

REPRESENTATIVE FOR PETITIONER: Tom Galligan, Attorney,  
Galligan Barrett, LLC.

REPRESENTATIVES FOR RESPONDENT: Marilyn Meighen, Attorney,  
Meighen & Associates, PC,  
Jay K. Walters, Grant County Assessor.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

KEN CORP.,	)	Petition No.: 27-016-02-1-4-00004
	)	
Petitioner,	)	Parcel: 0706-401-080.000-16
	)	
v.	)	Grant County
	)	
CENTER TOWNSHIP ASSESSOR,	)	Center Township
	)	
Respondent.	)	2002 Assessment

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

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**March 27, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and the arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following questions.

**Issue 1:** Was this appeal removed from the small claims procedures?

**Issue 2:** Outside of small claims procedures, does the failure to exchange copies of documentary evidence as required by 52 IAC 2-7-1 (at least five business days before the hearing) constitute a basis for sustaining an objection to that evidence at the hearing?

**Issue 3:** Does the evidence establish that the assessed value for the subject property should be changed because it is not consistent with its market value-in-use?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Procedural History

1. The Petitioner initiated an appeal of its assessment by written document on September 18, 2003. On May 12, 2005, the Grant County Property Tax Assessment Board of Appeals (PTABOA) issued an assessment determination for the subject property. On June 1, 2005, Thomas J Galligan, Petitioner's representative, filed a Form 131 Petition for Review of Assessment, seeking an administrative review by the Board. The Board found the Form 131 Petition defective on September 12, 2005, and again on October 11, 2005, because the Petitioner did not include information regarding its option to have the hearing held according to small claims or plenary hearing procedures.<sup>1</sup>
2. Unless a party elects to transfer from small claims under 52 IAC 2-5-1(c)(6) or 52 IAC 3-1-3, an appeal is subject to the small claims procedures if the property has an assessed value that does not exceed one million dollars. 52 IAC 3-1-2(a). A party who does not wish to proceed under small claims procedures may request a transfer to the plenary hearing procedures governed by 52 IAC 2. The request for transfer can be made by opting out of small claims procedures on the appeal petition or by written notice to the Board no less than fifteen days before the date of the hearing. 52 IAC 3-1-3(b).
3. In this case, the hearing was originally scheduled for May 4, 2006, but the Petitioner did not appear. The Board issued an Order of Dismissal on May 17, 2006. The Petitioner's representative subsequently established that an emergency prevented him from attending the original hearing and requested a rehearing on the petition. The Board granted this request and issued a new notice of hearing. The Respondent requested a continuance. Accordingly, the Board rescheduled the hearing and issued another notice of hearing. All three hearing notices contained the following statement: "At least 15 days before the hearing date, the parties must exchange a list of witnesses and exhibits. At least 5

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<sup>1</sup> During this hearing, the plenary procedures were frequently referred to as the "standard" procedures in distinguishing them from the small claims procedures.

business days before the hearing date, the parties must exchange evidence and summaries of witness testimony to be presented at the hearing."

4. The Petitioner filed a second Form 131 petition on July 3, 2006, in which it exercised its option to remove this matter from small claims procedures and attempted to add new issues. Although the Petitioner did not identify the revised Form 131 Petition as a request for transfer, it conforms to the requirements for such a request. The Petitioner provided the Board with a revised Form 131 Petition and checked the Opt-Out of Small Claims box more than fifteen days before the scheduled hearing as required by 52 IAC 3-1-3(b). *Board Exhibit E*. Therefore, the Board considers this matter to be governed by 52 IAC 2 plenary procedures.

### **Objections**

5. The Respondent objected to the addition of new issues listed on Attachment A to the second petition. The Petitioner's representative argued that he intended the second petition to act as an amended petition to include issues not identified in the original Form 131.
6. One amendment within thirty days of filing the original petition is permitted as a matter of course. After that time, amendments must be approved by the Board for good cause shown. Amendments filed solely to add new issues will be approved if filed no later than fifteen days before the hearing. 52 IAC 2-5-2.
7. The original appeal petition was filed on June 1, 2005. The second petition was filed on July 3, 2006. Although the second petition was filed more than fifteen days before the hearing, the Petitioner did not identify the petition as "amended" or show any good cause for the inclusion of additional issues. The Petitioner provided no evidence that it sought approval for amending its petition. The Petitioner provided no evidence that the Board approved an amended petition for the sole purpose of adding new issues. The Board

concludes the Petitioner did not properly amend its original appeal petition. The proposed additional issues will not be permitted.

8. The Respondent also objected to the admission of the Petitioner Exhibits 3-7 because the Petitioner did not provide copies of documentary evidence or summaries of statements of testimonial evidence at least five business days before the hearing as specified by the rules and by the hearing notices.
9. The Petitioner's representative, an attorney, did not rebut the facts that were the basis of the objection and offered no mitigating points. The Petitioner's representative simply asserted that he thought he could bring the evidence to the hearing. That assumption, however, conflicts with the procedural rule, 52 IAC 2-7-1(b), as well as the several hearing notices. The objection is sustained because Petitioner Exhibits 3-7 were not provided as required before the hearing. The Board will not rely on those exhibits or related testimony.

#### **Hearing Facts and Other Matters of Record**

10. On August 30, 2006, Administrative Law Judge Patti Kindler held a hearing in Marion, Indiana.
11. The following persons were sworn and presented testimony at the hearing:
  - For the Petitioner – Thomas J. Galligan, Attorney,
  - For the Respondent – Jay Walters, Grant County Assessor,  
Gary Landrum, Grant County Deputy Assessor.
12. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Contentions,
  - Petitioner Exhibit 2 – Exterior and interior photographs of the subject building,
  - Petitioner Exhibit 3 – A sales disclosure form and photograph for the commercial building at 102 East Fourth, Marion, Indiana,

- Petitioner Exhibit 4 – A sales disclosure form with attached assessment data for the commercial building at 402 South Washington, Marion, Indiana,
- Petitioner Exhibit 5 – A sales disclosure form and photograph for the commercial building at 101 South Washington, Marion, Indiana,
- Petitioner Exhibit 6 – A sales disclosure form and photograph for the commercial building at 959 East Fourth, Marion, Indiana,
- Petitioner Exhibit 7 – A settlement statement for the commercial building at 325 South Adams, Marion, Indiana,
- Petitioner Exhibit 8 – Six pages of interior photographs showing the basement, second and third floors of the subject building.

13. The Respondent presented the following exhibits:

- Respondent Exhibit A – Excerpts from Indiana Code, Administrative Code and the 2002 REAL PROPERTY ASSESSMENT MANUAL,
- Respondent Exhibit B – Aerial photograph of the subject parcel,
- Respondent Exhibit C – Sheriff's Deed for 321 South Adams Street, Marion, Indiana,
- Respondent Exhibit D – Seven photographs of the subject property,
- Respondent Exhibit E – Map of Courthouse Square and property record cards showing three comparable assessments of bank properties,
- Respondent Exhibit F – Property record card for the subject property,
- Respondent Exhibit G – Petitioner's supplemental Form 131 dated July 3, 2006.

14. The following additional items are officially recognized as part of the record of proceedings:

- Board Exhibit A – Original Form 131 petition,
- Board Exhibit B – Three Notices of Hearing,
- Board Exhibit C – Order of Dismissal,
- Board Exhibit D – Request for rehearing,
- Board Exhibit E – Revised Form 131 petition dated July 3, 2006,
- Board Exhibit F – Notice of County Assessor Representation,
- Board Exhibit G - Notice of Appearance of Marilyn Meighen,
- Board Exhibit H – Hearing sign-in sheet.

15. The subject property is a three-story commercial bank building located at 315 South Adams Street, Marion, Indiana.

16. The Administrative Law Judge did not conduct an on-site inspection of the property.

17. The PTABOA determined the assessed value is:
- |               |                        |                  |
|---------------|------------------------|------------------|
| land \$36,400 | improvements \$813,700 | total \$850,100. |
|---------------|------------------------|------------------|
18. On the Form 131 Petition, the Petitioner contended the assessed value should be:
- |               |                        |                               |
|---------------|------------------------|-------------------------------|
| land \$36,400 | improvements \$706,500 | total \$742,900. <sup>2</sup> |
|---------------|------------------------|-------------------------------|
19. The Petitioner sought an assessment change based on the following evidence and arguments:
- The partitioning adjustment is incorrect. The second floor and third floor partition adjustment should be \$3.61 (thirty percent of \$12.15). Photographs taken on August 29, 2006, show the openness of the second and third floors. *Galligan testimony; Pet'r Ex. 8.*
  - The basement usage is incorrectly calculated on the property record card. It should be 2,406 square feet of offices and 3,564 square feet of utility storage area, even though the basement offices are not used due to fire regulations. Photographs support this contention. *Galligan testimony; Pet'r Ex. 8 at 1.*
  - Economic obsolescence should be allowed because the building no longer meets the needs of a bank. It is going to be demolished and replaced by a more efficient structure. The third floor has not been utilized for several years and the basement offices are not functional due to fire hazards. *Galligan testimony; Pet'r Exs. 1, 8.*
  - The Petitioner attempted to submit five sales disclosure forms and photographs for purportedly comparable commercial offices in Marion. *Pet'r Exs. 3-7.*<sup>3</sup> The first purported comparable, a 5,808 square foot downtown office building located

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<sup>2</sup> At the hearing, the Petitioner contended that the total assessed value should be \$2.42 per square foot, or \$43,318 for the building (*Pet'r Ex. 1 at 2*). In addition, the Petitioner contended that approximately \$100,000 would be reasonable for the subject property (*Pet'r Ex. 1 at 1*).

<sup>3</sup> The Board sustained the Respondent's objection to these exhibits. Nevertheless, this summary is included because even if the objection had been overruled, this evidence would not have changed the Board's final determination.

at 102 East Fourth Street, sold for \$90,000 (\$15.50 per square foot) on September 15, 2001. *Pet'r Ex. 3.*<sup>4</sup> The second purported comparable was a 49,948 square foot bank building located at 402 South Washington Street that sold for \$116,458 (\$2.33 per square foot) on July 19, 2005. It sold again for \$100,000 (\$2.00 per square foot) on February 1, 2006. *Pet'r Ex. 4.* The third sale was a 23,297 square foot building located at 101 South Washington Street that sold for \$978,560 (\$42.00 per square foot) on February 7, 2006. *Pet'r Ex. 5.* The fourth sale was a 16,872 square foot medical office located at 959 East Fourth Street that sold for \$1,150,000 (\$68.16 per square foot) on March 17, 2005. *Pet'r Ex. 6.* This property was included only because it was a recent sale, not because it was comparable to the subject property. *Galligan testimony.* The fifth property is known as the Iroquois Building and is located at 325 South Adams Street. This property sold for \$76,350 (\$2.42 per square foot) on March 15, 2006. *Pet'r Ex. 7.* The three “closest sales in location and size” sold for a range of \$2.00 to \$15.50 per square foot. *Pet'r Ex. 1.* The subject building should be lowered from \$47.49 per square foot to \$2.42 per square foot, which is the same as the building located at 325 South Adams Street. *Galligan testimony; Pet'r Ex. 1.*

20. Based on the following evidence and arguments, the Respondent opposed any assessment change:
  - a. The MANUAL does not mandate any specific assessing method to determine true tax value and a failure to comply with the procedures of a specific assessing method does not violate assessing requirements so long as the individual assessment is a reasonable measure. *Meighen argument; Resp't Ex. A at 1.* No change to the assessment is warranted unless the total assessment is shown to be incorrect. *Meighen argument.*

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<sup>4</sup> The sales disclosure form that is part of this exhibit actually shows the date of sale was August 31, 2001.

- b. Photographs taken in 2006 are irrelevant to the 2002 assessment and do not establish an error. *Meighen argument*.
- c. The structure was a fully functioning bank in 2002. *Walters testimony*.
- d. The three sales identified by the Petitioner as the most comparable to the subject property were distressed sales, structures that were not used as bank facilities and sales that were not arm's-length transactions. *Walters testimony*. The structure at 102 East Fourth Street was not used as a bank building on the 2002 assessment date and true tax value is based on the specific value-in-use. *Id.*; *Resp't Ex. A at 2*. The sale of 402 South Washington Street for \$2.00 per square foot was a distressed sale. *Walters testimony*. The sale of the Iroquois building located at 325 South Adams Street for \$2.42 per square foot was not valid because it involved a vacated, gutted building that sold at a sheriff's sale. *Walters testimony; Resp't Ex. C*.
- e. There are three downtown multi-story banks in the subject's neighborhood. The assessments of those comparable banks for \$870,000 to \$1,335,100 show the assessment of the subject property for \$850,000 is a uniform and just valuation in accordance with the Indiana Constitution. *Resp't Ex. E; Meighen argument*.

### **Administrative Review and the Petitioner's Burden**

- 21. 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).
- 22. 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”).

23. 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.

### **Analysis**

24. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
25. The purported errors (partitioning and basement use type classification) that the Petitioner complains about in the original petition focus solely on the methodology used to determine the assessment. Even if the assessment did not fully comply with the Guidelines, the Petitioner failed to show that the total assessment was not a reasonable measure of true tax value. Strict application of the Guidelines is not enough to rebut the presumption that the assessment is a reasonable measure of the property’s true tax value.

*Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) The Petitioner was required to show that the assessed value does not accurately reflect its market value-in-use. *Id.* at 678 (“In challenging their assessment, the Eckerlings have offered [no] ... market value-in-use evidence. Rather, they have focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error.”) The Petitioner failed to present such evidence. Therefore, it failed to make a prima facie case.

26. In the second Form 131 petition, the Petitioner attempted to add new issues. The Respondent objected because of the Petitioner’s failure to timely raise the issues and provide a summary of testimony and copies of the documentary exhibits prior to the hearing. The Board sustained the objection, but it would reach the same result without sustaining the objection.
27. The Petitioner attempted to present market evidence (sales disclosure forms and a settlement statement for the 2001 to 2006 sales of five purported comparable commercial buildings) in an effort to show that the subject property was excessively assessed on a per square foot basis. *Pet’r Exs. 3-7*. If this market evidence were considered, the Petitioner failed to meet its burden to prove that the price per square foot for the building should be lowered from \$47.49 per square foot to \$2.42 per square foot.
28. In submitting this evidence, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. *See* MANUAL at 2 (stating that 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.”). *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

29. In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the similarity of the purportedly comparable 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. 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.*
30. The Petitioner did not explain how the properties upon which it relies are comparable to the subject property beyond its assertion that the properties represented commercial structures located in the same city as the subject property. The Petitioner did not provide property record cards for the purportedly comparable properties or otherwise describe the similarities or differences in square footages, ages, physical features, or condition of the various properties. As explained in *Long*, general assertions of comparability without an analysis of the specific individual features of the properties being compared are insufficient to establish how the evidence is relevant or meaningful.
31. Further, with only one exception (from August 2001), the Petitioner tried to present evidence of sales that occurred in 2005 and 2006. *Pet’r Exs. 3-7*. The 2002 assessment, however, must reflect a value as of January 1, 1999. *MANUAL* at 4. Consequently, a party relying on sales data to establish the market value-in-use of a property must provide some explanation as to how that evidence demonstrates, or is relevant to, a value as of January 1, 1999. *See Long*, 821 N.E.2d at 471. The Petitioner failed to establish such a link. Therefore, this evidence has no probative value.
32. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

## Summary of Final Determination

33. The Petitioner failed to make a prima facie case. The Board finds for the Respondent.

This Final Determination is issued by the Board on the date first written above.

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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](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>.