

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

Petitions #: 20-015-02-1-4-00022 20-015-02-1-4-00023
20-015-02-1-4-00030 20-015-02-1-4-00031
20-015-02-1-3-00033 20-015-02-1-4-00034

Petitioner: Goshen Sash and Door

Respondent: Elkhart Township Assessor (Elkhart County)

Parcels #: 20-11-15-103-001.000-015 20-11-15-103-002.000-015
20-11-15-107-003.000-015 20-11-15-107-012.000-015
20-11-10-358-001.000-015 20-11-10-358-002.000-015

Assessment Year: 2002

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 Elkhart County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 25, 2003.
2. The Petitioner received notice of the decision of the PTABOA on October 22, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 Petition with the county assessor on November 20, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 30, 2004.
5. The Board held an administrative hearing on June 29, 2004, before the duly appointed Administrative Law Judge Patti Kindler.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: R. Joe Blackburn, CFO, Treasurer, Goshen Sash and Door.
Kim Green, Licensed Appraiser, Associated Appraisers.
Susan Dunford, Licensed Appraiser, Associated Appraisers.
Christopher M. Bradford, CPA, McGladrey & Pullen, LLP.

- b) For Respondent: Becca Briscoe, Elkhart Township Assessor.
Cathy Searcy, Secretary, Elkhart County PTABOA.

Facts

7. The property, classified as industrial, is located at 613 and 614 Purl Street, with lots located on East Reynolds and East Monroe Streets, as is shown on the property record cards for the parcels listed above.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The combined Assessed Value of the six (6) subject parcels, as determined by the Elkhart County PTABOA: Land \$107,900 Improvements \$868,500 Total \$976,400.
10. The combined Assessed Value for the six (6) parcels, as requested by Petitioner at the appeal hearing: Total \$650,000.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The assessed value for the subject parcels is excessive and does not represent the subject's fair market value. *Bradford testimony; Attachment to Board Exhibit A.*
 - b) In support of the Petitioner's claims that the assessment is excessive, two (2) certified commercial summary appraisal reports prepared by Kim Green and Susan Dumford of Associated Appraisers were submitted. *Petitioner's Exhibit 1 & 2.* Both appraisal reports show a valuation date of January 10, 2003. *Id.* The purpose of the appraisals was to estimate the market value as of the effective date of the appraisals and to assist the owner in determining how best to market the property. *Green testimony; Petitioner's Exhibit 1.*
 - c) The first appraisal, for the Goshen Sash and Door office building and the former Oar & Paddle building, (parcels 20-11-15-103-002.000-015 and 20-11-15-107-003.000-015), shows a value range of \$220,000 to \$250,000. *Petitioner's Exhibit 1.*
 - d) The appraisers, in developing the highest and best use for the above appraisal, determined the older Oar & Paddle building (parcel 20-11-15-107-003.000-015) would best benefit the Goshen Sash & Door office building if it were demolished and the site used for parking, which was "extremely limited." In addition, the highest and best use of these two buildings was influenced by its current classification of R-1, residential zoning. These buildings were operating as an industry under a grandfathered zoning use and would revert to R-1 zoning if left unoccupied for more than eighteen (18) months, making warehousing or manufacturing an illegal zoning use at that site. *Green testimony; Petitioner's Exhibit 1.*
 - e) The appraisal shows the cost of the demolition of the Oar & Paddle building to be \$30,000 and the cost to cover part of the demolished building site with asphalt for parking to be \$10,000. *Petitioner's Exhibit 1, referring to the Income Approach*

Calculation page. In addition, the appraisal shows a cost of \$10,000 to install an independent heating system in the remaining office structure. *Id.*

- f) The second appraisal submitted estimates a value for the Goshen Sash and Door warehouse and parking lot. This appraisal includes the remaining four (4) parcels under appeal: 20-11-15-103-001.000-015; 20-11-10-358-001.000-015; 20-11-10-358-002.000-015; and, 20-11-15-107-012.000-015 with a value range of \$380,000 to \$420,000. *Petitioner's Exhibit 2.*¹
- g) A range of values was reported on the appraisals because the buildings were older, unique, and data was limited and difficult to analyze. *Dumford testimony; Petitioner's Exhibits 1 & 2.* The combined appraisals indicate an estimated value range of \$600,000 to \$670,000 for the Goshen Sash and Door property. *Id.*
- h) The Petitioner requested a value for the property, based on the appraisals, of \$650,000. *Bradford testimony.*
- i) At the time the appraisals were performed, the business was phasing out and only a few employees remained. *Bradford testimony.* Goshen Sash and Door is no longer in business and all the parcels, along with some additional parcels not under appeal, were sold to Goshen Community Schools in June of 2003 for \$700,000. *Bradford testimony; Attachment to Board Exhibit A.*
- j) In regards to the Respondent's claims that he is not certified as a tax representative, Mr. Bradford asserted that he is *not* acting as the Petitioner's tax representative and that is why the owner, Joe Blackburn, is present for the appeal. *Bradford testimony.*

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

- a) The Respondent submitted Respondent's Exhibit 1(a)-(g), a brief containing the following documents: two (2) aerial plats of the subject properties, three (3) pages of photographs; a letter from Cole Layer Trumble (CLT) regarding industrial values and depreciation with an attached letter of reply from Goshen Sash and Door; a letter from Elkhart Township requesting an informal conference; the informal conference schedule; minutes from the August 2003 assessor's meeting with attached revised depreciation schedule; and the PTABOA's Notice of Hearing. In addition, Respondent's Exhibit 2 was presented, which includes copies of original and revised property record cards (PRC's), and Forms 115 and 130 for each parcel at appeal.
- b) Ms. Briscoe testified that the office building, which is assessed on parcel #20-11-15-103-001.000-015, is addressed in the second appraisal (*Briscoe testimony; Petitioner's Exhibit 2*), although it is assessed on the same parcel with the other Goshen Sash and Door buildings that are valued in the first appraisal. *Briscoe testimony; Petitioner's Exhibit 1.* All the improvements that are located north of Purl Street are listed on parcel #20-11-15-103-001.000-015 and the land is assessed under individual parcel numbers. *Briscoe testimony; Respondent's Exhibit 2.*

¹ Parcel #20-11-15-103-001.000-015 contains the majority of Goshen Sash & Door's improvements. Some of the improvements are included in what the record is referring to as Appraisal #1; the remaining improvements are included in Appraisal #2.

- c) Ms. Briscoe asserted the commercial properties appeared to be overvalued according to the reassessment company, so the assessors voted to accelerate the depreciation schedules in August of 2003 and revised PRCs were issued. *Briscoe testimony; Respondent's Exhibit 1(f) and Respondent's Exhibit 2.* In addition, the township discovered a data entry error for parcel 20-11-15-103-001.000-015 and the values were revised from \$784,900 to \$778,600 for assessment year 2003. *Briscoe testimony; Respondent's Exhibit 2.*
- d) Ms. Briscoe opined that Goshen Sash and Door's location represents a distressed area for manufacturing use. *Briscoe testimony.* No functional obsolescence was taken into consideration, however, when reviewing the parcels. *Id.*
- e) Ms. Searcy objected to the introduction of the appraisals, which she contends were not presented to the PTABOA or provided through pre-hearing discovery. *Searcy testimony.*
- f) Further, Ms. Searcy objected to the testimony of Tim Green, Sue Dumford, and Chris Bradford, because Goshen Sash and Door did not appear for the scheduled PTABOA hearing and its notice was not returned as undeliverable. *Searcy testimony; Respondent's Exhibit 1(g).* Ms. Searcy also objected to all testimony given by Mr. Bradford, contending that he was acting as a tax representative without being licensed as a certified tax representative in the State of Indiana. *Id.*
- g) Respondent contends the sale of the subject property to the school corporation in 2003 occurred well after the State's January 1, 1999, assessment valuation date and is therefore not reflective of the 1999 values. *Searcy testimony.*
- h) Ms. Briscoe contends the property was never listed for sale on the open market; the sale between Goshen Sash & Door and the school was a private transaction. *Briscoe testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #5329.
- c) Exhibits:
 - Petitioner's Exhibit 1: Commercial appraisal report for parcels 20-11-15-103-002.000-015 and 20-11-15-1007-003.000-015, dated January 10, 2003.
 - Petitioner's Exhibit 2: Commercial appraisal report for parcels 20-11-15-103-001.000-015, 20-11-10-358-001.000-015, 20-11-10-358-002.000-015 and 20-11-15-107-012.000-015, dated January 10, 2003.
 - Respondent's Exhibit 1: Brief, containing the following items:
 - a) Aerial plats of the property.

- b) Three (3) pages of interior and exterior photographs.
- c) Letter from CLT to Goshen Sash and reply (two (2) documents).
- d) Letter from Elkhart Township regarding scheduling an informal conference.
- e) Informal conference schedule.
- f) Assessor's monthly meeting minutes.
- g) Notice of hearing from County PTABOA.

Respondent's Exhibit 2: Copy of the original and revised PRC, Form 130 and Form 115 for each parcel under appeal.

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations are:

- a) 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).
- 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. 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”).
- 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.
- d) True tax value is the value determined under the rules of the State Board of Tax Commissioners. Ind. Code § 6-1.1-31-6(c). True tax value, therefore, is defined 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 MANUAL at 2.

- e) Fee appraisals of the subject property, or comparable sales approaches, that estimate the market value of improvements may be considered in determining true tax value if they are based on the value-in-use standard and utilize market information that is relevant to the subject property under the assumption that a potential purchaser would continue the existing use of the subject property. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4-5.

15. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

- a) The Petitioner contends the assessed value for the subject parcels under appeal is excessive and does not represent the subject's fair market value. The six (6) parcels under appeal are currently assessed at a combined total of \$976,400. The Petitioner asserts the properties' total value should be \$650,000.
- b) In support of its contentions, the Petitioner submitted two (2) certified commercial appraisals and a sales contract between Goshen Sash and Door and the Goshen Community Schools for all the parcels under appeal, along with nine (9) additional parcels not under appeal.
- c) The certified appraisal reports (*Petitioner's Exhibit 1 & 2*) were prepared by Kim Green and Susan Dumford of Associated Appraisers. The purpose of the appraisals was to estimate the market value of the subject parcels as of January 10, 2003. The appraisals valued the parcels in accordance with the sales approach and income approach methodologies. The cost approach was not utilized due to the age and condition of the improvements, which would require substantial and subjective adjustments in determining the depreciation of the buildings. *Green testimony*.
- d) The first appraisal determined the combined value of two (2) improved parcels under appeal (the Goshen Sash and Door office building, parcel 20-11-15-107-003.000-015, and the former Oar and Paddle manufacturing building, parcel 20-11-15-103-002.000-015) to be within a range of \$220,000 to \$250,000. This valuation, however, is based on the appraisers' opinions of *highest and best use* for the parcels, and includes the demolition of the older Oar and Paddle manufacturing building, as well as the installation of an asphalt parking lot in its place and a new furnace for the office building. No alternative valuation was submitted to help determine the value for the existing Oar and Paddle building in its "as is" condition. Therefore, the former Oar and Paddle building's market value in use cannot be determined.
- e) In Indiana, the 2002 assessment is based on the replacement cost of the property, defined as "the cost, including material, labor and overhead, which would be incurred in constructing an improvement having the same utility to its owner as the subject improvement." 2002 REAL PROPERTY ASSESSMENT MANUAL at 11. Further, true tax value is defined as: "The market value-in-use of a property for its *current use*, as reflected by the owner or a similar user from the property." 2002

REAL PROPERTY ASSESSMENT MANUAL at 2 (emphasis added). The appraisal did not offer a value for the former Oar and Paddle building based on its current use, but instead valued the property as demolished and included only those costs of the demolition and the cost to improve the vacated site. Therefore, the appraisal is of little assistance in determining the property's true tax value (based on its market value in use).

- f) The second appraisal presented by the Petitioner (Petitioner Exhibit 2) estimates the combined value for four (4) separate parcels, including an industrial warehouse/manufacturing building (parcel 20-11-15-103-001.000-015), an asphalt parking lot (20-11-15-107-012.000-015), and two (2) lots (20-11-10-358-001.000-015 and 20-11-10-358-002.000-015). This appraisal shows a value range based on the sales and income approaches to value of \$380,000 to \$420,000 for the parcels listed above. As stated before, parcel 20-11-15-103-001.000-015 contains pricing for additional buildings that were included in the first appraisal discussed above, as well as the manufacturing building shown in the second appraisal.
- g) The problem with determining the weight to be given to the second appraisal, as evidence of an error in the assessment, is that it does not allocate the purported appraised values to specific parcels and improvements. The appraisal discusses and values the buildings and land as one totality, instead of considering each of the individual parcels, which show separate values for taxation purposes. Without further explanation from the taxpayer or his appraisers, the Board is simply unable to decipher how the overall appraised value should be segregated and carried over to the applicable parcels.
- h) Both appraisals were ordered for the purpose of estimating a market value for the subject property to assist the owner in "marketing the property." *Green testimony*. The appraisal reports specify the intended use of the report is to provide an estimate of the current market value of the subject property "for the client." *See Petitioner's Exhibits 1 & 2, the intended use of the report*. Mr. Bradford testified that the appraisals were ordered prior to the filing of the Form 130 appeal petition, and were not influenced by the appeal.
- i) The final document addressed by the Petitioner, in support of Goshen Sash and Door's purported value, is a sales contract with Goshen Community Schools. *Attachment to Board Exhibit A*. This contract shows that Goshen Schools purchased all of the parcels under appeal as well as nine (9) additional parcels, which are not the subject of this appeal, in June of 2003 for \$700,000. There is no explanation in the record regarding how much of the \$700,000 sale price is applicable to the land and improvements under appeal, and how much is applicable to the additional nine (9) parcels included in the sale. While probative to the overall value of the properties, this evidence is not specific enough to allow the Board to determine the proper assessed value of the properties under appeal. *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”). Without the explanatory connections, the Board cannot find that Petitioner made a prima facie case.

- j) Undisputed testimony indicated this was a private sale without benefit of exposure to the market at a time the business was in the process of closing. This fact casts doubt as to whether the sale is representative of market value as described in the Manual. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (defining market value to include “reasonable time [] allowed for exposure in the open market”).
- k) As stated above, there is insufficient evidence in this appeal to ascertain that any of the above reported values are an indication of the 2002 value-in-use for the parcels under appeal. However, the Elkhart Township Assessor testified that she found data entry errors on parcel #20-11-15-103-001.000-015 (*Respondent's Exhibit 2*), in which the reassessment company failed to apply the revised grades and condition adjustments for the 2002 reassessment.
- l) The Elkhart Township Assessor submitted the corrected PRC for the record and made the purported changes for the 2003 assessment year. Because the errors were brought forth in the appeal and represented changes in the percentage of the overall pricing grid, they were mathematical in nature and should be corrected for the 2002 assessment year. Therefore, the values applicable to property record card #20-11-15-103-001.000-015 are to be changed from \$784,900 to \$778,600. There are no additional changes made to the assessment.

Other

16. Several objections were made by the Respondent to evidence and testimony presented. These objections concern evidentiary procedures regarding tax representation discussed in 52 IAC 3-1-4, 52 IAC 3-1-6, discovery requirements discussed in 52 IAC 3-1-5, and the limitation of issues discussed in 52 IAC 2-5-3. These objections are overruled.

Conclusion

17. The Petitioner failed to make a prima facie case sufficient to prove the proper assessed value for each parcel and improvement. The Board finds in favor of Respondent. There is no change to the assessment other than the modification described supra at ¶ 15(k).

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment, with exception of the assessment errors reported by the Elkhart Township Assessor on parcel #20-11-15-103-001.000-015, 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.