INDIANA BOARD OF TAX REVIEW

Final Determination
Findings and Conclusions
Lake County

Petition #: **45-041-02-1-4-00367**
Petitioner: **Ziese & Sons Excavating, Inc.**
Respondent: **Department of Local Government Finance**
Parcel #: **003030700300073**
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held in November 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is $238,800 and notified the Petitioner on March 12, 2004.

2. The Petitioner filed a Form 139L on April 8, 2004.

3. The Board issued a notice of hearing to the parties dated March 3, 2005.

4. A hearing was held on April 6, 2005, in Crown Point, Indiana before Special Master Ken Daly.

Facts

5. The subject property is located at 6929 W. 109th Avenue, Crown Point, in Center Township.

6. The subject property is 2.269 acres of improved commercial land.

7. The Special Master did not conduct an on-site visit of the property.

8. The DLGF determined the assessed value of the subject property to be $81,500 for the land and $157,300 for the improvements for a total assessed value of $238,800.

9. The Petitioner requested an assessed value of $31,500 for the land and $110,300 for the improvements for a total assessed value of $141,800.

10. Kenneth and Jean T. Ziese, officers of the Petitioner, and Everitt Davis, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

a) The Petitioner contends that the asphalt paving shown on the PRC as 17,600 square feet is incorrect. The amount of asphalt paving should be 12,275 square feet as evidenced by the bill from Site Services, Inc. *J. Ziese testimony; Petitioner Exhibit 5.*

b) Petitioner further argues that an appraisal done by an independent appraiser determined that the market value of the subject property was $125,000. *J. Ziese testimony; Petitioner Exhibit 6.*

c) According to the Petitioner, a business property across the street (Hartline Equipment Sales) was valued differently than the subject property. The Petitioner alleges that the Hartline property consists of six acres and 10 buildings in addition to the house. It is an equipment business but it is not zoned "business" as is Petitioner's properties. *J. and K. Ziese testimony*. The Petitioner contends that the Hartline property is assessed as agricultural rather than commercial. *J. and K. Ziese testimony; Petitioner Exhibit 4.* According to Petitioner, Petitioner's property is 2.7 acres (2.269 acres per PRC) of rural residential land assessed at $81,500. Whereas the Hartline property is six acres assessed at $22,000. *J. Ziese testimony, Petitioner Exhibit 4; Respondent Exhibit 1.* Further, the Petitioner argues that the assessed value of some of the neighboring property's buildings, which are similar in size to Petitioner's buildings but have concrete and are heated, are valued less than Petitioner's buildings that are unheated and unfinished. *K. Ziese testimony.*

d) The Petitioner also contends that the assessed value does not represent the cost of the buildings. According to Petitioner, its 50 foot by 63 foot building built in 1998 cost $44,000 and the assessed value is $67,400. Further, the shop and office cost Petitioner $33,000 and the assessed value is $84,700. Finally, the shop is a pole barn with an office attached to the front. It is not heated nor is the ceiling insulated. *J and K. Ziese testimony; Petitioner Exhibit 7.*

e) Finally, Petitioner contends that its use of the property is restricted. According to the Petitioner, should the business be discontinued or the property sold, the land becomes residential. *J and K Ziese testimony.*

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

a) According to the Respondent, the value of Petitioner's property is proper. *Davis testimony*.

b) The Respondent argues that the appraisal submitted by the Petitioner is not a full appraisal. It is an opinion of value and there are no comparables. *Davis testimony.* The appraiser states, "This appraisal was prepared for net worth purposes only and is <u>invalid</u> if used for marketing, mortgage loan, insurance rate, or any other purposes. Replacement cost exceeds market value and the subject property should be insured accordingly." *Davis testimony; Petitioner Exhibit 6.*

c) Finally, the Respondent agreed with the Petitioner regarding the square footage of the pavement. *Davis testimony.*

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 #1474.

c) Exhibits:

Petitioner Exhibit 1: Form 139L petition
Petitioner Exhibit 2: Final assessment
Petitioner Exhibit 3: Commercial Property Record Card (the PRC)
Petitioner Exhibit 4: Comparable assessment from neighboring property
Petitioner Exhibit 5: Proposal for paving services
Petitioner Exhibit 6: Appraisal by Metz Appraising
Petitioner Exhibit 7: Notes regarding cost of constructing buildings

Respondent Exhibit 1: Subject PRC
Respondent Exhibit 2: Form 139L petition

Board Exhibit A: Form 139L petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign-in Sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable laws are:

a) A petitioner seeking review of a determination of the DLGF 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 at 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 Petitioner's evidence. *See American United Life Ins. 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 479.

15. The Petitioner failed to raise a prima facie case that Petitioner's property is over-valued. However, the Respondent agreed to a change in the area of the asphalt paving. This conclusion was arrived at because:

a) Real property in Indiana is assessed on the basis of its "true tax value." *See* I.C. § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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) (hereinafter "Manual"). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id*. at 3; *Long v. Wayne Township Assessor,* 821 N.E.2d 466 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the "sales comparison approach." *Id.* The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." *Id.*

b) Here, the Petitioner submitted an "appraisal" from Metz Appraisals, dated March 5, 2003, which determined the market value of the subject property to be $125,000 as of November 12, 2002. However, the "appraisal" was nothing more than a letter providing an opinion of market value prepared by Mr. Robert W. Metz. The letter consisted of three pages: two pages of a statement of value from the appraiser and a copy of a survey of the subject property. *Petitioner Exhibit 6.* While the valuation letter purports to have been "made using comparable market sales," no comparable properties were identified or discussed. Further, the letter itself states that the "appraisal was prepared for net worth purposes only and is invalid if used for marketing, mortgage loan, insurance rate, or any other purposes." *Id.* (emphasis in original). Thus, Petitioner's "appraisal" is little more than an "opinion of value" which is not probative of the subject property's market value-in-use. *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).[1]

c) Further, the 2002 Real Property Assessment Manual provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 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. *See Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). Therefore, even if the opinion letter were probative of the subject property's market value, the report values the property as of November 12, 2002, almost four years after the relevant valuation date of January 1, 1999. *Petitioner Exhibit 6*. The Petitioner provided no testimony as to how the calculated price of $125,000 relates to the value as of the subject property as of January 1, 1999. Nor was any evidence submitted that related the appraisal value as of the assessment valuation date. The letter therefore lacks probative value.

d) The Petitioner also attempts to compare its "assessed" value to the "assessed" value of the neighboring property. In support of this contention, the Petitioner submitted the property record cards of the property located at 6918 W. 109th Street owned by Jerry Hartline, as Trustee of the Hartline Trust, dba Hartline Equipment Sales. Based on this comparison, the Petitioner alleges that the land should be assessed as agricultural land and the buildings are over-valued.

e) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*

f) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.,* 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two

[1] The Board in no way questions Mr. Metz's qualifications as an appraiser. Instead, the Board finds that the information contained in the letter of market value is insufficient to treat the estimation of value contained therein as probative of the subject property's market value-in-use.

properties. *See Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id. See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

g) In the case at bar, the Petitioner has not met its burden. While Petitioner identifies a neighboring property that is assessed lower, the Petitioner did not make any attempt to explain why or how the properties are comparable to the subject property. The Petitioner merely compared the use and size of the properties and the number of buildings thereon. This falls far short of the burden that Petitioner faces. The Petitioners has only made a "de minimis factual showing" and has failed to "sufficiently link [their] evidence to the uniform and equal argument they raise." *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

h) Further, while Petitioner alleges that the neighboring property has a similar use as the subject property (commercial) but is assessed as agricultural, we are unwilling to assess Petitioner's property in a manner contrary to its use simply because a neighboring property may be assessed incorrectly. It would take a far greater showing (for example a showing that *every* property in the township was assessed as agricultural except for petitioner's despite other properties being used as commercial properties) to properly raise an equalization case.

i) Finally, while Petitioner's testimony that the property's commercial use is restricted to Petitioner's use and reverts to residential if the property is sold or the commercial use is discontinued, does not raise a prima facie case the property is improperly assessed. "True tax value" is "[t]he 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." MANUAL at 2. Here, there is no question the property is being used for commercial purposes by Petitioner. While this restriction may have some impact on the market value of the property, that evidence is not before this Board.

j) Because the Petitioner did not meet its burden of presenting a prima facie case, the Assessor's duty to rebut Petitioners' evidence was not triggered. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence). However, the Respondent agreed with Petitioner that the

area of the asphalt paving, as identified on the PRC is properly 12,275 sq.ft. rather than the 17,600 sq.ft. as assessed on Petitioner's PRC.[2]

Conclusion

16. The Petitioner failed to make a prima facie case on the issue of the value of the subject property but Respondent agreed to the amount of asphalt paving sought by the Petitioner. Thus, the assessment for asphalt paving should be changed from 17,600 sq.ft. to 12,275 sq.ft.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the amount of asphalt paving should be changed from 17,600 square feet to 12,275 square feet and be valued accordingly.

ISSUED: ______________________________

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Commissioner,
Indiana Board of Tax Review

[2] The Petitioners also submitted a list of structures built on the subject property from 1979 to 1998 and their purported costs. 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*; Manual at 4. However, the Petitioners failed to present any additional documentation to support the listed values or to trend those costs to the appropriate assessment valuation date. Thus the listing and statements made by the Petitioner regarding the values attributed to the different structures are conclusory and are not probative of the property's value as of January 1, 1999. *See Whitley Products, Inc. V. State Board of Tax Commissioners*, 704 N.E.2d 119 (Ind. Tax 1998) (unsubstantiated conclusions do not constitute probative evidence).

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 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/trialproc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code.