

REPRESENTATIVE FOR PETITIONER:

David Schaadt, Integrity Financial & Tax Consulting, Inc.

REPRESENTATIVE FOR RESPONDENT:

Brenda Brittain, Morgan County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Sun Polymers International, Inc.,)	Petition No.:	55-005-07-1-3-00017
)		
)		
Petitioner,)		
)		
)	Parcel No.:	55-05-13-200-001.003-005
v.)		
)		
Morgan County Assessor,)	County:	Morgan
)		
Respondent.)	Assessment Year:	2007

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

September 7, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 assessed value of the Petitioner's property is over-stated for the 2007 assessment year.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeal by filing a Form 130 Petition with the Morgan County Property Tax Assessment Board of Appeals (the PTABOA) on September 18, 2008. The PTABOA issued its assessment determination on February 13, 2009.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on March 24, 2009, petitioning the Board to conduct an administrative review of its property's 2007 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing on June 30, 2011, in Martinsville Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

David Schaadt, Tax representative, Integrity Financial & Tax Consulting, Inc.
John F. Fiene, MAI Appraiser, Interwest Consulting Group, Inc.

For the Respondent:

Brenda Brittain, Morgan County Assessor,
Reva Brumett, PTABOA member,
Robin Davidson, Hearing Officer.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Determination from the informal hearing,
Petitioner Exhibit 2 – Form 115 for the property’s 2007 assessment,
Petitioner Exhibit 3 – Form 131,
Petitioner Exhibit 4 – Form 115 for the property’s 2008 assessment,
Petitioner Exhibit 5 – Property record card for the subject property,
Petitioner Exhibit 6 – Appraisal Report of John F. Fiene,
Petitioner Exhibit 7 – Summary of David Schaad’s testimony.¹

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Form 130,
Respondent Exhibit 2 – Real Property Assessment Guidelines, Appendix D,
Respondent Exhibit 3 – Town of Mooresville definitions of industrial categories,
Respondent Exhibit 4 – Form 115,
Respondent Exhibit 5 – Property record card dated February 9, 2009, for the
subject property,
Respondent Exhibit 6 – Form 131,
Respondent Exhibit 7 – Letter from Integrity Financial & Tax Consulting Inc. to
the Morgan County Assessor date stamped June 8, 2009,
Respondent Exhibit 8 – Letter from Integrity Financial & Tax Consulting Inc. to
the Morgan County Assessor dated June 1, 2009,
Respondent Exhibit 9 – Letter from Integrity Financial & Tax Consulting Inc. to
the Morgan County Assessor dated September 21, 2009,
Respondent Exhibit 10 – Copy of the Petitioner’s Appraisal Report,
Respondent Exhibit 11 – Real Property Assessment Manual, page 4,
Respondent Exhibit 12 – Real Property Assessment Guidelines, Chapter 6,
Respondent Exhibit 13 – Board determination in *Cinram v. Wayne Township
Assessor*, Petition No. 89-030-05-1-7-00008,²
Respondent Exhibit 14 – Summary of Respondent’s testimony.

¹ Petitioner Exhibit 7 is marked “Confidential”. However, the Petitioner’s representative did not request it be considered confidential and, in any event, because the information in the summary is contained in the Petitioner’s other exhibits, the Board will not consider Petitioner Exhibit 7 as confidential.

² Mr. Schaad objected to Respondent Exhibit 13 because it was a Board determination concerning personal property. Pursuant to 52 IAC 2-7-4, the Board may take official notice of the record of other proceedings before the Board. Therefore, the ALJ admitted Respondent Exhibit 13 into evidence over the Petitioner’s objection.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notices of Hearing dated March 29, 2011,
 - Board Exhibit C – Hearing sign-in sheet.
9. The subject property is an industrial facility on 68.701 acres located at 100 Sun Polymer Drive, Mooresville, IN.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2007, the PTABOA determined the assessed value of the subject property to be \$1,172,300 for the land and \$4,040,700 for improvements, for a total assessed value of \$5,213,000.
12. For 2007, the Petitioner contends the total assessed value of its property should be \$3,300,000.

JURISDICTIONAL FRAMEWORK

13. 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, (3) property tax exemptions, and (4) property tax credits 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 Indiana 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

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a

preponderance of the evidence, 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).

15. 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”).
16. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER’S CONTENTIONS

17. The Petitioner contends that the assessed value of its property is over-stated for the March 1, 2007, assessment year. The Petitioner presented the following evidence in support of its contention:
 - A. The Petitioner’s representative argues that the Petitioner’s property is over-valued for the 2007 assessment year based on the property’s appraised value. *Schaadt argument*. In support of this contention, Mr. Schaadt presented an appraisal prepared by Mr. John F. Fiene, a certified general and MAI designated appraiser. *Petitioner Exhibit 6*. In his report, the appraiser applied the cost approach, the income approach and the sales comparable approach and estimated the value of the Petitioner’s property to be \$3,300,000 as of January 1, 2006, for the March 1, 2007, assessment year. *Id.*
 - B. Mr. Fiene testified that in preparing his cost approach valuation for the property, he first addressed the value of the land. *Fiene testimony*. According to Mr. Fiene, he

used a land to building ratio of 4:1 and determined the site had 8.28 acres of primary land. *Id.*; *Petitioner Exhibit 6, page 39*. The remainder of the land he valued as excess acreage – a portion of which has a heavy wooded cover and some of which lies in a flood zone. *Id.* Mr. Fiene analyzed five land sales and estimated the value of the primary land to be \$27,000 per acre and the value of the excess land to be \$9,000 per acre, resulting in a market value of \$769,000 for the Petitioner’s acreage. *Fiene testimony; Petitioner Exhibit 6, pages 40 through 42*.

- C. To complete his cost approach valuation, Mr. Fiene testified that he priced the property’s improvements from the GCK pricing schedule for industrial office, light manufacturing, and warehouse/utility storage and applied the appropriate adjustments.³ *Fiene testimony; Petitioner Exhibit 6, page 29 and Addenda*.

According to Mr. Fiene, he used Marshall Valuation Service to determine the trending factor between January 1, 1999, and January 1, 2006, which he calculated to be 1.303. *Id.* Mr. Fiene testified that after deducting for physical depreciation and abnormal obsolescence, he determined the value of the building to be \$2,536,178. *Fiene testimony; Petitioner Exhibit 6, page 30*. He then added the value of the building to his estimated land value, resulting in a cost approach valuation for the Petitioner’s property of \$3,305,178, or \$3,310,000 when rounded. *Fiene testimony; Petitioner Exhibit 6, pages 42 and 43*.

- D. For his sales comparison analysis, Mr. Fiene testified that he considered six sales, which he contends were the most comparable to the Petitioner’s property in terms of use, size, and age. *Fiene testimony*. After adjustments, Mr. Fiene contends, the sales prices ranged from \$30.45 to \$30.81 per square foot. *Id.*; *Petitioner Exhibit 6, pp.61-65*. Mr. Fiene testified that he put the greatest weight on his first comparable property and rounded the value to \$31 per square foot, estimating a market value of \$2,794,867 for the subject property. *Id.* Mr. Fiene then added the excess land value of \$543,800, resulting in a value of \$3,340,000 for the Petitioner’s property. *Id.*

³ The base rates for commercial and industrial units are based on four pricing schedules: General Commercial Mercantile (GCM); General Commercial Industrial (GCI); General Commercial Residential (GCR); General Commercial Kit (GCK).

- E. In preparing his income approach calculation, Mr. Fiene testified that he used five comparable rental properties. *Fiene testimony*. Based on the those rental properties, he determined that market rent was \$3.60 per square foot, resulting in a potential gross income of \$314,565, exclusive of the Petitioner's excess land. *Id.* Mr. Fiene then estimated the vacancy/collection loss at 15%, which resulted in an effective gross income of \$275,880. *Id.* Assuming a triple net lease, Mr. Fiene determined that only modest operating expenses would be incurred by the landlord during periods of vacancy and he estimated those operating expenses to be \$10,305, resulting in a net operating income of \$265,575. *Petitioner Exhibit 6, page 78.*
- F. To capitalize the net income, Mr. Fiene testified that he considered actual sales and the rates reported on RealtyRates.com to determine the proper rate. *Fiene testimony*. According to Mr. Fiene, the capitalization rates from sales ranged from 8.06% to 10.67% and a comparable rental property yielded an overall capitalization rate of 11.26%. *Petitioner Exhibit 6, page 80.* Mr. Fiene reconciled these values to an overall capitalization rate of 9.50%, which he testified was supported by the published rates on RealtyRates.com. *Fiene testimony; Petitioner Exhibit 6, pages 80 and 81.* Adding the effective tax rate to reflect the property owner's expenses during periods of vacancy yielded a rate of 9.68%, which Mr. Fiene used to capitalize the net operating income, resulting in value of \$2,743,543. *Id.* Mr. Fiene then added the value of the excess land and estimated the income value of the property to be \$3,300,000 for the March 1, 2007, assessment year. *Id.*
- G. In his final reconciliation of market value, Mr. Fiene testified that he considered the income approach to be the best indicator of the property's value. *Petitioner Exhibit 6, page 83.* According to Mr. Fiene, the sales comparison approach yields a secondary indication of market value-in-use and was a reasonably reliable indicator in his analysis. *Id.* Mr. Fiene, however, considered the cost approach to be the least reliable value because of the property's location and "add-on" construction. *Id.* Based on his analysis, Mr. Fiene estimated the value of the Petitioner's property to be \$3,300,000 as of January 1, 2006. *Id.*

H. In response to the Respondent's arguments, Mr. Fiene contends that the subject property is not a special purpose building because a special purpose property is defined by something other than just bay height. *Fiene testimony*. According to Mr. Fiene, the Petitioner's property is well-positioned to be retrofitted for an alternate use such as a truck terminal. *Id.*

RESPONDENT'S CONTENTIONS

18. The Respondent contends that the assessed value of the Petitioner's property is correct for the March 1, 2007 assessment year. The Respondent presented the following evidence in support of its contentions:
- A. The Respondent contends the Board should not consider the Petitioner's appraisal because it was not submitted until September 21, 2009, which is more than two years after the March 1, 2007, assessment date. *Brittain argument*. According to Ms. Brittain, the PTABOA did not have the appraisal when it made its determination. *Id.* Furthermore, Ms. Brittain argues, the 2002 Real Property Assessment Manual states, "Some types of fair market value data or valuation methods may be used only as described in these rules. In general, such methods will be applicable only if they rely on data that was readily available to the assessor at the time the assessment was made." *Respondent Exhibit 11*. Further, Ms. Brittain argues, "readily available" means information that the assessor should know is relevant to the assessment, that the assessor is aware exists, and could have been accessed with reasonable care or that the assessor could have availed himself/herself of with ease." *Id.* The Respondent argues that the sales included in the Petitioner's appraisal had not occurred by the assessment date, and therefore the information was not "available" to the assessor. *Brittain argument*.
- B. Ms. Brittain further contends that the Petitioner's issues on its Form 130 were that the land value was excessive because part of the land was wetlands and was in a flood

plain and that the construction should be “Type 3,” or metal construction.⁴ *Brittain testimony; Respondent Exhibit 1*. According to Ms. Brittain, the PTABOA changed 11.90 acres of land to agricultural because of its location in a flood plain and changed the wall construction to “Type 3” metal. *Brittain testimony; Respondent Exhibits 4 and 5*. Ms. Brittain testified that the PTABOA also changed the use type from light manufacturing to heavy manufacturing based on the height of the building and the additional stress loads from the existing crane mechanisms. *Id.* However, when the Petitioner filed its Form 131, Ms. Brittain argues, they changed the issue to “the assessment exceeded market value.” *Brittain testimony; Respondent Exhibit 6*.

C. Finally, the Respondent argues that the Petitioner’s building should not be assessed according to the GCK model, rather than the GCI industrial model. *Brittain argument*. According to Ms. Brittain, the Guidelines define a special purpose design as “an improvement whose design is such that it limits its use to a narrow range of occupancies. Any building designed in such a way that it cannot be easily converted to another use can be considered a *special purpose structure*.” *Id.; Respondent Exhibit 12*. “Structures classified as a *special purpose design*, as defined in the glossary of this guideline are not valued using the GCK pricing schedule.” *Id.* According to Ms. Brittain, the structure’s excessive wall height and design would indicate that the Petitioner’s building is a special purpose building. *Brittain testimony*.

ANALYSIS

20. The 2002 Real Property Assessment Manual defines “true tax value” 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

⁴ The 2002 Real Property Assessment Guidelines state, “Wall type is a descriptive classification indicating the exterior wall construction material used for most of the use types.” There are four wall type options: Type 1 is concrete block, stucco, tile, wood, aluminum, metal siding, or an equivalent material; Type 2 is brick, stone, concrete, or an equivalent material; Type 3 is aluminum, metal, or steel siding on steel framing; and Type 4 is metal, concrete, or masonry guard wall three to four feet high which only applies to open parking areas.

MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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 to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).

21. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
22. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
23. Here, the Petitioner's representative argues that the Petitioner's property is over-valued based on its appraised value. *Schaadt argument*. In support of his contention, Mr. Schaadt submitted an appraisal prepared by John F. Fiene that estimated the value of the

Petitioner's property to be \$3,300,000 for the 2007 assessment year.⁵ *Petitioner Exhibit 6*. Mr. Fiene is an Indiana certified appraiser who attested that he prepared the Petitioner's appraisal in accordance with USPAP. *Id.* The appraiser used the cost approach, the income approach and the sales comparison approach to value the property and estimated the property's value as of the correct valuation date. *Id.* Thus, the Board finds that the Petitioner raised a prima facie case that its property is over-assessed for the 2007 tax year at issue. *See Meridian Towers*, 805 N.E.2d at 479 (An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued).

24. 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Here, the Respondent merely argued that the appraisal should not have used a GCK model in his cost approach because the building was a "special use" improvement. The Respondent, however, did not go forward to explain why or how this "flaw" invalidates the Petitioner's evidence. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioner's case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel's calculations. Rather, he merely asked open-ended

⁵ The Respondent argues that the Petitioner's appraisal should not be considered because it was not submitted until September 21, 2009, and neither the PTABOA nor the assessor had the information when they made their determinations. 52 IAC 2-7-1(a), however, states that "Except as provided in subsection (b), a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county PTABOA." Section (b) of that regulation lists the requirements for the timely exchange of evidence. The Respondent did not claim that the Petitioner failed to follow the statutory requirements for the exchange of evidence and, therefore, the Board will consider the Petitioner's appraisal. The Respondent also appears to take exception to the Petitioner's change in issues between its Form 130 and the Form 131. 52 IAC 2-5-3(a) however states that "The board may not limit the scope of the issues raised in the appeal petition to those presented to the PTABOA unless all parties agree to the limitation." Thus, the Petitioner was within its statutory rights when it raised new issues on its Form 131 appeal to the Board.

questions or made conclusory statements”). Nor did the Respondent raise any issue with the appraiser’s sales comparison or income approach valuation of the Petitioner’s property. Therefore, the Board finds that the Respondent failed to rebut or impeach the Petitioner’s evidence.

CONCLUSION

25. The Petitioner raised a prima facie case that its property was over-valued for the March 1, 2007, assessment year. The Respondent failed to rebut or impeach the Petitioner’s evidence. The Board finds in favor of the Petitioner and holds that the property’s 2007 assessed value should be \$3,300,000.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner’s property for the March 1, 2007, assessment date should be changed.

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, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.