

REPRESENTATIVE FOR PETITIONER:

Michael E. Duff, DuCharme, McMillen & Associates

REPRESENTATIVE FOR RESPONDENT:

Richetta Hale, Harrison Township Chief Deputy

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Ulrich Realty Inc.,	)	Petition Nos.:	84-002-02-1-3-01063
	)		84-002-04-1-3-00065
Petitioner,)		
)		
	)	Parcel:	118-06-34-402-002
v.)		
)		
	)	County:	Vigo
Harrison Township Assessor,	)	Township:	Harrison
)		
Respondent.	)	Assessment Years:	2002 and 2004

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

May 9, 2007

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the property's assessed value for tax years 2002 and 2004 exceeds its market value-in-use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Gregory Poore,¹ on behalf of Ulrich Realty Inc., filed Form 131 Petitions for Review of Assessment, petitioning the Board to conduct an administrative review of the above petitions. For 2002, the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on October 25, 2004. The Petitioner filed its Form 131 Petition for tax year 2002 on November 29, 2004. For 2004, the PTABOA issued its determination on December 13, 2005. The Petitioner filed its Form 131 Petition for tax year 2004 on January 12, 2006.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. 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 hearing on November 14, 2006, in Terre Haute, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Michael E. Duff, DuCharme, McMillen & Associates,
Doug Cooper, Appraiser, Don R. Scheidt & Co., Inc.,
Hank Rassel, Appraiser, Don R. Scheidt & Co., Inc.,

¹ Mr. Poore subsequently left DuCharme, McMillen & Associates, Inc., and Michael Duff assumed responsibility for representing Petitioner in the appeal.

For the Respondent:

Richetta Hale, Harrison Township Chief Deputy,
Gloria Donham, Vigo County PTABOA.

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Summary appraisal report for the subject property,
Petitioner Exhibit 2 – Form 11 Notice of Assessment dated September 12,
2003,
Petitioner Exhibit 3 – Request for Preliminary Conference dated May 9,
2005,
Petitioner Exhibit 4 – Form 114 Notice of PTABOA hearing on 130
Petition,
Petitioner Exhibit 5 – Form 130 Petition date stamped October 27, 2003,
Petitioner Exhibit 6 – Form 115 Final Assessment Notice dated October
25, 2004,
Petitioner Exhibit 7 – Form 131 Petition to Indiana Board of Tax Review,
Petitioner Exhibit 8 – Power of Attorney and Tax Representative
Disclosure,
Petitioner Exhibit 9 – Post-hearing Response to Respondent’s evidence.

6. The Respondent presented the following exhibits:²

Respondent Exhibit 1 – Property record card for the subject property
labeled “test parcel”,
Respondent Exhibit 2 – Aerial photograph of subject property,
Respondent Exhibit 3 – Aerial photograph of TDK Properties,
Respondent Exhibit 4 – Property record card for TDK Properties,
Respondent Exhibit 5 – Sales disclosure dated June 30, 2000,
Respondent Exhibit 6 – Response to Petitioner’s post-hearing brief.

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

□

² The Petitioner met the requirements of discovery as required by IC 6-1.1-15-4(n) and 52 IAC 2-7-1. The Respondent, however, failed to exchange its evidence prior to the hearing. Both sides agreed to waive the discovery rules and proceed with the hearing. See *Board Exhibit D*. The ALJ granted the Petitioner a 30-day post-hearing period to examine and respond to the Respondent’s evidence. The Respondent was granted a 30-day post-hearing period to examine Petitioner’s response and file its own response. See *Board Exhibit E*.

Board Exhibit A – 131 Petition and all subsequent submissions to the Board,
Board Exhibit B – Notice of Hearing dated October 6, 2006,
Board Exhibit C – Hearing Sign-in Sheet,
Board Exhibit D – Waiver of Exchange of Evidence,
Board Exhibit E – Request for Additional Evidence and waiver of statutory requirement of Board’s deadline to issue its findings.

8. The subject property is a parcel of land totaling 4.0 acres with improvements comprised of approximately 38,420 square feet of manufacturing area in four detached buildings located at 1400 E. Lockport Road, Terre Haute, Harrison Township, Vigo County. The manufacturing facility is also comprised of two adjacent unimproved parcels comprising an additional 3.8 acres of land for a total property of 7.8 acres. The two adjacent parcels have not been appealed by the Petitioner for the 2002 or 2004 assessment year.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2002 and 2004, the PTABOA determined the assessed value of the property to be \$168,800 for the land and \$748,500 for the improvements, for a total assessed value of \$917,300.
11. For 2002 and 2004, the Petitioner contends that the assessed value of land should be \$168,800 and the assessed value of the improvements should be \$365,300, for a total assessed value of \$534,100.

JURISDICTIONAL FRAMEWORK

12. 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 Indiana 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

13. 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).
14. 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”).
15. 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.

PARTIES' CONTENTIONS

16. The Petitioner contends that the subject property's 2002 and 2004 assessments are over-stated when compared to the \$660,000 appraised value of the property. *Duff testimony*

17. In support of its value, the Petitioner presented the following evidence:
- A. The Petitioner presented a summary appraisal report prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) by licensed Indiana Certified General Appraisers, Hank Rassel, MAI, and Doug G. Cooper, associates for Don R. Scheidt & Co., Inc. *Petitioner Exhibit 1*. The appraisers estimated that the January 1, 1999, value of the subject property, a land lease, and two adjoining unimproved parcels for tax years 2002 and 2004 is \$660,000. *Duff argument; Petitioner Exhibit 1*.
 - B. One of the Petitioner's appraisers, Mr. Cooper, testified that the appraisal used only the sales comparison approach in determining the property's January 1, 1999, value. *Cooper testimony, Petitioner Exhibit 1 at 4*. According to Mr. Cooper, the appraisers did not use the income capitalization approach because there was limited lease data in the local market for a property of the subject property's scope. *Id.* Further, Mr. Cooper testified that the cost approach was also not used because the property's improvements were constructed over a period of seventeen years and because all of the buildings suffer from multiple forms of depreciation. *Id.*
 - C. Mr. Cooper testified that the appraisers identified ten industrial properties that sold during the period of April 1994 through January 1999. *Cooper testimony, Petitioner Exhibit 1 at 31*. According to Mr. Cooper, the sale properties were similar to the subject property in age, size, location, and ceiling clearance. *Id.* The Petitioner's appraisers analyzed the comparable sales and determined a value of \$14 to \$17 per square foot resulting in an estimated value of \$600,000 for the property. *Id.* Mr. Cooper admitted that the appraisers widened the market area to include similar markets within Indiana because they could not identify sufficient sales of similar properties in Vigo County. *Id.* Mr. Cooper also admitted that the appraisers made their adjustments qualitatively rather than by a percentage or dollar amount. *Id.*

According to Mr. Russell, however, the appraisers understand Indiana's market-value-in-use concept of property value and that, while each individual sale was not trended back to 1999, the final estimate of value for the Petitioner's property was retrospective back to January 1, 1999. *Rassel testimony.*

- D. The appraisers also performed a land lease analysis based on a cellular telephone tower lease of a portion of the Petitioner's property and determined a value of \$60,000 for the land lease. *Cooper testimony; Petitioner Exhibit 1 at 38 and 39.* According to Mr. Cooper, the appraised value was adjusted to provide a retrospective market value of the subject property as of January 1, 1999. *Id.*
- E. The appraisers estimated the market value of the property and the land lease together to be \$660,000. *Id.* The Petitioner's tax representative, however, testified that the appraised value includes the two adjoining unimproved parcels not at issue in this appeal in the estimated value. *Duff testimony.* Mr. Duff argued that the value of the unappealed parcels should be deducted from the appraised value, resulting in an estimated value for the subject property of \$534,100. *Duff testimony, Petitioner Exhibit 1 at A-1.* According to Mr. Duff, the assessment should be \$168,800 for the land and \$365,300 for the improvements. *Id.*
- F. In its post-hearing submission, the Petitioner contends that that the Respondent's revised property record card with a lower assessment than the 2002 and 2004 assessments of record, amounts to an admission that the assessments are incorrect. *Petitioner Exhibit 9 at 1.* The Petitioner contends, however, that the Respondent's revised assessment is not supported by market evidence. *Id.*

- G. The Petitioner further argues that the Respondent’s evidence regarding the assessed value of TDK Properties, LLC, failed to explain the correlation between the assessment information and the market value of the property. *Petitioner Exhibit 9 at 1.* Moreover, the Petitioner contends that the Respondent failed to explain how the 2000 sale of TDK Properties related to the market value of the Ulrich property under appeal. *Id.*
18. The Respondent admitted that the current assessed value of the subject property is over-stated, but argued that the correct assessment is \$768,700.
19. In support of its value, the Respondent presented the following evidence:
- A. The Respondent presented a revised property record card labeled “test parcel” which reflects a proposed assessment of \$768,700. *Hale testimony, Respondent Exhibit 1.* According to the Respondent, on the revised property record card, the value of the land remains at \$168,800, but the improvement values were changed from \$748,500 to \$599,900 based on information discovered by the Harrison Township Assessor’s office after a Vigo County PTABOA Form 130 hearing with the Petitioner’s representative on the 2002 and 2004 assessed values. *Id.*
- B. The Respondent further contends that the \$660,000 appraisal submitted by the Petitioner is flawed. *Hale testimony.* According to the Respondent, the value of the actively used rail spur as shown on an aerial photograph of the subject property is not reflected in the appraisal submitted. *Hale testimony, Respondent Exhibit 2.* Moreover, the Respondent argues, the appraisal does not support the Petitioner’s contention that the value of the subject property is \$534,100. *Hale testimony.*
- C. The Respondent also contends that two sales on June 30, 2000, of an industrial property identified as TDK Properties, LLC, for \$1,750,000 and for

\$8,000,000 respectively supports the \$768,700 assessed value of the subject property. *Hale testimony; Donham testimony; Respondent Exhibits 4 and 5.* According to the Respondent, TDK Properties is a Terre Haute manufacturing operation comparable to the subject property because it has multiple buildings. *Hale testimony.* The primary parcel for TKD Properties is assessed for \$998,500 for 2002. *Respondent Exhibits 3 and 4.* The Respondent argues that the \$32.40 per square foot value for TDK properties is comparable to the subject property's assessment. *Donham testimony.*

- D. Finally, the Respondent contends that four of the ten sales that the Petitioner's appraisers analyzed in their sales comparison analysis occurred outside of the accepted window of time around the January 1, 1999, valuation date on which both the 2002 and 2004 assessments under appeal are based. *Donham testimony* Moreover, the Respondent contends, none of the sales were time adjusted to bring them to the valuation date. *Id.*
- E. In its post-hearing brief, the Respondent contends that the two 2000 sales of the TDK property, the first at \$1,750,000 and the second at \$8,000,000, did not include personal property according to the sales disclosure form. *Respondent Exhibit 6.* The Respondent also contends that four of the ten sales considered in the appraisal took place outside the January 1, 1999, assessment value date, and that one of those sales was of a property being used as a restaurant in 2002. *Respondent Exhibit 6.* The Respondent argues that if you consider only the six sales that occurred during the relevant time period, the median sales price is \$700,000 and the average sales price is \$710,000. *Id.* Thus, the Respondent concludes the average sale price of six of the Petitioner's comparable properties supports the Respondent's \$768,700 proposed assessed value. *Id*

ANALYSIS

20. Real property in Indiana is assessed on the basis of its “true tax value.” *See* 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 a 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 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. MANUAL at 5.

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

22. Here, the Petitioner submitted a summary appraisal report for the Petitioner’s property establishing a value of \$660,000 for the subject property, two adjacent parcels, and an associated land lease as of January 1, 1999. *Petitioner Exhibit 1*. In the appraisal, the appraisers valued the property by using the sales comparison approach to value. The appraisers certified that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice. An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d

- 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioner has raised a prima facie case that the assessment of the subject property is over-valued.
23. Once a Petitioner establishes a prima facie case, the burden shifts to the assessing official to impeach or 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.
24. Here, the Respondent admits the 2002 and 2004 assessments are incorrect, but contends that, as a result of a site inspection, the correct assessed value is \$768,700 for the subject property. *Hale testimony*; *Respondent Exhibit 1*. In order to carry its burden, however, the Respondent 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. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).
25. The Respondent further contends that sales of TDK Properties support the revised assessment. *Hale testimony*. The Respondent argues that the subject property and the TDK Properties' property are comparable because both properties are chemical manufacturing facilities that consist of multiple buildings. *Hale testimony*. Merely asserting that both properties are used for the same purpose or that both properties have multiple buildings is insufficient to show comparability 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. *Long*, 821 N.E.2d at 470. 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

26. Respondent also argues that four of the ten sales analyzed by the Petitioner's appraisers in their sales comparison approach fall outside the state's mandated 18-month window around the January 1, 1999, valuation date for the 2002 general reassessment. *Hale testimony; Donham testimony*. This alone is insufficient to rebut the Petitioner's evidence. Merely criticizing various sales in an appraisal falls short of the substantial evidence the Respondent must present to rebut an appraisal prepared by a licensed appraiser. *Hometowne Associates v. Maley*, 839 N.E. 2d 269,280 (Ind. Tax Ct. 2005). The Respondent further contends that the remaining six sales support its revised assessment because the median sale price of those six properties is \$700,000. *Donham testimony*. While the Petitioner compared properties of varying size and quality by qualitative adjustments and the use of a per square foot value, the Respondent merely compared the sales values of the properties. Thus, the Respondent failed to account for any differences in the comparable properties used by the Petitioner. Further, the Respondent offered no evidence as to why a median or average sales value of six property sales reflects the market value of the subject property. *See Long*, 821 N.E.2d at 470.
27. Finally, the Respondent argues that the appraisal does not support the Petitioner's contention that the value of the subject property is \$534,100. *Hale testimony*. We agree with the Respondent. The Petitioner's representative testified regarding an insert that he had placed in the Petitioner's appraisal. *Petitioner Exhibit 1 at A-1*. Mr. Duff stated, "I wanted to bring up something I noticed when preparing the appeal...all the improvements are on one parcel which is under appeal. The entire site included in their appraisal is 7.8 acres of land divided up into three different tax parcels which I have summarized on this page. This is just for clarification. There is a little bit of difference between the property we actually appealed and the total property included in the appraisal. Basically, parcels ending in -001 and -003 are just land. The appraisal covered the entire parcel of 7.8 acres plus all the improvements and the cell tower lease and that's what their \$660,000 appraisal

covers.” *Duff testimony*. In summary, Mr. Duff argued that “we have presented an appraisal in compliance with USPAP rules for the appropriate purpose for the appropriate time of January 1, 1999, and under Indiana guidelines for the value-in-use of this property. And in the \$660,000 total property value is a fair and reasonable value. And as I submitted in the worksheet I did today that translates to the particular parcel under appeal to a value of \$534,100 land and buildings.” *Id.* Mr. Duff, however, failed to identify how he determined those values. *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”). Similarly, in his insert, Mr. Duff identified the value of Parcel No. 118-06-34-402-001 as being \$53,900; the value of Parcel No. 118-06-34-402-002 as being \$917,300; and the value of Parcel No. 118-06-34-402-0003 as being \$72,000. *Petitioner Exhibit 1 at A-1*. Again, Mr. Duff provided no explanation of how those values were determined.³ Most importantly, the appraisers do not apportion the appraised value in their report. Thus, nothing in the appraisal supports a \$534,100 valuation of the subject property. Therefore, the Petitioner has presented no probative evidence to support what portion of the appraisal is attributed to the subject property and we reject the Petitioner’s contention the subject property’s value is \$534,100.

28. The Board finds that, while the Petitioner’s appraisal does not establish the market value of the subject property alone, it is probative evidence that the subject property can be worth no more than the appraised value of the subject property together with the two adjoining parcels. The Respondent failed to impeach the appraisers’ valuation of the property. Thus, the Board concludes that the market

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³ The calculations seem to suggest that Mr. Duff merely deducted the assessed value of the adjacent lots from the appraised value of the property as a whole. On the one hand, then, the Petitioner claims its property is over-assessed and, on the other hand, the Petitioner’s tax representative deducts the assessed values of the additional properties from its appraised value on the other. The Petitioner cannot have it both ways. Absent evidence relating the assessed value to the properties’ market values, the Petitioner’s valuation of the additional properties is a conclusory statement that has no weight in establishing the market value of the subject property. *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

value-in-use of the subject property for assessment years 2002 and 2004 is no more than \$660,000.

SUMMARY OF FINAL DETERMINATION

29. The Petitioner raised a prima facie case that the subject property's assessment is incorrect. The Respondent failed to rebut or impeach the value determined by the Petitioner's appraisers. The Board finds in favor of the Petitioner and holds that the subject property's assessed value for 2002 and 2004 is no more than \$660,000.

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

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 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>.