

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**

| | | |
|--------------------------------------|-------------------|---------------------|
| Tredegar Film Products (U.S.) LLC,) | Petition Nos.: | 84-002-02-1-3-01064 |
|) | | 84-002-04-1-3-00064 |
| Petitioner,) | Parcel: | 118-06-01-300-006 |
|) | | |
| v.) | County: | Vigo |
|) | Township: | Harrison |
| Harrison Township Assessor,) | Assessment Years: | 2002 and 2004 |
|) | | |
| Respondent.) | | |

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

May 10, 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 values for 2002 and 2004 exceed the market value in-use of the subject property.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Michael E. Duff, on behalf of Tredegar Film Products (U.S.) LLC, 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.,

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 – Filing receipt dated October 27, 2003,
Petitioner Exhibit 4 – Form 130 Petition,
Petitioner Exhibit 5 – Form 114 Notice of PTABOA hearing on 130 Petition,
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 documentation,
Petitioner Exhibit 9 – Post- hearing response to Respondent’s evidence.

6. The Respondent presented the following exhibits:¹

Respondent Exhibit 1 – Aerial photograph map of subject property,
Respondent Exhibit 2 – Aerial photograph map and data sheet on Bemis,
Respondent Exhibit 3 – Aerial photograph map and data sheet on AET,
Respondent Exhibit 4 – Aerial photograph map and data sheet on Ampacet,
Respondent Exhibit 5 – LoopNet listings of commercial properties for sale,
Respondent Exhibit 6 – Property record card for subject property labeled “test parcel.”

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

Board Exhibit A – Form 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 single parcel consisting of 57.89 acres improved with four detached buildings housing 203,902 square feet of industrial plastic film manufacturing located at 3400 E. Fort Harrison Road, Terre Haute, Harrison Township, Vigo County.²

9. The ALJ did not conduct an on-site inspection of the subject property.

¹ 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.*

² The appraisal report identifies 25.60 acres as primary industrial land and 32.29 acres as excess industrial land.

10. For 2002 and 2004, the PTABOA determined the assessed value of the property to be \$203,900 for the land and \$3,407,500 for the improvements, for a total assessed value of \$3,611,400.
11. For 2002 and 2004, the Petitioner contends the assessed value should be \$2,570,000.

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 property is over-valued based on its appraised value.
17. In support of its value, the Petitioner presented the following evidence:
 - A. The Petitioner contends there are numerous errors on the property record card. *Duff testimony*. The Petitioner's representative, Mr. Duff, recommended a change to the grade of the improvements, the depreciation factor, the schedule used for the training center, and the perimeter-to-area ratio (PAR). *Id*.
 - B. The Petitioner also contends that the property's 2002 and 2004 assessments are overstated when compared to the \$2,570,000 appraised value of the property. *Duff testimony* In support of this contention, the Petitioner presented a summary appraisal report prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) by licensed Indiana Certified General Appraisers Hank Russel, MAI, and Doug G. Cooper, associates for Don R. Scheidt & Co., Inc. *Petitioner Exhibit 1*. The appraisers estimated the property's January 1, 1999, value for tax years 2002 and 2004 based on the sales comparison approach and the income approach. *Duff argument; Petitioner Exhibit 1*. One of the Petitioner's appraisers, Mr. Russell, testified that the appraisers did not use the cost approach because the subject improvements were originally constructed in 1956 and suffer from multiple forms of depreciation. *Russell testimony*.
 - C. Mr. Russell testified that the appraisers determined the underlying land value to be \$250,000 by the sales comparison approach. *Russell testimony; Petitioner Exhibit 1 at 38*. According to Mr. Russell, they identified five sales in Vigo County between November 1997 and mid-1999 and ranked the sales data based on similar usage. *Id*.

The appraisers reached a price-per-acre range of \$1,906 to \$8,116 and reconciled the value at \$7,000 per acre for the 25.6 primary acres, or \$180,000. *Id.* The appraisers further contend that, given the limited uses of the excess 22.29 acres, they considered its value to be near the low end of the range, \$3,000 per acre, or \$70,000. *Id.*

- D. In developing the sales comparison approach for the property, Mr. Russell testified that the appraisers used sales from all over Indiana because, being a larger property, the subject property would have regional desirability and could be acquired by regional or international companies. *Russell testimony.* Mr. Russell testified that all of the comparable sales occurred prior to January 1, 1999. *Petitioner Exhibit 1 at 39.* According to Mr. Russell, the appraisers analyzed eleven comparable sales and concluded that the value of the subject property is \$11 to \$13 per square foot, which they reconciled to \$2,450,000. *Russell testimony; Petitioner Exhibit 1 at 47.*
- E. Mr. Russell testified that the appraisers also estimated the property's value using the income capitalization approach to value. *Russell testimony; Petitioner Exhibit 1 at 48.* According to Mr. Russell, the appraisers examined five leases of comparable properties in areas in Indiana that they identified as similar to the Terre Haute market. *Id. at 49.* The comparable properties leased for a range of \$1.56 to \$2.85 per gross square foot. *Id.* The appraisers determined that an appropriate rate for the subject property was \$2.00 per square foot or \$407,804 per year. *Id. at 54.* Mr. Russell further testified that the appraisers calculated the expenses, including a loss for vacancy, and arrived at a net operating income of \$280,833. *Id.* The appraisers then developed a capitalization rate of 10.5% to 11% using the band of investment and market data and calculated a market value of \$2,600,000 for the subject property. *Russell testimony; Petitioner Exhibit 1 at 54-57.*
- F. Mr. Russell testified that the appraisers reconciled the sales comparison approach and income approach to value at \$2,500,000 and added the \$70,000 for the excess acreage

and concluded that the value of the subject property was \$2,570,000 as of the effective date of value of January 1, 1999. *Petitioner Exhibit 1 at 59.*

- G. 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 2.* The Petitioner contends, however, that the Respondent's revised assessment is not supported by market evidence. *Id.*
- H. The Petitioner further argues that the Respondent's evidence regarding the assessed values of three other Vigo County plastics manufacturing plants offers no probative evidence because the Respondent has failed to prove comparability between the plastics plants and the subject property. *Petitioner Exhibit 9.* Finally, the Petitioner contends that the Respondent's exhibit showing a list of industrial properties currently on the market in Indiana is not probative evidence because the Respondent, again, did not prove comparability of the listed properties to the subject property. *Petitioner Exhibit 9 at 2.*
18. The Respondent admitted that the current assessed value of the subject property is overstated, but argued that the correct assessment is \$3,457,700.
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 \$3,457,700. *Hale testimony, Respondent Exhibit 1.* According to the Respondent, on the revised property record card, the value of the land remains at \$203,900, but the improvement values were changed from \$3,407,500 to \$3,253,800 based on changes in statistical data. *Id.*

- B. The Respondent also contends that aerial photographs and property data sheets showing the assessed value per square foot of three other plastics manufacturing plants in Terre Haute support the revised assessed value of the subject property. *Hale testimony, Respondent Exhibits 2, 3 and 4.*
- C. Finally, the Respondent contends that a list of industrial properties currently for sale in Indiana substantiates the revised assessed value of the subject property. *Hale testimony, Respondent Exhibit 5.* According to the Respondent, the list prices, ranging between \$18.94 and \$31.66 per square foot, support its assessed value calculation for the subject property *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 method consistent with the Manual’s definition of true tax value, such as sales information regarding the subject property 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 establishing a value for the subject property of \$2,570,000 as of January 1, 1999. *Petitioner Exhibit 1*. In the appraisal, the appraisers valued the property by using the sales comparison approach and the income approach to value. *Id.* 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.³
26. Once 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.
27. 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 \$3,457,700 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).

³ The Petitioner’s representative also alleged several “errors” on the assessment, but provided no evidence in support of this claim. Mr. Duff merely “recommended” a change to the grade of the improvements, the depreciation factor, the schedule used for the training center, and the PAR. Moreover, merely showing an error in the application of the GUIDELINES is not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) (“Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor’s assessed value does not accurately reflect the property’s market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct”). Thus, the Petitioner’s alleged “errors” do not raise a prima facie case that the assessment is incorrect.

23. The Respondent further contends that the assessments of three other Terre Haute plastics manufacturing plants, Bemis Brother Bag Co., Inc. (Bemis), Applied Extrusion Technologies (AET), and Ampacet Corp. (Ampacet), support its revised assessment for the property. *Hale testimony*. In support of this contention, the Respondent submitted an aerial map of the subject property and aerial maps for Bemis, AET and Ampacet. *Hale testimony, Respondent Exhibits 1- 4*. The Respondent also provided a data sheet for each of the properties with a written notation on each sheet calculating the assessed value per square foot. *Id.* The Respondent, however, offered no evidence of comparability between the three properties and the subject property other than the assertion that all of the properties are plastics manufacturers. Merely asserting that the properties are used for the same purpose 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.*
24. Finally, Respondent introduced a four-page printout from the LoopNet website listing a number of industrial, commercial and retail properties currently on the market in and around Hammond, Indiana. *Respondent Exhibit 5*. The Respondent marked seven properties and calculated the list price per square foot of each. *Id.* The Respondent offered no explanation as to how the identified properties compared to the subject property. Further, the Respondent failed to show how properties in Hammond were comparable to the properties located in Terre Haute. Finally, the Respondent failed to explain how the current listing prices relate to the January 1, 1999, valuation date. *See Long*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). As such, the Respondent’s evidence fails to impeach the Petitioner’s prima facie case.

SUMMARY OF FINAL DETERMINATION

25. The Petitioner raised a prima facie case based upon its appraisal. The Respondent failed to impeach the Petitioner's case. The Board, therefore, finds in favor of the Petitioner and holds that the value of the subject property for 2002 and 2004 is \$2,570,000.

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 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>.