

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00048
Petitioner: Whiteco Industries, Inc. (Radisson Hotel)
Respondent: Department of Local Government Finance
Parcel #: 008081504210001
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 February 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessment for the subject property was \$16,023,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed its Form 139L petition on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated July 22, 2005.
4. Dalene McMillen, a special master duly appointed by the Board (Special Master), held a hearing in this matter on August 24, 2005, in Crown Point, Indiana.

Facts

5. The subject property, which is known as the Radisson Hotel, is located at 1000 East 80th Place, Merrillville, Ross Township in Lake County.
6. The subject property is a hotel located on 7.892 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land: \$2,260,600 Improvements: \$13,762,400 Total: \$16,023,000
9. The assessed value of the subject property as requested by the Petitioner at the hearing:
Total Value of \$12,460,000

10. The following persons were present and sworn in at the hearing:

For Petitioner: Richard Archer, Tax Representative
Thomas Janik, Witness

For Respondent: Terry Knee, Assessor/Auditor, DLGF
Phillip Raskosky II, Assessor/Auditor, DLGF

Issues

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

- a) The assessed value of the subject property exceeds its 1999 market value.
- b) The Petitioner submitted an appraisal of the subject property prepared by David M. Heinowski, a certified appraiser. Mr. Heinowski is licensed in the State of Michigan and has a permit for temporary practice in Indiana. *Pet'r Ex. 3 at 56*. The appraisal is dated August 5, 2005, and it estimates the value of the subject property to be \$13,500,000 as of March 1, 2002. The appraisal further trends the March 1, 2002, value to reflect a value of \$12,460,000 as of January 1, 1999. *Pet'r Ex. 3 at 51*.
- c) Mr. Heinowski considered the sales comparison, cost and income approaches to value. Mr. Heinowski did not develop the sales comparison approach due to the lack of sales of similar hotel/conference facilities within an acceptable time frame. *Archer testimony; Pet'r Ex. 3 at 32, 50-51*. Nonetheless, Mr. Heinowski did rely upon sales of comparable properties in determining the effective age of the subject improvements. *Archer testimony; Pet'r Ex. 3 at 39-42*.
- d) Mr. Heinowski first estimated the market value of the subject property using the cost approach. Mr. Heinowski estimated the replacement cost new (RCN) of the improvements to be \$37,226,698 as of December 31, 2004. *Pet'r Ex. 3 at 38*. To determine the RCN of the improvements as of the March 1, 2002, assessment date, Mr. Heinowski divided the December 31, 2004, RCN by a comparative cost multiplier of 1.175, which he obtained from a publication of Marshall Valuation Services. *Id.* This yielded a March 1, 2002, RCN for the subject improvements of \$31,682,296. *Id. at 39*. Mr. Heinowski then used market-derived data to estimate that the subject improvements suffered depreciation equal to 61% of their March 1, 2002, RCN. *Id. at 39-42*. The March 1, 2002, RCN less 61% physical depreciation yielded a depreciated value for the improvements of \$12,039,272. *Id.* Mr. Heinowski then added a land value of \$1,600,000 to the depreciated cost of the improvements to arrive at a total value of \$13,650,000 as of March 1, 2002. *Id.*
- e) Mr. Heinowski arrived at his estimate of 61% physical depreciation, in part, by analyzing the sales of two comparable properties from Merrillville. Mr. Heinowski concluded that the effective ages of commercial properties in Merrillville exceed the actual ages of those properties. *Pet'r Ex. 3 at 39-40*. Based on his analysis, Mr.

Heinowski determined that, while the subject improvements were actually 32 years old as of the effective date of the appraisal, they had an effective age of “36+” years. *Id. at 41*. The Marshall Valuation Service’s depreciation schedule indicates that 61% depreciation for improvements with an effective age of “36+” years is approximately 62%. *Id.*

- f) Mr. Heinowski estimated the March 1, 2002, market value of the subject property to be \$13,500,000 (rounded) using the income approach. *Pet’r Ex. 3 at 49*. In doing so, Mr. Heinowski examined the income and expenses of the subject property from 1998-2001 to develop a “Pro Forma” income statement for March 1, 2002. *Id. at 43-47*.
- g) Mr. Heinowski applied an overall capitalization rate of 14.9% to the pro forma net operating income of the subject property. To determine the overall rate, Mr. Heinowski first used the band of investment technique to calculate a rate of 9.8% (rounded). *Pet’r Ex. 3 at 48*. According to Mr. Heinowski, that rate was supported by various investor surveys, which cited rates ranging from 8.5% to 11% for the Chicago office market. *Id.* While the subject property is not in the Chicago market, it is influenced by that market. *Id.* Mr. Heinowski therefore felt that a rate of 9.8% was reasonable. *Id.* Mr. Heinowski then added an effective tax rate of 5.06% to arrive at an overall rate of 14.89%, which he rounded to 14.9%. *Id.*
- h) Mr. Heinowski gave greater weight to his estimation of value under the income approach than he did to his estimation of value under the cost approach. *Pet’r Ex. 3 at 50*. According to Mr. Heinowski, given the age of the subject improvements, it “is questionable whether [the cost approach] reflects the alternatives to investors.” *Id.* In Mr. Heinowski’s opinion, the lack of construction of new hotels/conference facilities is evidence that investors are unlikely to consider the cost approach in making investment decisions. *Id.* Mr. Heinowski therefore estimated the market value of the subject property to be \$13,500,000 as of March 1, 2002. *Id. at 51*. Mr. Heinowski then trended that amount to a value as of January 1, 1999, using a comparative cost multiplier of .923 derived from the comparative cost indexes provided by Marshall Valuation Services. *Id.* This resulted in a value of \$12,460,500, which Mr. Heinowski rounded to \$12,460,000. *Id.*

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

- a) The Respondent presented the subject property record card, photographs of the subject property, a plat map of the area, land calculations, and a proposed corrected property record card. *Raskosky testimony; Resp’t Exs. 1-5*.
- b) The Respondent recommended adding an additional 28% influence factor for the shape and size of the subject parcel. This correction would reduce the land value to \$1,557,300. The total corrected assessment would be \$15,319,700. *Raskosky testimony; Resp’t Ex. 5*.

- c) The Respondent argued that, if there were no sales of comparable properties from which to apply a sales comparison approach to value, Mr. Heinowski should not have used the sales of two office buildings in determining the effective age of the subject improvements. *Knee argument.* According to the Respondent, office buildings are not comparable to hotels. *Knee testimony.* Moreover, the Petitioner did not present any supporting information to show that the office buildings were in a condition similar to the condition of the subject property. The relative condition of the respective buildings, however, could have a profound effect on their effective ages. *Knee argument.* The Respondent also noted that Mr. Heinowski examined the same two office buildings to determine the effective age of an improvement that was the subject of a separate appeal. *Knee testimony.*
- d) The Respondent additionally noted that, while Mr. Heinowski examined sales of purportedly comparable properties to determine whether the depreciation schedules published by Marshall Valuation Services were appropriate, he did not perform a similar analysis to check the reasonableness of the comparative cost index he used to estimate the subject property's value as of January 1, 1999. *Knee argument.*
- e) The Respondent further argued that Mr. Heinowski should have used income and expense information from 1999 rather than 2002 in estimating the subject property's value under the income approach. *Knee argument.*
- f) Based on the above-described flaws in the appraisal, the Respondent argued that its corrected property record card presented a better indication of the subject property's market value-in-use than did Mr. Heinowski's appraisal. *Knee testimony.*

Record

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

- a) The Petition,
- b) The recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1 – Form 139L petition,
Petitioner Exhibit 2 – Subject property record card,
Petitioner Exhibit 3 – Appraisal report prepared by David M. Heinowski,
Petitioner Exhibit 4 – Copy of a depreciation schedule from Marshall Valuation Service,

Respondent Exhibit 1 – Subject property record card (PRC),
Respondent Exhibit 2 – Six exterior photographs of the subject,
Respondent Exhibit 3 – Plat map of the subject parcel,
Respondent Exhibit 4 – Land Calculations/Land Summary Sheet,

Respondent Exhibit 5 – PRC with proposed land correction,

Board Exhibit A – Form 139L petition,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable 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 did provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, 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. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.
- b) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, is presumed to be accurate. *See MANUAL* at 5; *see also, Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 2006 Ind. Tax

- LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use an appraisal prepared in accordance with the Manual's definition of true tax value to rebut the presumption that an assessment is correct. *MANUAL* at 5; *Kooshtard Property VI*, 836 N.E.2d at 505-06 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice [USPAP].”).
- c) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See MANUAL* at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal performed substantially after January 1, 1999, should explain how the value estimated by that appraisal relates to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value as of December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Mr. Heinowski performed his appraisal in accordance with the “Competency Provision and Rules 1-5 of [USPAP].” *Pet'r Ex. 3 at 55*. Mr. Heinowski estimated the market value of the subject property using two generally accepted methods of appraisal - the cost and income approaches to value. *Id. at 33-51*. In his expert opinion, Mr. Heinowski estimated the value of the subject property to be \$13,500,000 as of the assessment date of March 1, 2002. *Id. at 50*. Mr. Heinowski then applied a comparative cost multiplier to trend his March 1, 2002, estimation of value to a value as of January 1, 1999, of \$12,460,000. *Id. at 51*. Thus, under the above cited portions of the Manual and applicable case law, Mr. Heinowski's appraisal suffices to establish a prima facie case that the current assessment is incorrect and that the true tax value of the subject property is \$12,460,000.
- e) Because the Petitioner established a prima facie case for a change in assessment based upon the appraisal prepared by Mr. Heinowski, the burden shifted to the Respondent to impeach or rebut that appraisal. *See Meridian Towers*, 805 N.E.2d at 479.
- f) The Respondent sought to impeach Mr. Heinowski's opinion of value by pointing to what it viewed as several flaws in the appraisal. The first group of those purported flaws center on Mr. Heinowski's calculation of the effective age of the subject improvements for purposes of applying physical depreciation under the cost approach.
- g) In that vein, the Respondent pointed out that the appraisal does not contain any information demonstrating that the two purportedly comparable buildings relied upon by Mr. Heinowski in determining the effective age of the subject improvements actually were comparable to the subject improvements. *Knee argument*. The Respondent also questioned the reliability of Mr. Heinowski's analysis of the sales of purportedly comparable buildings in determining the effective age of the subject

improvements, given that he separately concluded that there were no sales of comparable properties upon which to base a sales comparison approach to value. *Knee argument*. The Respondent further noted that Mr. Heinowski examined the same two office buildings to determine the effective age of an improvement that was the subject of a separate appeal. *Knee testimony*.

- h) Mr. Heinowski's appraisal does contain information regarding the construction and condition of the purportedly comparable buildings at issue. *See Pet'r Ex. 3 at 39-41*. His appraisal, however, does not contain any explanation regarding how relevant characteristics of the purportedly comparable buildings compare to those of the subject improvements. Similarly, Mr. Heinowski's decision not to use the sales comparison approach to value based on a lack of sales of hotels with conference facilities (*see Pet'r Ex. 3 at 32*) appears inconsistent with his decision to base his estimate of depreciation, in part, on the sales of purportedly comparable buildings. The Respondent, however, did not present any evidence of its own to show that the subject improvements deteriorated at a rate substantially different from the rate determined by Mr. Heinowski. Moreover, Mr. Heinowski admittedly did not place a significant amount of weight on his conclusions under the cost approach in reaching his final estimation of value. *Id. at 48*. Thus, although the absence of evidence demonstrating that the buildings used by Mr. Heinowski in his depreciation calculation actually were comparable to the subject improvements detracts somewhat from the reliability of his estimation of value, it does so only marginally.
- i) The Respondent did not explain the significance of its assertion that Mr. Heinowski examined the same two office buildings to determine the effective age of an improvement that is the subject of a separate appeal. Absent such explanation, it is not apparent why that fact should detract from the reliability of Mr. Heinowski's opinion of value.
- j) The Respondent also argued that Mr. Heinowski's estimation of value under the income approach was flawed because he relied upon a pro forma estimation of income and expenses from 2002 rather than from 1999. *Knee argument*.
- k) The Manual provides that a property's assessment should reflect its value as of January 1, 1999. That mandate is based upon the fact that the Guidelines utilize cost tables derived from 1998 and 1999 data. *See GUIDELINES*, intro at 1 (incorporated by reference at 50 IAC 2.3-1-2). Thus, in order to maintain uniformity and consistency in assessments, values must be based upon 1999 dollars.
- l) The Manual, however, does not contemplate valuing a property based upon the characteristics it actually exhibited on January 1, 1999. Instead, real property is assessed based upon the characteristics it exhibits on the assessment date, which in this case was March 1, 2002. Consequently, the better approach in applying an income capitalization analysis is to look at the subject property as it physically existed on March 1, 2002, as well as at the economic conditions prevailing on or

about that date. Of course, the value ultimately derived from that analysis must be related back to January 1, 1999.

- m) Mr. Heinowski followed the above outlined approach in this case. He prepared a pro forma estimation of the subject property's net operating income as of March 1, 2002, based upon an examination of its historical income and expenses. *Pet'r Ex. 3 at 43-45*. Mr. Heinowski then adjusted his March 1, 2002, estimate of value to reflect 1999 dollars through use of a comparative cost multiplier. *Id. at 51*.
- n) The Respondent further argued that, while Mr. Heinowski examined the sales of purportedly comparable buildings to check the accuracy of the depreciation schedules provided by Marshal Valuation Services, he did not similarly check the accuracy of the comparative cost indexes that he used to arrive at a January 1, 1999, value for the subject property. *Knee argument*. The Respondent, however, did not provide any evidence to dispute the reliability or accuracy of the cost indexes used by Mr. Heinowski.
- o) Finally, the Respondent presented a revised property record card. The Respondent, however, did not explain the methodology behind the valuation reflected on that card. The Respondent similarly failed to explain why the valuation on the revised property record card is more probative of the subject property's true tax value than is Mr. Heinowski's opinion of value, other than to point to various flaws within Mr. Heinowski's appraisal. As explained above, however, the purported flaws identified by the Respondent do not significantly detract from Mr. Heinowski's opinion of value.
- p) Based on the foregoing, the Respondent failed to impeach or rebut Mr. Heinowski's appraisal. The preponderance of the evidence supports a finding that the current assessment is incorrect, and that the correct assessment is \$12,460,000.

Conclusion

16. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of the Petitioner.

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>>.