

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

Petition: 47-010-12-1-3-00137
Petitioner: Anderson Realty LLC
Respondent: Lawrence County Assessor
Parcel: 47-06-14-422-045.000-010
Assessment Year: 2012

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On January 21, 2013, the Petitioner, Anderson Realty LLC, appealed its assessment to the Lawrence County Property Tax Assessment Board of Appeals (“PTABOA”). On October 21, 2013, the PTABOA issued its determination reducing the assessment, although not by as much as the Petitioner requested.
2. The Petitioner then timely filed a Form 131 petition with the Board. It elected to proceed under our small claims rules.
3. On May 12, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing. Neither he nor the Board inspected the property.
4. Milo E. Smith, a certified tax representative, appeared for the Petitioner. Marilyn Meighen appeared as counsel for the Respondent, Lawrence County Assessor. The following people were sworn as witnesses: Smith; Lawrence County Assessor April Stapp Collins; Kirk Reller, appraisal vendor, and Paul Weber, certified appraiser.

Hearing Facts and Other Matters of Record

5. The subject property is a self-service “mini” warehouse facility located at 13th and J Street in Bedford. It is composed of five separate structures on two acres. The structures have a combined size of 36,700 square feet and 134 rental units. The property is not fenced or enclosed, and it has open access from both 13th Street and K Street.
6. The PTABOA determined the following assessment:
Land: \$79,900 Improvements: \$549,100 Total: \$629,000.
7. The Petitioner requested a total assessment of \$540,000.

8. The official record of the hearing consists of the following:

a. A digital recording of the hearing.

b. Exhibits:

Petitioner Exhibit 1: Property record card (“PRC”) for the subject property,
Petitioner Exhibit 2: Depreciation Detail Listing for the subject property,
Petitioner Exhibit 3: Comparative Cost Indexes from Marshall Valuation Service,
Petitioner Exhibit 4: District Comparative Cost Multipliers from Marshall Valuation Service.

Respondent Exhibit 1: Restricted Appraisal report prepared by Gilbert S. Mordoh, and Paul E. Weber,

Respondent Exhibit 2: PRC for the subject property.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

Contentions

A. Summary of the Respondent’s Case

9. The Respondent offered a restricted appraisal report prepared by two certified appraisers, Paul Weber and Gilbert Mordoh. They certified that they prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (“USPAP”). They used the cost, sales-comparison, and income approaches to estimate the property’s market value at \$635,000. *Weber testimony, Resp’t Ex. 1.*
10. Under the cost approach, the appraisers estimated a value of \$90,000 for the site as if vacant. They then used Marshall and Swift Valuation Services and local building costs to estimate the improvements’ replacement cost. Because the improvements are “erector set” construction and are not climate controlled, the appraisers used \$21.07/sq. ft. as a base cost, which Weber testified is the low end of the scale. They estimated 50% physical depreciation, which they arrived at by dividing the improvements’ effective age (15 years) by their economic life (30 years). They found no functional or external obsolescence. Adding the site value to the depreciated improvement costs yielded a value of \$500,000 (rounded). *Weber testimony, Resp’t Ex. 1 at 5.*
11. Turning to the sales-comparison approach, the appraisers identified three mini warehouse

facilities for which they provided the following information:

Location	Facility Size	Eff. Age	Site Size	Humid. Control	Sale Date	Price
Bedford	21,050 sq. ft	15 yrs.	3.2acre	No	2012	\$425,000 \$20.19/sq. ft.
Mitchell	13,948 sq. ft	4 yrs.	6.1-acre	No	2012	\$500,000 \$35.85/sq. ft.
Bloomington	28,600 sq. ft	10 yrs.	3.6-acre	No	2005	\$500,000 \$17.48/sq. ft.

Resp't Ex. 1 at 6.

12. All three properties are superior to the subject property. Two are newer and in better condition, and all three are in better locations with higher visibility than the subject property. Unlike the subject property, which has gravel around all the buildings, the comparable properties are paved so that water runs away from the goods stored in the units. The comparable properties are fenced and have security systems such as gates and keypad entry. By contrast, the subject property has no security. Also unlike the subject property, all three comparable properties have room to expand. In addition, about one quarter of the subject property's rental units are 10' x 30'—which is a size normally used to store cars or boats. But the units have concrete steps which make it difficult to get a car inside. In any case, smaller units provide more income. *Weber testimony, Resp't Ex. 1 at 6.*

13. The appraisers concluded that the subject property would have a lower per-square-foot value—their chosen unit for comparison—than the comparable properties. For those reasons, they believed the “reconciled per square foot value of the subject project would be at the low end of the comparables listed.” They determined that a rate of \$20/sq. ft. was appropriate, which led to a value of \$734,000 under the sales-comparison approach. *Resp't Ex. 1 at 6.*

14. For their analysis under the income approach, the appraisers estimated market rent at \$9,000/month. Weber noted that the income information provided by the Petitioner was contradictory, and it is more than what the Petitioner's principal, Mr. Anderson, claimed it actually charged. According to the Respondent, the appraisers used market rent. The appraisers then subtracted an amount for vacancy and collection loss, which they estimated at 12% of potential gross income, to arrive at effective gross income of \$94,040. They next estimated operating expenses at 54.9% of effective gross income. After subtracting their estimated market expenses, they came up with net operating income of \$42,859. The appraisers then used the band-of-investment technique to estimate a capitalization rate of 7.94%. They divided the property's net operating income by that rate to arrive at a total value of \$540,000 (rounded). *Weber testimony; Resp't Ex. 1 at 8; Meighen argument.*

15. The appraisers considered the three approaches to be “reasonable, reliable and complementary as independent value illustrations.” In reaching their reconciled value of \$635,000, they gave the most emphasis to the sales-comparison and income approaches. In response to the Petitioner’s request that we adopt their conclusions under the income approach, Weber testified that doing so would translate to a per-square-foot value “in the teens.” In his view, the subject property is better than that, even if it is inferior to the comparable properties from the appraisal’s sales-comparison analysis. He rarely sees properties comparable to the subject property priced at that level. *Weber testimony, Resp’t Ex. 1 at 9.*

B. Summary of the Petitioner’s Case:

16. The property is assessed too high. The assessment shot up by 35%, increasing from \$463,600 in 2011 to \$629,000 in 2012. *Smith argument, Pet’r Ex. 1.*
17. Based on income tax records from 1999 and 2000, the subject property has a depreciation cost basis that is significantly lower than the replacement cost the appraisers used in their analysis. The Petitioner’s witness, Milo Smith, used a comparative cost multiplier from Marshall Valuation Service to convert those historical costs to present costs, and then applied 29% depreciation (the amount used by the Respondent in assessing the property) to arrive at a depreciated cost of \$486,759. He then added the land value used by the Respondent (\$79,000) to reach a total value of \$566,700. On cross-examination, however, Smith agreed that he used a comparative cost multiplier for masonry bearing walls instead of the one for metal frame walls, which more accurately reflects the subject improvements. Using the correct multiplier would have led to a lower value. *Smith testimony and argument; Pet’r Exs. 1-4.*
18. The Respondent’s appraisal is flawed because Weber and Mordoh failed to properly adjust the sale prices for their comparable properties to account for various ways in which they were superior to the subject property, such as their fencing, paving, and security. The appraisers were comparing “apples to oranges.” *Smith argument.*
19. The appraisers’ estimate of \$540,000 under the income approach would be an acceptable value for the property. *Smith testimony and argument..*

Burden of Proof

20. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where, among other things, the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property. *See I.C. § 6-1.1-15- 17.2(a) and (b)* If an assessor has the burden and

fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

21. Because the parties agreed that the subject property's assessment increased by more than 5% between 2011 and 2012, the Respondent has the burden of proof.

Analysis

22. In Indiana, real property is assessed based on its "true tax value," which means, "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." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost, sales-comparison, and the income approaches are three generally accepted techniques to calculate market true tax value. *Id.*
23. Parties may offer evidence relevant to true tax value in an assessment appeal. A market value-in-use appraisal prepared according to USPAP often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). Other evidence may include actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled in accordance with generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (providing that parties may offer evidence of comparable properties' assessments to determine the market value-in-use of a property under appeal).
24. The Respondent, who had the burden of proof, offered the appraisal report prepared by Weber and Mordoh. They certified that their appraisal conformed to USPAP, and they developed all three generally accepted valuation approaches in reaching their valuation opinion. Thus, the appraisal is prima facie evidence of the property's true tax value.
25. The Petitioner sought to impeach the appraisal by pointing out that the appraisers did not adjust any of the sale prices from their sales-comparison analysis to account for various ways in which the subject property was inferior to the comparable properties. Adjustments need not always be quantitative. Appraisers may account for relevant differences qualitatively, something the appraisers arguably did here. But despite recognizing that the subject property was inferior to the comparable properties in most respects, they settled on a price per square foot that was more than \$3 higher than one of the three comparable properties, and only \$.19 lower than the sale price for another.
26. The appraisers' conclusion under the sales-comparison approach heavily influenced their overall valuation opinion. We therefore give that opinion little weight. But that doesn't mean the appraisal lacks probative weight altogether. Weber and Mordoh also applied the cost and income approaches. And the Petitioner does not dispute their conclusions under the income approach. To the contrary, it finds that value acceptable.

27. Weber testified that he rarely sees mini warehouse facilities with per-square-foot values in the teens, which would be the case if the appraisal's conclusions under the income approach were adopted. But two of the three properties from his sales-comparison analysis sold for per-square-foot values either close to or below that threshold. Although the \$540,000 that Weber and Mordoh estimated under the income approach translates to an even lower per-square-foot value than either of those comparable sales, they acknowledged that the subject property is inferior to those properties.
28. Indeed, were we to disregard the appraisers' conclusions under the income approach, we would have to reduce the assessment even further. Smith's cost approach analysis is unconvincing, and Weber and Mordoh estimated a value of only \$500,000 under that approach. If we were to disregard the appraisal in its entirety, the assessment would revert to its 2011 level of \$463,000.
29. Based on the appraisers' estimate under the income approach and the Petitioner's concession as to that estimate's reasonableness, we find that the subject property should be valued at \$540,000.

FINAL DETERMINATION

In accordance with these findings of fact and conclusions of law, the 2012 assessment must be changed to \$540,000.

Issued: August 3, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

-APPEAL RIGHTS-

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at

<<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at

<<http://www.in.gov/judiciary/rules/tax/index.html>>.