

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

Petition #: 20-031-02-1-3-00018
Petitioner: Patrick Industries
Respondent: Washington Township Assessor (Elkhart County)
Parcel #: 20-03-27-285-038.000-031
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 July 21, 2003.
2. The Petitioner received notice of the decision of the PTABOA on October 7, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 8, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 7, 2006.
5. The Board held an administrative hearing on June 21, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn as witnesses at the hearing:
 - a. For Petitioner: Rex Hume, Uzelac & Associates, Inc.
 - b. For Respondent: Dana Hunt, Elkhart County Deputy Assessor

Facts

7. The subject property is a manufacturing plant on 3.903 acres located at 207 St. Joseph Street in Bristol, Indiana.
8. The ALJ did not conduct an on-site inspection of the property.

9. The PTABOA determined the assessed value of the subject property is \$114,500 for the land and \$453,600 for the improvements. The total assessed value is \$568,100.
10. The Petitioner requested an assessment of \$114,500 for the land and \$81,700 for the improvements. The total assessed value would be \$196,200. This amount represents the remainder value when a 2003 sale price of \$225,000 is reduced by the value of a related parcel that was included in the sale.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the sale price of \$225,000 (reduced by \$22,800 allocated to related parcel number 20-03-27-286-014.000-031) for the subject property on December 23, 2003, is the best indication of value. *Hume testimony*. In support of this contention, the Petitioner submitted the closing statement and the sales disclosure from the sale. *Petitioner Exhibits 2, 3*. According to the Petitioner, the property was listed with a realtor for three years before the owner sold it. The Petitioner offered testimony that no sales of comparable industrial properties occurred in the county between the assessment date and the December 2003 sale. A realtor actively marketed the subject property for three years before it sold. Though the property was listed at one time at \$500,000, the seller instructed the realtor to bring in any offers at the end of the listing period. Petitioner contends the lack of offers indicates the property was overvalued at \$500,000. The market value in use is the sale price of \$225,000 (reduced by \$22,800 allocated to related parcel number 20-03-27-286-014.000-031). *Hume testimony*.
 - b. Petitioner contends the December 2003 sale price is indicative of the most appropriate value for the assessment date. *Hume testimony*. The lack of comparable industrial sales in the area from 1999 to the 2003 sale of the subject property fails to establish a trending of value over that period. *Id.* A search for comparable sales or real estate listings in Elkhart County yielded no results, thereby supporting the fact that the sale of the subject property in December 2003 after more than three years of market exposure is the best evidence of value. *Id.* Petitioner contended that the December 2003 sale price was the best estimate of the assessment value in the absence of comparable sale or listing data in the county for the relevant time period that would establish trending evidence to adjust the sale amount to the assessment date.
 - c. The Respondent's comparables (Respondent Exhibits 1 thru 5) are not comparable in age, size, or in any meaningful way other than that they are industrial properties. *Hume testimony*. The Respondent's evidence does not include an analysis that relates the purported comparable properties to the subject property. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that the assessed value assigned to the subject property is correct. *Hunt testimony.*
 - b. In support of this contention, the Respondent submitted property record cards and sales disclosures of five (5) properties purported by the Respondent to be comparable to the subject. *Respondent Exhibits 1 thru 5.*

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 # 6246,
- c. Exhibits:

Petitioner Exhibit 1 - Form 131, including statement of issues, power of attorney and disclosure,

Petitioner Exhibit 2 - Closing statement on sale of subject property dated December 23, 2003,

Petitioner Exhibit 3 - Sales disclosure,

Petitioner Exhibit 4 - Form 130,

Petitioner Exhibit 5 – Form 115,

Petitioner Exhibit 6 – Property record card for parcel 20-03-27-285-038.000-031 (subject),

Petitioner Exhibit 7 – Property record card for parcel 20-03-27-286-014.000-031 (related parcel),

Respondent Exhibit 1 – Property record card and sales disclosure for comparable number 1,

Respondent Exhibit 2 - Property record card and sales disclosure for comparable number 2,

Respondent Exhibit 3 - Property record card and sales disclosure for comparable number 3,

Respondent Exhibit 4 - Property record card and sales disclosure for comparable number 4,

Respondent Exhibit 5 - Property record card and sales disclosure for comparable number 5,

Respondent Exhibit 6 – Subject property record card,

Respondent Exhibit 7 – Form 115,

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Authorization for county to represent 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. Real property in Indiana is assessed on the basis of its “true tax value.” Ind. Code § 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 similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) at 12 (2001) (incorporated by reference at 50 IAC 2.3-1-2). 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 Twp. Assessor*, 821 N.E.2d 466, 469 (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.* In the absence of comparable sales in the county the Petitioner offered testimony that the sale price was the best indicator of market in use value.

- b. 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. *Long*, 821 N.E.2d at 471; MANUAL at 4. Consequently, a party must provide some explanation as to how the evidence demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- c. The Petitioner made a prima facie case that the property was over-valued through the submission of the December 2003 sale and testimony that the property had been listed on the market for over three (3) years. *Hume testimony; Petitioner Exhibit 2.*
- d. The burden shifted to the Respondent to produce evidence to impeach or rebut the Petitioner's evidence. The Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), (statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence). When challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case. *Id.*
- e. The Respondent's submission of multiple property record cards and sales information that have not been correlated to the subject property or adjusted for differences between the sale properties and the subject property was not sufficient to rebut the Petitioner's case. To introduce evidence of comparable properties, a taxpayer must explain how the properties are comparable. *Long*, 821 N.E.2d at 470-471 (party offering evidence is responsible for explaining the characteristics of the subject property, how those characteristics compare to the purportedly comparable properties, and how any differences affect the relevant market value of the properties). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Id.*; *Lacy Diversified Industries, Ltd. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003). The Respondent failed to make any comparisons of the similarities or differences between the purported comparable properties and that of the subject property to show that the properties were in fact comparable to one another. Therefore, the purportedly comparable properties offered by the Respondent have no probative value.

Conclusion

- 16. The Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner's case. The Board finds in favor of the Petitioner. The assessed value of the subject property should be \$202,200 (\$225,000 sale amount less the \$22,800 assessed value of the related parcel).

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: _____

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>.