

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

Petition #s: 20-021-02-1-3-00009 and 20-021-02-1-3-00010
Petitioners: Damon Corporation
Respondent: Locke Township Assessor (Elkhart County)
Parcel #s: 20-13-35-251-008.000-021 and 20-13-35-202-011.000-021
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 Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 25, 2003.
2. The Petitioner received notice of the decision of the PTABOA on September 29, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 1, 2004.
4. The Board issued a notice of hearing to the parties dated May 5, 2006.
5. The Board held an administrative hearing on June 20, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.¹
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Barbara Jo Wiggins, Crowe Chizek & Company,
 - b. For Respondent: Dana Hunt, Elkhart County Deputy Assessor.

¹ While the Petitioner opted out of the Board's small claims procedures in its Petitions, the hearing was inadvertently held as a small claims matter. The Petitioner, however, was not limited in the presentation of its evidence or the submission of its exhibits. Further, no objection was raised at the hearing by either party.

Facts

7. The subject properties include two improved parcels of a single tenant manufacturing facility located at 354 North Delaware Street and 656 North Delaware Street, Nappanee, Indiana. The two parcels under appeal comprise approximately 7.52 acres of the 13.523 acres of the property.² *Petitioner Exhibit 4.*
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of parcel 20-13-35-251-008.000-021 (Parcel #1) to be \$116,100 for the land and \$123,000 for the improvements, for a total assessed value of \$239,100 and the assessed value of parcel 20-13-35-202-011.000-021 (Parcel #2) to be \$110,100 for the land and \$2,926,700 for the improvements, for a total assessed value of \$3,036,800.
10. The Petitioner requested a total assessment of \$2,400,000 for both of the parcels as reflected by a May 2003 appraisal of the property adjusted to the 1999 valuation date.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the value of the subject properties is \$2,800,000. *Wiggins testimony.* In support of this contention, the Petitioner submitted an appraisal dated May 30, 2003, that was completed by three MAI appraisers licensed by the State of Indiana. *Petitioner Exhibit 4.* The appraisal used all three approaches to value, the sales comparison, income and cost approaches. *Id.* According to the Petitioner, the appraisal properly adjusted the sales comparable properties for differences between the comparables and the subject properties in the sales comparable method. *Wiggins testimony; Petitioner Exhibit 4.* Further, the Petitioner contends, the income approach to value was developed using the actual rent paid for the subject property. *Id.* The Petitioner argues that an appraisal prepared by an individual with an MAI designation is considered the most reliable source of value in the appraisal community. *Id.*
 - b. The Petitioner further contends that a three percent per year adjustment should be applied to the appraisal from the appraisal date of May 30, 2003, to the January 1, 1999, valuation date for the 2002 assessment year. *Wiggins testimony.* According to the Petitioner, the three percent per annum adjustment to the appraisal amount of \$2,800,000 results in a value of \$2,400,000 for both properties. *Id.* According to the Petitioner's representative, the three percent per annum time adjustment was selected as a representative inflation rate. *Id.*
 - c. The Petitioner also testified the properties were purchased in May 2002 at a sale price of \$1,900,000. *Wiggins testimony.* According to the Petitioner, the May 2002 sale

² The third parcel, which appears to be vacant land, is not under appeal.

price supports a reduction in value from the total assessed value of \$3,275,900 for both properties. *Id.*

- d. In its rebuttal, the Petitioner contends the Respondent's comparable properties have not been adjusted for differences between the comparables and the subject properties. *Wiggins testimony.*

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

- a. The Respondent contends that the appraised value sought by the Petitioner results in a per square foot amount that is not acceptable to the Respondent. *Hunt testimony.* According to the Respondent, the appraised value of the subject properties is \$19.55 per square foot. *Id.*
- b. The Respondent further alleges that the appraised value is below market value. *Hunt testimony.* In support of this contention, the Respondent submitted eleven properties that it contends are comparable to the subject properties showing an average square foot price of \$28.46. *Id.*; *Respondent Exhibit 3.*

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled BTR # 6244,
- c. Exhibits:

Petitioner Exhibit 1 - Form 131 Petitions,
Petitioner Exhibit 2 - Notices of Final Assessment,
Petitioner Exhibit 3 - Withdrawn by Petitioner Representative,
Petitioner Exhibit 4 - Copy of certified appraisal of entire property dated May 15,
2003,

Respondent Exhibit 1 - Property record card for 20-13-35-251-008.000-021,
Respondent Exhibit 2 - Property record card for 20-13-35-202-011.000-021,
Respondent Exhibit 3 - Comparable sales,

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Authorization for County to Representative Township,
Board Exhibit D - 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 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. 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.
15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. The Petitioner contends the subject property should be valued at \$2,800,000. *Wiggins testimony*. In support of this contention, the Petitioner submitted an appraisal indicating a value for the two subject properties of \$2,800,000 as of May 15, 2003. *Petitioners Exhibit 4*. Further, the Petitioner contends that the appraised value of \$2,800,000 must be adjusted by a 3% per annum deduction back to January 1, 1999. *Wiggins testimony*.
 - b. The 2002 Real Property Assessment Manual defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479.
 - c. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *See Long v.*

Wayne Township Assessor, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

- d. Here, the Petitioner presented an appraisal prepared by a certified appraiser that valued the subject property at \$2,800,000 as of May 15, 2003.³ *Petitioner Exhibit 4*. Further, the Petitioner testified that value should be adjusted by three percent per annum to account for appreciation in the market. An appraisal performed in accordance with generally recognized appraisal principles is generally sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479.
- e. 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.*, 803 N.E.2d 276. Here, the Respondent argued that they did not agree with the appraisal. *Hunt testimony*. The Respondent's testimony, however, did not go forward to explain what part of the appraisal was objectionable, nor how these differences might affect the value determination. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioner's case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005)
- f. The Respondent also submitted property record cards for eleven properties the assessor deemed to be more comparable to the subject properties than the comparable properties used by the Petitioner's appraiser. *Hunt testimony; Respondent Exhibit 3*. To rebut or impeach a petitioner's case, a respondent has the same burden to present probative evidence that the petitioner faces to raise its prima facie case. 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). Here, the Respondent failed to quantify any similarities or differences between the purportedly "comparable" properties and the subject properties. Thus, the Respondent failed to rebut the Petitioner's prima facie case with substantial evidence.
- g. The Petitioner raised a prima facie case that the subject properties are over-valued. The Respondent failed to rebut this evidence. While the submitted appraisal establishes a prima facie case for the Petitioner, however, the three percent per annum

³ The Petitioner's witness claims that the sale of the property in May 2002 for \$1.9 million supported a reduction in assessed value. *Wiggins testimony*. The Petitioner, however, presented no documentation supporting this contention. In fact, the appraisal states that the Damon Corporation acquired the property in about 1991, or possibly earlier. *Petitioner Exhibit 4 at 1*.

adjustment to the appraisal amount is unsupported and conclusory. Further, it contradicts the findings of the Petitioner's appraisers which determined that "no significant adjustments for date of sale are called for [in the sales comparable method]. Industrial building prices may have appreciated between 1999 and 2000 and 2001. However, at least some observers report that prices declined somewhat during 2001 and into 2002, especially for buildings with modest ceiling heights. Accordingly, we believe that current prices and values are roughly equal to prices paid in both 1999 and 2002." *Petitioner Exhibit 4 at 32*. Thus, the Petitioner failed to provide any foundation for application of a three percent adjustment factor.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case through the submission of an appraisal completed by a licensed appraiser. The Respondent failed to rebut the Petitioner case with substantive evidence. The Board finds in favor of the Petitioner and holds that value of the subject properties is \$2,800,000.

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: October 3, 2006

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.