, 2008, that estimated the value of the Whirlpool facility to be \$10,700,000 as of January 1, 2005. *Petitioner Exhibit 1*. The Petitioner's appraiser argued that the property's 2007 market value-in-use would be less than the property's 2006 value because of the downturn in the U.S. economy and the continued aging and deterioration of the Whirlpool facility. *Scheidt testimony*. The Petitioner, however, agreed to use the same value of \$10,700,000 for both 2006 and 2007. *Id.* The Petitioner's appraisers are Indiana certified appraisers who prepared the appraisal report in accordance with USPAP standards. *Petitioner Exhibit 1*. The appraisal conforms to the appropriate date for the 2006 appeal and offers some evidence relating the property's January 1, 2005, appraised value to the January 1, 2006, valuation date for the 2007 tax year. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Therefore the Board finds that the Petitioner raised a prima facie case that the property is over-assessed.
27. Once the Petitioner has established a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Company v. Maley* 803 N.E.2d 276 (Ind. Tax Court 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
28. Here the Respondent contends it assessed the property correctly. According to Mr. Simons, the county followed the rules of the Department of Local Government Finance and the IAAO in its assessment and in its ratio study. *Simons testimony*. In order to carry its burden, however, the county must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. 1998) (mere recitation of expertise insufficient to rebut prima facie case).

29. The Respondent also argues that the assessments were correct based on the sales prices of other comparable properties. *Simons testimony*. In support of this contention, the Respondent's representative introduced a list of sales used in an appraisal prepared for a Pillsbury plant in New Albany, Indiana. *Respondent Exhibit 5*. Mr. Simons argued that the sales prices per square foot for the comparable properties were higher than the assessed value of the Whirlpool property. *Id.* The Respondent's representative, however, made no attempt to compare the properties in his sales data to the subject property. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). Such is also the case with Mr. Simons' testimony concerning Whirlpool's sale of a nearby warehouse facility in December 2005 for \$24 per square foot. *Respondent Exhibit 4*. Mr. Simons, however, admitted that the warehouse was not used for manufacturing and had no comparable characteristics. *Simons testimony*. Thus, the sale offers no evidence useful in impeaching the Petitioner's prima facie case.

SUMMARY OF FINAL DETERMINATION

30. The Petitioner raised a prima facie case that the 2006 and 2007 assessed values of its property are overstated. The Respondent failed to rebut or impeach the Petitioner's case. The Board finds in favor of the Petitioner and holds that the property's 2006 and 2007 assessed values should be changed to \$10,700,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman,
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>.