

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

Petition #: 89-030-03-1-4-00337
Petitioner: Indiana American Water Co
Respondent: Wayne Township Assessor (Wayne County)
Parcel #: 46-28-200-302.000-29
Assessment Year: 2003

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 Petitioner initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 19, 2004.
2. The Petitioner received notice of the decision of the PTABOA on December 29, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on January 28, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 6, 2006.
5. The Board held an administrative hearing on March 15, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Duane Zishka, Uzelac & Associates, Inc.
 - b) For Respondent: Michael Statzer, County Assessor and PTABOA Member
Dan Williams, PTABOA Member
Richard Lee, PTABOA Member
Marie Elstro, PTABOA Member
Betty Smith, Wayne Township Assessor
David Fradenburg, Wayne County Reassessment Office
Charles Todd, Attorney

Facts

7. The property is an office building owned by a utility on 3.04 acres of land located at 1710 Sylvan Nook Drive, Richmond, in Wayne Township.
8. The ALJ did not conduct an on-site visit of the subject property.
9. The PTABOA determined the assessed values of subject property to be \$29,900 for the land and \$381,400 for the improvements, for a total assessed value of \$411,300.
10. The Petitioner requested a total assessed value of \$233,836 for the subject property.

Issue

11. Summary of Petitioner's contentions in support of an error in assessment:
 - a) The Petitioner contends that the subject property is assessed in excess of its market value-in-use. *Zishka testimony*. In support of this contention, the Petitioner submitted an appraisal for the subject property dated February 18, 2004. *Petitioner Exhibit 1*. The Petitioner contends that the appropriate market value for the subject property is the appraiser's opinion of value of \$265,000 on February 18, 2004, time adjusted to arrive at a market value for January 1, 1999, valuation date. *Zishka testimony; Petitioner Exhibit 2*. The Petitioner further contends that one way to time adjust the appraisal is to use an inflation factor. *Id*. The Petitioner used the InflationData.com website and determined a negative adjustment of 11.76% to the appraised value. *Id*. According to the Petitioner, the adjusted value of the subject property is \$233,836 as of January 1, 1999. *Id*.
 - b) The Petitioner's representative testified that even though the appraisal stated that the subject property was listed for sale at \$750,000, the \$750,000 was the value that the Petitioner carried on their books for the subject property. *Zishka testimony*. According to the Petitioner's representative, the Petitioner is reluctant to sell the property for anything less because they did not want to have to explain a loss to their shareholders. *Id*. The Petitioner's representative stated that there were no "serious inquiries" for the subject property and there have not been any to date according to David Moore, the Central Region Property Manager of American Water. *Id*. The Petitioner's representative further testified that the listing price was subsequently lowered to \$650,000. *Id*. The Petitioner asserts that since the subject property has not sold and is still on the market, the exchange of value on the subject property is unknown. *Id*. The Petitioner further contends that the current listing price of \$650,000 does not establish the market value in use of the property. *Id*.
 - c) The Petitioner asserts that, even though an adjustment was made to the assessment by the PTABOA due to vacancy, vacancy was not the Petitioner's

contention. *Zishka testimony*. The Petitioner's representative testified that the subject property was vacant at the time of the appraisal but it was not vacant on January 1, 1999. *Id.* The witness could not, however, specifically say when the subject property became vacant. *Id.*

- d) In its rebuttal, the Petitioner argued that even though the Respondent raised questions regarding the selection of the comparable sales used in the appraisal, the appraiser indicated that he had problems finding comparable sales. *Zishka testimony; Petitioner Exhibit 1*. The Petitioner further contends that the Respondent has not offered any sales information that would have been more appropriate than those used in the appraisal. *Zishka testimony*.
- e) Finally, the Petitioner argued that the Respondent made assumptions regarding the listing prices on the subject property and is assuming that the listing price is correct to begin with. *Zishka testimony*.

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent contends that the Petitioner did not provide adequate foundation for its evidence. *Todd argument*. According to the Respondent, the Petitioner's representative did not have independent knowledge as to the basis used by InflationData.com or the reliability of the data. *Id.* The Respondent further asserts that the Petitioner's representative cannot testify as to why the appraiser failed to use the income or cost approaches to value in the February 18, 2004, appraisal, nor can he testify as to why the appraiser selected the comparable sold properties that he used in the appraisal. *Id.*
- b) The Respondent argues that the appraiser's failure to utilize the cost and income approaches to value in the Petitioner's appraisal dictates that the selection of appropriate comparable sales is even more important and should be in the similar time frame as the appraisal. *Todd argument; Petitioner Exhibit 1*. The Respondent questioned the validity of the comparable sales used by the appraiser because the comparables were from 1998, 2000, 2001, and 2003, but not from 2004 when the appraisal was prepared. *Id.; Williams testimony*. The Respondent contends that the appraiser's absence at the hearing made it impossible for the appraiser to be cross-examined concerning the selected comparable sales in the appraisal. *Todd argument*.
- c) The Respondent further contends that the Form 131 petition filed for the subject property indicates that if the subject property were listed for sale, the Petitioner would ask \$265,000 for the subject property, but the Petitioner's representative testified that the subject property was listed for sale at \$750,000 in August 2003 with the asking price being subsequently lowered to \$650,000. *Todd argument; Board Exhibit 1*. The Respondent claims that this represents a considerable inconsistency on the part of the Petitioner. *Id.* The Respondent argued that the

Petitioner's representative failed to clarify what might constitute a "serious offer" for the property when the Petitioner's representative testified that there were no "serious offers" made for the subject property. *Id.* Finally, the Respondent contends that the Petitioner's insistence to stay with a \$600,000 plus listing price indicates that the Petitioner believes the subject property to be worth more than the \$265,000 shown on the appraisal or the Petitioner would not have listed it for such a value. *Statzer testimony; Lee testimony.*

Record

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

- a) The Petition,
- b) The tape recording of the hearing labeled BTR # 6207,
- c) Exhibits:

Petitioner Exhibit 1: Appraisal report dated February 18, 2004

Petitioner Exhibit 2: Inflation calculator

Petitioner Exhibit 3: Overview of issue

Respondent Exhibit 1: Subject property record card (PRC)

Respondent Exhibit 2: Two aerial photographs of the subject property

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Hearing Sign In Sheet

Board Exhibit D: Notice of Appearance for Charles Todd, attorney

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessed value of the subject property exceeds its market value-in-use. *Zishka testimony*. In support of this contention, the Petitioner submitted an appraisal dated April 18, 2004, estimating the market value of the subject property to be \$265,000. *See Petitioner Exhibit 1*.
 - b) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 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 (MANUAL) at 12 (2001)(incorporated by reference at 50 IAC 2.3-1-2). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*
 - c) 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*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - d) Here, the Petitioner presented a certified appraisal that valued the property as of April 18, 2004. *Petitioner Exhibit 1*. In an attempt to relate the 2004 appraisal value to the January 1, 1999, valuation date, the Petitioner used an inflation factor obtained from InflationData.com website. *See Petitioner Exhibit 2*. According to the InflationData.com website, the negative adjustment was 11.76%. *Id.* Applying this adjustment to the appraised value, the Petitioner calculated the

value of the subject property as of the January 1, 1999, valuation date to be \$233,836. *Zishka testimony*. 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 subject property is over-valued.

- e) Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent argued that the Petitioner submitted no evidence to support how InflationData.com determined their inflation factors, what criteria was used, whether the factors were national, regional or local, and the relevance they had to the area or property under review. The fact that the Petitioner testified that he used this website at other State hearings but failed to document such testimony or to submit the outcome from those purported hearing's, is insufficient to support this evidence. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119 (Ind. Tax 1998). Further, the Respondent argues, discrepancies exist between the appraised value and the evidence and testimony submitted by the Petitioner. *Todd argument*. Both the appraiser and the Petitioner indicated that the Petitioner listed the subject property for sale at \$750,000 (August 2003) and at a later date lowered the listing price to \$650,000 (February 2006). Although a listing price may not be a true market value, it does represent what a seller believes the property to be worth. Finally, the Respondent contends that the appraiser only utilizes the sales approach to value, while disregarding the cost and income approaches.
- f) The Board finds that, while the Petitioner's appraisal is sufficient to raise a prima facie case that the subject property is over-valued, the Respondent rebutted that evidence. The Respondent is correct that the Petitioner's acts of continuing to list the property for \$650,000 to \$750,000 evidences that the Petitioner believes the property is worth considerably more than the appraised value and, in fact, more than the property's current assessed value. If the Petitioner does not give credence to its own appraisal, this Board is not persuaded that it should find the evidence credible. Therefore, the Board finds in favor of the Respondent.

Conclusion

16. The Petitioner established a prima facie case which was rebutted by the Respondent. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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 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>.