

REPRESENTATIVE FOR PETITIONER:
Jerome Prince, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Robert W. Metz, Lake County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Nirjodh Singh)	Petition No.:	45-004-07-1-4-00001
)		
Petitioner,)		
)	Parcel No.:	45-08-27-228-001.000-004
v.)		
)		
Lake County Assessor,)	County:	Lake
)		
Respondent.)	Assessment Year:	2007

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

February 12, 2013

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 Petitioner's property was over-valued for the 2007 assessment year.

PROCEDURAL HISTORY

2. The Petitioner initiated his assessment appeal by filing a Form 130, Petition for Review of Assessment to the Property Tax Assessment Board of Appeals, on March 9, 2009. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination on May 20, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed his Form 131 Petition for Review of Assessment on May 20, 2011, petitioning the Board to conduct an administrative review of the 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), Ellen Yuhan, held a hearing on November 14, 2012, in Crown Point, Indiana.
5. The following persons were sworn at the hearing:

For the Petitioner:

Jerome Prince, Tax representative,
Nirjodh Singh, Taxpayer,

For the Respondent:

Robert W. Metz, Lake County Hearing Officer.

6. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Appraisal of the subject property dated June 15, 2011,
- Petitioner Exhibit 2 – Letter from the Indiana Department of Environmental Management to Mr. Singh dated September 7, 2011,
- Petitioner Exhibit 3A – Subject property’s property record card,¹
- Petitioner Exhibit 3B – Property record card for a service station located at 43rd and Cleveland,
- Petitioner Exhibit 3C – Property record card for a service station located at 3501 Broadway,
- Petitioner Exhibit 3D – Property record card for a service station located at 3077 Broadway,
- Petitioner Exhibit 4 – Form 130 petition,
- Petitioner Exhibit 5 – Form 134 dated October 9, 2009,
- Petitioner Exhibit 6 – Form 134 dated April 5, 2011,
- Petitioner Exhibit 7 – Form 115, Notification of Final Assessment Determination,
- Petitioner Exhibit 8 – Form 131 petition,
- Petitioner Exhibit 9 – Power of Attorney,
- Petitioner Exhibit 10 – Contract between Nirjodh Singh and Jerome Prince dated May 20, 2011,
- Petitioner Exhibit 11 – Proposal for an addition to the subject property by Construction Advisors Associates, Inc., dated October 9, 1998.

7. The Respondent presented the following exhibit:

- Respondent Exhibit A – Appraisal of the subject property dated October 3, 2012.

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

- Board Exhibit A – Form 131 petition,
- Board Exhibit B – Notice of Hearing, Re-schedule, dated September 26, 2012,
- Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a gas station and convenience store located at 1401 East Ridge Road, in Gary, Indiana.

¹ Petitioner Exhibit 3A includes the 1st page of the subject property record card. The 2nd page of this exhibit is actually a duplicate of the 2nd page of the property record card for 43rd and Cleveland, Petitioner Exhibit 3B.

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 Petitioner's property to be \$350,700 for the land and \$102,300 for the improvements, for a total assessed value of \$453,000.
12. For 2007, the Petitioner contends the assessed value of his property should be \$75,000 for the land and \$86,500 for the improvements, for a total assessed value of \$161,500.

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.

PARTIES' CONTENTIONS

14. The Petitioner contends that the assessed value of his property was over-stated for the 2007 assessment year. The Petitioner presented the following evidence in support of his contentions:
 - A. The Petitioner's representative first contends that the Petitioner's property was over-valued for 2007 based on its appraised value. *Prince testimony*. In support of this contention, the Petitioner presented an appraisal prepared by Howard O. Cyrus, SIOR, an Indiana certified residential appraiser and licensed real estate broker, who attested that the appraisal was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Petitioner Exhibit 1*. Mr. Cyrus valued

- the property at \$183,000 as of January 1, 2006, based on a sales comparison analysis. *Id.*
- B. Moreover, the Petitioner’s representative contends that the property’s appraised value should be further reduced because the property has petroleum contamination. *Prince testimony.* In support of this contention, the Petitioner submitted a letter from the Indiana Department of Environmental Management (IDEM) requesting a Corrective Action Plan to address soil and groundwater contamination associated with a petroleum release. *Petitioner Exhibit 2.* While the appraiser valued the property as environmentally clean, the appraiser acknowledged that any environmental issue would have a negative effect on the property’s value. *Prince testimony; Petitioner Exhibit 1 at 6.* Thus, Mr. Prince argues that it is “plausible to conclude there would be a reduction in value” as a result of the contamination and, in fact, the assessor previously recommended a 60% influence factor for the existence of contamination on the property. *Prince testimony; Petitioner Exhibit 5.*
- C. The Petitioner further contends that the Petitioner’s property was over-assessed based on the influence factors that were applied to other similar properties. *Prince testimony.* According to Mr. Prince, the subject property has an influence factor of 20%, while three service stations in the same taxing jurisdiction have influence factors of 35% and 40%. *Id.* In support of this contention, the Petitioner submitted the property record cards for the subject property and three nearby service stations. *Petitioner Exhibits 3A-3D.*
- D. Mr. Prince concludes that the subject property’s land should be valued at \$75,000. *Prince argument.* Thus, adding the land value to the \$86,500 assessed value of the improvements, results in an assessed value of \$161,500 for the subject property for 2007. *Id.* Mr. Prince also argues that this value should continue as the value of the property for the years following the petition. *Id.*
- E. In response to the Respondent’s case, the Petitioner contends that the basis for the Respondent’s determination was that the land remains 100% usable and is generating

- revenue. *Prince testimony*. However, Mr. Prince argues, those facts would be more significant in an income approach to value and the Respondent did not submit an income approach calculation. *Id.* Further, Mr. Prince contends, because the Petitioner cannot sell the property or refinance it due to the property's contamination, the land is not 100% usable. *Id.*
- F. The Petitioner's representative also contends that the Respondent's appraised value is highly inconsistent with the property's assessed value. *Prince testimony*. Further, Mr. Prince claims the Respondent's appraised values are much higher than the actual cost associated with constructing the building. *Id.* In support of his contention, the Petitioner presented a proposal for an addition to the building from Construction Advisors Associates, Inc., dated October 9, 1998. *Petitioner Exhibit 11*.
- G. Finally, the Petitioner contends that one of the comparable properties in the Respondent's appraisal is far superior to the subject property. *Singh testimony*. According to Mr. Singh, 7510 Broadway, is on a crossroad in a high traffic area with the nearest service station four blocks away. *Singh testimony*. In contrast, Mr. Singh testified, the subject property is surrounded by convenience stores and there are five gas stations within one mile – which makes the subject property much less valuable. *Id.* Even with adjustments, Mr. Prince argues, the property at 7510 Broadway does not reflect the market in the subject property's area. *Prince testimony*. However, the Petitioner's appraiser also used the property located at 7510 Broadway as a comparable property in his sales comparable analysis. *Petitioner Exhibit 1*.
15. The Respondent admits that the property's assessed value should be reduced based on an appraisal. However, the Respondent seeks a higher value for the Petitioner's property than the Petitioner's representative seeks for the 2007 assessment year. The Respondent presented the following evidence in support of its value:
- A. The Respondent's representative, Mr. Metz, agrees that the Petitioner's property was over-assessed in 2007 based on its appraised value. *Metz testimony*. However, the Respondent contends the property should be valued at \$250,000 rather than the value

- sought by the Petitioner's representative. *Id.* In support of this contention, Mr. Metz submitted an appraisal prepared by Jeffrey R. Vale, MAI, an Indiana certified general appraiser, and Michael L. Grant, SRA, an Indiana certified residential appraiser, who attested that they prepared the appraisal in accordance with USPAP. *Respondent Exhibit A*. The Respondent's appraisers valued the property at \$250,000 as of January 1, 2006, using the sales comparison approach and the cost approach to value. *Id.*
- B. In response to the Petitioner's case, the Respondent contends that the Petitioner's appraisal should be given little weight. *Metz argument*. According to Mr. Metz the comparable sales used in the Petitioner's appraisal occurred in 2002, 2004, and 2005. *Metz testimony*. Moreover, one of the properties, 7510 Broadway, resold for \$710,000 in June 2006, which is closer to the assessment date. *Id.*; *Respondent Exhibit A at 24*.
- C. In addition, Mr. Metz argues that the influence factors shown on the property record cards submitted by the Petitioner do not support the Petitioner's position that a larger influence factor should be applied to the subject property. *Metz argument*. According to Mr. Metz, the influence factors applied to other properties could have been for location or for ingress or egress issues. *Id.*
- D. Mr. Metz further contends that the letter from IDEM states that the threat from groundwater and soil contamination has decreased significantly on the property. *Metz testimony; Petitioner Exhibit 2*. And, in fact, Mr. Metz argues, gas stations are inherently going to have the same contamination problems – which would be considered in the purchase price of any gas station. *Metz testimony*. Moreover, Mr. Metz contends, the Petitioner has not provided any evidence that he has been unable to sell the property. *Id.*
- E. Finally, Mr. Metz contends that the cost information provided by the Petitioner is dated October 9, 1998. *Metz testimony*. Mr. Metz argues that the cost to build an addition to the Petitioner's gas station in 1998 would be significantly different than it

would be today. *Id.* Thus, Mr. Metz concludes, the Petitioner’s “cost” evidence is not relevant to the assessment under appeal. *Id.*

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that its property’s assessment is wrong and what the correct assessment should 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17.2, which shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment. Here, the parties agreed that the property’s assessment increased from \$109,700 in 2006 to \$453,000 in 2007. The Assessor, therefore, has the burden of proving the assessment was correct.

ANALYSIS

17. In Indiana, assessors value real property based on the property’s market value-in-use, which the 2002 Real Property Assessment Manual defines 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.” MANUAL at 2. Thus, a party’s evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice (USPAP) will often be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
18. Regardless of the method used to prove a property’s value, each party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date.

O'Donnell v. Dept' of Local Gov't Fin., 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also*, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment date, the valuation date was January 1, 2006. 50 IAC 21-3-3.

19. Here, the Respondent submitted a market value appraisal prepared by Jeffrey R. Vale and Michael L. Grant. Both appraisers are Indiana certified appraisers who attested that they prepared the Respondent's appraisal in accordance with USPAP. Using the cost approach and sales comparison approach to value, the appraisers estimated the value of the property to be \$250,000 as of January 1, 2006. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is incorrect. *See Meridian Towers*, 805 N.E.2d at 479. Thus, the Board finds the Respondent raised a prima facie case that the property should be assessed at \$250,000 for the March 1, 2007, assessment date.
20. The Respondent established a prima facie case that the Petitioner's property's value was \$250,000 for 2007. Thus, the burden shifted to the Petitioner to prove any lower value. Here, the Petitioner submitted an appraisal prepared by Howard O. Cyrus, an Indiana certified appraiser, who also attested that he prepared his appraisal in accordance with USPAP. Mr. Cyrus estimated the value of the property to be \$183,000 as of January 1, 2006, based on a sales comparison analysis. The Board therefore finds that the Petitioner presented sufficient evidence to rebut the Respondent's prima facie case.
21. The Petitioner further contends that the property should have an influence factor applied to the property's appraised value because the Petitioner's land is contaminated. Generally, land values in a given neighborhood are developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Board of Tax Commissioners*, 693 N.E.2d 657, 659 fn. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. However, the Petitioner bears the burden to produce "probative evidence

that would support an application of a negative influence factor and quantification of that influence factor.” *See Talesnick v. State Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Here, while the Petitioner presented some evidence of petroleum contamination on the property, the Petitioner presented no probative evidence of the impact that the contamination has on the value of the property. Thus, the Petitioner failed to prove that the property should be granted a larger influence factor or that the property’s value should be reduced below its appraised value.²

22. The Petitioner’s representative also contends that the subject property had a 20% influence factor applied to its property, while the other gas stations had a 35% or 40% influence factor applied. Pursuant to Indiana Code § 6-1.1-15-18(c), “To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district...” Ind. Code § 6-1.1-15-18. The “determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” *Id.* Here, the Petitioner’s representative made no attempt to show how the nearby gas stations were similar to the subject property – other than to contend that the properties were all gas stations and convenience stores. As the Respondent’s witness observed, the influence factors could have been for location or problems with ingress or egress. Thus, the Petitioner again failed to prove that any further reduction should be made to the property’s appraised value.
23. Finally, the Petitioner contends its actual construction costs support a lower improvement value. And in support of this contention, the Petitioner submitted a proposal for an addition to the building at a cost of \$85,600. But the proposal is dated October 9, 1998, which is approximately seven years before the valuation date. Moreover, the cost of constructing an addition to a building has little probative value to show the cost of

² The Petitioner contends that the township assessor offered to apply a 60% influence factor to the land. However, this evidence involved an agreement to settle the Petitioner’s 2007 appeal and therefore the Board gives no weight to it. *See* Ind. Evidence Rule 408.

constructing the building. Thus, the Petitioner's cost data does not support any lower value for the subject property.

24. As the Board found above, both the Respondent's appraisal and the Petitioner's appraisal are sufficient to be probative evidence of the subject property's value for the March 1, 2007, assessment date. The Board, therefore, must weigh the evidence presented by both parties and determine the most persuasive evidence of the property's value.
25. Here, the Respondent's appraisers estimated the property's value to be \$250,000 for the 2007 assessment using the sales comparison approach. The appraisers based this value on properties that sold in 2005 and in 2006. By contrast, the Petitioner's appraiser valued the property at \$183,000 using mostly sales from 2002, 2003 and 2004. Pursuant to 50 IAC 21-3-3(a), assessing officials use sales of properties occurring between January 1, 2005, and December 31, 2006, in performing sales ratio studies for the March 1, 2007, assessment date. Thus, the Respondent's appraisers used sales that were more relevant to the time frame for the 2007 assessment. Only one of the Petitioner's appraiser's comparable sales occurred during the relevant time frame and that property, 7510 Broadway, resold in 2006 for a substantially higher value, as noted in the Respondent's appraisal.
26. In addition, the Respondent's appraisers made net adjustments to their comparable properties that ranged from 5 % to -25% and provided an explanation of the differences between each comparable property and the subject property to support their adjustments. The Petitioner's appraiser's analysis, however, addressed all of the comparable properties together and the explanation of his adjustments was largely conclusory: "All of the properties are in very superior locations and condition compared to the subject." And the Petitioner's appraiser adjustments were much larger than the Respondent's appraisers adjustments – ranging from -45% to -65%. Thus, the Board can infer that the Respondent's appraisers used properties that were more comparable to the subject property than the Petitioner's appraiser's properties.

27. The Respondent's appraisal also estimated the value of the subject property using the cost approach; whereas the Petitioner's appraiser chose not to prepare a cost approach analysis. Neither appraisal employed an income analysis in its valuation.
28. Finally, the Petitioner's appraiser was a residential appraiser. And while one of the Respondent's appraiser's was also a residential appraiser, the Respondent's other appraiser was an Indiana Certified General Appraiser with an MAI designation. The Board finds a commercial property appraised by a Certified General Appraiser with an MAI designation to be more credible and reliable than a commercial property appraised by a residential appraiser.
29. Here the Petitioner's appraiser only developed a sales comparison analysis to value the Petitioner's property and he used mostly sales that were remote from the relevant valuation date. In addition, he made large adjustments with little explanation for those adjustments. The Respondent's appraisers, on the other hand, developed both a sales comparison and a cost approach analysis. They also used sales data from the relevant time period and provided a more thorough explanation for their adjustments. Moreover, one of the Respondent's appraisers was a Certified General Appraiser; whereas the Petitioner hired a residential appraiser to value its commercial property. Thus, the Board concludes that the weight of the evidence supports the Respondent's appraised value.

CONCLUSION

30. The Respondent established a prima facie case that the property should be valued at \$250,000. The Petitioner provided rebuttal evidence that the property's value should be \$183,000. After weighing the evidence, the Board finds the assessed value of the subject property to be \$250,000 for the March 1, 2007, assessment date.

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 subject property should be reduced to \$250,000 for 2007.

ISSUED: February 12, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.