

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

Petition #: 20-015-03-1-4-00109
Petitioner: First National Bank
Respondent: Elkhart Township Assessor (Elkhart County)
Parcel #: 20-11-09-264-011.000-015
Assessment Year: 2003

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On November 12, 2004, the Petitioner initiated an assessment appeal with the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”).
2. The PTABOA issued notice of its determination on July 27, 2005.
3. On August 25, 2005, the Petitioner filed a Form 131 petition to the Board. The Petitioner elected to have the Board hear this case under its rules for small claims.
4. The Board held an administrative hearing on September 6, 2007, before its duly appointed Administrative Law Judge, Dalene McMillen (“ALJ”).
5. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Carla D. Bishop, Meritax Property Tax Consultants
 - For Respondent: Becca Briscoe, Elkhart Township Assessor¹

¹ A.J. Pletcher, Elkhart Township Deputy Assessor, attended the hearing, but she did not swear an oath or testify.

Facts

6. The subject property is located at 217 North Main Street in Goshen, Indiana. The property is comprised of a .208-acre parcel of land and several improvements, including a three-story office building. The building's first floor contains a bank branch and offices, and the upper-two stories contain general office space. The building also has a basement.
7. The ALJ did not inspect the subject property.
8. The PTABOA determined subject property's value to be \$18,200 for the land and \$1,378,200 for the improvements, for a total assessment of \$1,396,400.
9. The Petitioner requested an assessment of \$806,000.

Parties' Contentions

10. Summary of Petitioner's contentions:
 - a. The Petitioner contended that the Respondent assessed the subject property for more than its market value-in-use, which the Petitioner claimed was \$806,000. *Bishop argument*. In support of its position, the Petitioner offered an appraisal report prepared by Richard R. Correll, David B. Cain and Aaron Wood of Correll Real Estate Services. *Pet'r Ex. 2*. Correll and Cain are certified appraisers, and Wood is a licensed trainee. *Id.* In that March 28, 2007, report, the Correll appraisers estimated the market value-in-use of the subject property and four adjoining vacant parcels at \$850,000 as of January 1, 1999. *Id.*; *Bishop testimony*.
 - b. The Correll appraisers relied primarily on the sales-comparison approach to value. *Pet'r Ex. 2 at 26-37, 42*. They also used the income approach. But they found the income approach to be less reliable than the sales-comparison approach, given that the property would most likely sell to an owner-occupant. *Id. at 42*. They did not use the cost approach because subject building was 23-years-old, and buyers would be unlikely to base pricing decisions on the building's replacement cost. *Id. at 25*.
 - c. Although the appraisers estimated the property's value retrospectively, the property did not substantially change between the January 1, 1999, valuation date and the March 1, 2003, assessment date. *Bishop testimony*.
 - d. The Petitioner also offered a September 5, 2007, letter from Correll and Wood, which the Petitioner argued should be read together with the appraisal report. That letter addresses various comments that the Respondent made about the appraisal report, including comments comparing it to a 1992 appraisal performed by FM Properties. *Pet'r Ex. 3*.

- e. Among other things, the Correll appraisers took issue with the Respondent criticizing their market-rent estimate. In their view, simply multiplying the building's total area by the market rate for multi-tenant-property leases, as the FM Properties appraisal did, grossly oversimplified how to value the subject property. Unlike multi-tenant properties, a bank occupied the subject building's entire first floor. And the upper-two floors were a mix of perimeter offices and open areas with cubicle partitioning. *Id.*
 - f. Nonetheless, the Correll appraisers conceded that their market-rent estimate was not well developed due to lack of data. *Id.* And they acknowledged that the Respondent did a good job critiquing their income-approach analysis. *Id.* They agreed that the income approach was subject to many hypothetical projections, which was why they primarily relied on the sales-comparison approach. *Id.*
 - g. The Correll appraisers dismissed the Respondent's comments about their sales-comparison analysis. While the Respondent criticized that appraisal's failure to adjust Sale 1's price to a 1999 value, market volatility prevented the appraisers from substantiating any adjustment. *Id.* The Correll appraisers similarly disagreed with the Respondent's assertion that the size of South Bend's market required them to adjust Sale 2's price downward. *Id.*
 - h. Finally, because the Petitioner did not appeal the adjoining vacant parcels' assessments, it subtracted those parcels' assessed values from the Correll appraisal's valuation opinion to arrive at its requested value of \$806,000. *Bishop testimony.*
11. Summary of Respondent's contentions:
- a. The Respondent contended that it correctly assessed the subject property. *Respondent Exhibit 3; Briscoe testimony.*
 - b. According to the Respondent, both the Correll and FM Properties appraisals suffer from many flaws. *Briscoe testimony.* And the two appraisals actually impeach each other, because they rely on significantly different data. For example, the FM Properties appraisers described the subject building as a sophisticated, class-A office building. *Id.* The Correll appraisers, by contrast described the building as a functional, class-B office building with good curb appeal. *Id.* Too, the FM Properties appraisal indicates that the building had an insurance replacement cost of \$1,000,000 in 1992, while the Correll appraisal fails to address that issue. *Id.*

- c. The Respondent also contended that both appraisals show the subject building as having 1316 fewer square feet than the 19,008 square feet listed in the Respondent's records. *Briscoe testimony*.
- d. Next, the Respondent pointed to specific flaws in the Correll appraisers' value estimate under the income approach. First, the rent that the appraisers used in estimating the property's net operating income was substantially lower than both their own data and other market evidence. They used market rent of only \$7.00 per square foot. *Resp't Ex. 7; Briscoe testimony*. Yet they acknowledged that market rents in the area ranged from \$9.00 to \$13.50 per square foot. Also, classified advertisements from the ELKHART TRUTH show that on August 3, 2007, office space was being leased at rates ranging from \$10.00 to \$14.00 per square foot. *Id.; Resp't Ex. 9*. And CB Richard Ellis advertised office space in the subject building for \$14.25 per square foot. *Briscoe testimony; Resp't Ex. 8*.
- e. Plus, while the Correll appraisers indicated that asking rents in 2007 were comparable to those in January 1999, Marshall & Swift, Inc.'s cost index shows that building costs rose 37.7% from 1999 to 2006. *Briscoe testimony; Resp't Ex. 13*.
- f. The Correll appraisers compounded their error in estimating market rent by failing to explain how they chose their capitalization rate. They pointed to a range of capitalization rates contained in the KORPAZ REAL ESTATE INVESTOR SURVEY for the 3rd quarter of 1999 and then simply chose a rate at that range's upper end. *Briscoe testimony; Resp't Ex. 15*.
- g. The Respondent further pointed to what it perceived as flaws in the Correll appraisal's sales-comparison analysis. The appraisers relied upon three comparable sales—one each from Goshen, Lafayette, and South Bend. *Resp't Exs. 5, 7 & 15; Briscoe testimony. Id.* While they adjusted the Lafayette property's sale price downward to reflect a difference in relative market sizes, they did not adjust the South Bend property's sale price. South Bend, however, is an even bigger market than Lafayette is. Plus, while the sales all occurred between 2001 and 2006, the appraisers did not adjust the comparable sales prices to 1999 values. They similarly failed to adjust for differences in building sizes. *Briscoe testimony; Resp't Ex. 7*.
- h. The Respondent also attacked the Correll appraisal on grounds that the subject building changed between the January 1, 1999 valuation date and the March 28, 2007, appraisal. *Briscoe testimony*. According to Ms. Briscoe, the building changed from being approximately 50% multi-tenant to being approximately 75% owner-occupied. Cubicles and the office spaces were also rearranged. *Id.*

- i. Finally, the Respondent presented information on what it claimed were comparable sales from downtown Goshen. *Briscoe testimony; Resp't Exs. 1, 10-12.* The first property contained a 22,000-square-foot building and sold for \$600,000 on December 22, 2005. *Briscoe testimony; Resp't Ex. 10.* The second property was ½ an acre of vacant land that that National City Bank bought for \$300,000 on February 1, 2005. *Briscoe testimony; Resp't Ex. 11.* The third property was located just west of the subject property and contained a Shell Station. Due to its prime location, that property sold for \$1,291,544 on June 21, 1999. *Briscoe testimony; Resp't Ex. 12.*
12. The official record for this matter is made up of the following:
- a. The Form 131 petition and related attachments.
 - b. The digital recording of the hearing.
 - c. Exhibits:
 - Petitioner Exhibit 1 – Petitioner’s summary of issues,
 - Petitioner Exhibit 2 – Summary appraisal report prepared by Correll Commercial Real Estate Services,
 - Petitioner Exhibit 3 – September 15, 2007, letter from Richard R. Correll and Aaron Wood to Carla Bishop,
 - Petitioner Exhibit 4 – Copy of the Form 131 petition, Form 115 – Notification of Final Assessment Determination and Form 130 petition,

 - Respondent Exhibit 1 – Photograph of the subject property,
 - Respondent Exhibit 2 – Three aerial maps of the subject area,
 - Respondent Exhibit 3 – Subject property record card,
 - Respondent Exhibit 4 – Form 115,
 - Respondent Exhibit 5 – Petitioner’s comparison of FM Properties appraisal and Correll Commercial Real Estate Services appraisal,
 - Respondent Exhibit 6 – Initial real estate appraisal for Ameritrust National Bank Building prepared by FM Properties, dated February 10, 1992,
 - Respondent Exhibit 7 – Summary appraisal report prepared by Correll Commercial Real Estate Services, dated March 28, 2007,
 - Respondent Exhibit 8 – Leasing summary advertisement on the subject property by CB Richard Ellis, dated January 2, 2001,

Respondent Exhibit 9 – Commercial office space advertisements from the ELKHART TRUTH, dated August 30, 2007,
Respondent Exhibit 10 – Sales Disclosure, dated December 22, 2005, and two 2006 property record cards for First Source Bank,
Respondent Exhibit 11 – Photograph, aerial map and sales disclosure, dated February 1, 2005, for National City Bank,
Respondent Exhibit 12 – Photograph, aerial map and sales disclosure, dated June 21, 1999, for Jay Petroleum, Inc. (Shell Station),
Respondent Exhibit 13 – Marshall & Swift, Inc. cost index, section 98, page 8, dated July 2007,
Respondent Exhibit 14 – U.S. Department of Labor consumer price index from 1997 to 2007, dated September 5, 2007,
Respondent Exhibit 15 – Elkhart Township Assessor’s summary of analysis of Petitioner’s evidence,
Respondent Exhibit 16 – September 5, 2007, letter from Correll and Wood to Carla Bishop,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:
- a. A taxpayer seeking review of an assessing official’s determination 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).
 - 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 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.

14. The Petitioner demonstrated that the subject property’s assessment should be reduced to \$850,000. The Board reached this decision for the following reasons:
 - a. 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 MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But 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 (“USPAP”) often will suffice. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c. And the taxpayer must explain how its evidence relates to its property’s value as of the relevant valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005); *see also* MANUAL at 4, 8. For assessment years 2002 – 2005, that valuation date is January 1, 1999. *Id.*; *see also* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments beginning in 2006).

The Petitioner’s prima facie case

- d. The Petitioner made a prima facie case rebutting the subject property’s assessment and showing that the property’s true tax value was no more than \$850,000. The Petitioner offered exactly the type of market-based evidence

contemplated by the Manual and Tax Court. It offered an appraisal report in which two licensed appraisers estimated the market value-in-use of the subject property and four adjoining vacant land parcels at \$850,000. *Pet'r Ex. 2*. The appraisers considered all three generally accepted approaches to value, although they ultimately developed only two of those approaches. *Id. at 25-42*. And they followed USPAP in reaching their conclusions. *Id. at 14*. Plus, they estimated the subject property's value as of the relevant January 1, 1999 valuation date. *Id. at 42*.

- e. But the Petitioner did not support its requested assessment of \$806,000. The Petitioner arrived at its request by subtracting from the Correll appraisers' estimate the assessed value of the four vacant lots that it did not appeal. The Petitioner, however, cannot mix and match its evidence in that way. The Correll appraisers did not develop the cost approach, so there is nothing to show what portion of their \$850,000 estimate was attributable to the vacant land parcels. There is certainly nothing to support an inference that the Correll appraisers estimated the vacant parcels' contributory values as being identical to their assessments. Thus, while the Petitioner's evidence supports an inference that the subject property's market value-in-use is something less than \$850,000, the Petitioner did not submit any probative evidence to quantify how much less.

The Respondent's case

- f. Because the Petitioner made a prima facie case, the burden shifted to the Respondent to impeach or rebut the Correll appraisers' valuation opinion. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The Respondent attempted to do both but it succeeded in doing neither.

1. Attempts to impeach the Correll appraisal

- g. The Respondent attempted to impeach the Correll appraisal on various grounds. First, it contrasted that appraisal with an earlier appraisal performed by FM Properties, noting that the FM Properties appraisers assigned a higher classification to the subject building than did the Correll appraisers. At most, that discrepancy simply juxtaposes two expert opinions. But other than Ms. Briscoe summarily asserting that FM Properties' appraisers were more familiar with the Goshen market, the Respondent did nothing to show which of the two opinions was more credible. More importantly, The Correll appraisers did not rest their opinion on the cost approach. And that is the approach where classifying the building is most relevant.
- h. Second, Ms. Briscoe testified that both appraisals used smaller dimensions for the subject building than what the Respondent's records reflect. *See Briscoe testimony*. The property record card indicates that the Respondent assessed as

having a basement and three above-grade levels, with each level containing 4,752 square feet. *Resp't Ex. 3*. The Correll appraisers likewise found three above-grade levels measuring 4,752 square feet. But they measured the basement as having only 3,148 square feet. *Pet'r Ex. 2 at 6*.

- i. The Respondent, however, simply pointed out a difference in measurements, without offering any evidence to resolve which measurement was correct. Indeed, Ms. Briscoe did not even identify who measured the subject property for the Respondent much less describe how that person performed his or her measurements.
- j. Third, the Respondent pointed to what it claimed were flaws in the Correll appraisers' income-approach analysis. The Respondent focused most heavily on the fact that the Correll appraisers used a \$7-per-square-foot lease rate to calculate the subject property's net operating income despite evidence of significantly higher market-rates.
- k. The Respondent overstated its point somewhat. The Correll appraisers explained the discrepancy, noting that the building was being used primarily as a single-occupant space, and that it most likely would sell to an owner-occupant. *Pet'r Ex. 2 at 23, 42*. In their opinion, simply multiplying the building's first floor area by the market rate for multi-tenant properties would have been a "gross oversimplification." *Pet'r Ex. 3 at 2*.
- l. Nonetheless, the Respondent's attack on the Correll appraisers' income-approach analysis is well taken. Although the Correll appraisers explained why they did not use the full multi-tenant-property rate, they did not explain why they settled upon such a drastically lower rate. Plus they freely admitted that their market-rent estimate was not "well developed." *Pet'r Ex. 3 at 2*. In fact, the Correll appraisers acknowledged that their income-approach analysis included many hypothetical assumptions and other problems that made it difficult to credibly value the subject property using that approach. *Id. at 2-3*.
- m. Fourth, the Respondent attacked The Correll appraisers' sales-comparison analysis on grounds that they (1) ignored comparable sales from Goshen, and (2) failed to make several necessary adjustments to the prices for the comparable sales that they did use.
- n. Of the three Goshen sales that the Respondent identified, one was a vacant land parcel and another was a service station. The only property that even remotely compared to the subject property was the First Source Bank property. But as Ms. Briscoe acknowledged, the sales-disclosure form for that property indicates that the buyer and seller had a family or business relationship. *Briscoe testimony; Resp't Ex. 10*. The fact that parties to a real estate transaction are related raises

concerns about whether the sale price reflects the property's market value. *See* MANUAL at 10.² And the Respondent did nothing to allay those concerns. Perhaps more importantly, the First Source Bank property sold for \$250,000 less than the amount at which The Correll appraisers valued the subject property. Thus, if anything, the First Source Bank sale would support an assessment even lower than what the Petitioner requested.

- o. The Respondent also argued that The Correll appraisers should have adjusted Sale 2's price to account for South Bend having a larger population than Goshen. There is no dispute that South Bend has a larger population than Goshen. But that does not necessarily translate to South Bend's commercial real estate market differing significantly from Goshen's. And to the extent it does translate into a difference, the Respondent argued that the difference required the appraisers to adjust Sale 2's price downward, which in turn would have lowered their value estimate for the subject property.
- p. The Respondent similarly claimed that The Correll appraisers should have made adjustments to account for differences in building sizes. Once again, however, it is not self evident that the size differences at issue—the subject building had 14,256 square feet above grade, and Sales 1 and 2 had 20,000 and 30,094 above-grade square feet respectively—required an adjustment. Indeed, the Correll appraisers found that the size differences did not translate into any difference in price per square foot.
- q. The Correll appraisers' failure to adjust the comparable sale prices to reflect January 1, 1999, values presents a slightly more complicated question. The Correll appraisers did not find any evidence to support adjusting sale prices to account for differences in sale dates. They reached that conclusion after comparing Sale 1, which occurred in 2006, to Sale 2, which occurred in 2002, and adjusting for physical differences between the two properties. *Pet'r Ex. 2 at 35*. While that explanation may suffice to show that values remained static between 2001 and 2006, it arguably does not relate the Correll appraisers' valuation opinion to the earlier date of January 1, 1999.
- r. But the Respondent cured any problems on that front by introducing evidence to show that both construction costs and the consumer price index rose steadily from 1999 through 2007. *Resp't Exs. 13-14*. Thus, any time-related differences between the subject property's appraised value and its value as of January 1, 1999, would serve only to reduce the subject property's true tax value below the Correll appraisers' \$850,000 estimate.

² The Manual defines "market value" as the most probable price that a property should bring in a competitive and open market under all requisite conditions for a fair sale. Those conditions include that the parties to the sale are typically motivated and well informed, and that they act in what they consider their own best interests. MANUAL at 10.

- s. Finally, the Respondent claimed that the subject building changed between the January 1, 1999 valuation date and March 28, 2007, when the Correll appraisers prepared their appraisal report. The Board agrees that interim changes to property's use or physical make-up might affect the probative weight to be assigned to an appraisal of that property. But the Respondent focused on the wrong timeframe. Although a property's true tax value is premised on its market value-in-use as of January 1, 1999, the property must be assessed as it physically existed on the assessment date in question. Thus, the relevant question is whether the subject building's use and physical make-up changed between March 1, 2003, and March 28, 2007. The Respondent, however, did not explain whether the identified changes occurred before or after March 1, 2003.
- t. And the changes that the Respondent described were hardly monumental. The Respondent simply claimed that the building changed from being approximately 50% multi-tenant to being largely owner-occupied and that some of its interior configuration changed to an unspecified degree.
- u. To sum up, the Respondent pointed to some flaws in the Correll appraisal that detract from its probative value. That is particularly true regarding the flaws in the appraisers' income-approach analysis. But those flaws are not so great that they render the Correll appraisers' ultimate valuation opinion unreliable. The Board therefore gives significant weight to that opinion.

2. Respondent's market-based evidence

- v. The fact that the Respondent did not completely impeach the Correll appraisal, however, does not mean that the Petitioner carried its burden of persuasion. The Respondent was free to present its own weightier evidence establishing a higher market value-in-use for the subject property.
- w. But the Respondent presented little of its own market-based evidence. At most, it offered sales information for three properties located in downtown Goshen. *Briscoe testimony; Pet'r Exs. 10-12*. As noted above, however, two of the three properties were patently dissimilar to the subject property. And while the First Source Bank property at least resembled the subject property on the surface, the Respondent completely failed to compare any of the two properties' specific characteristics. *See Long*, 821 N.E.2d at 469 (denying taxpayers' claim where they failed to explain how the characteristics of their property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). Thus, the Respondent's evidence of sales from downtown Goshen did nothing to show the subject property's market value-in-use.

Conclusion

15. The Petitioner made a prima facie case for reducing the subject property's assessment to \$850,000. The Respondent neither fully impeached the Petitioner's evidence nor offered credible market-based evidence of its own. The Board therefore finds for the Petitioner and orders that the subject property's assessment should be changed to \$850,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: December 5, 2007

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>>