

REPRESENTATIVES FOR PETITIONER:  
Sandra Bickel, Morse & Bickel, P.C.

REPRESENTATIVE FOR RESPONDENT:  
Frank Agostino, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

3230 Rosetta Place, LLC,	)	Petition No.:	71-009-08-1-3-00001
	)		
Petitioner,	)	Parcel No.:	71-03-28-426-006.000-009
	)		
v.	)	County:	St. Joseph
	)		
St. Joseph County Assessor,	)	Township:	German
	)		
Respondent.	)	Assessment Year:	2008

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Appeal from the Final Determination of the  
St. Joseph County Property Tax Assessment Board of Appeals

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**June 16, 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having 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. Was the subject property assessed in excess of its true tax value for 2008?

## Procedural History

2. On September 15, 2009, Samar, Inc. filed a Form 130 petition with the St. Joseph County Assessor. Samar later assigned its rights and interests in that appeal to the Petitioner, 3230 Rosetta Place (“Rosetta”).<sup>1</sup> The Form 130 petition referred to the assessment under appeal as “March 1, 2008/2009.” *Bd. Ex. A.*
3. The PTABOA failed to hold a hearing on the petition within 180 days as required by Ind. Code § 6-1.1-15-1 (k). October 27, 2011, Rosetta filed the Form 131 petition at issue in this appeal with the Board. *See* Ind. Code § 6-1.1-15-1 (o)(1) (allowing a taxpayer to appeal to the Board if a PTABOA fails to hold a hearing within the time specified in Ind. Code § 6-1.1-15-1 (k)). That petition refers only to an appeal of the 2008 assessment year. Rosetta also filed a separate Form 131 petition (pet. no. 71-009-09-1-3-00001) for the 2009 assessment year.
4. On January 5, 2012, counsel for Rosetta sent the Board a letter in which she explained that Rosetta had originally appealed both 2008 and 2009 to the Board because it was unsure which years the tax representative who originally filed the Form 130 petition had intended to appeal.<sup>2</sup> Because Rosetta had since learned that the appeal was only intended to be for 2008, counsel explained that Rosetta was “withdrawing the 2009 assessment appeal.” *Bd. Ex. A.*
5. On March 19, 2014, the Board’s administrative law judge, Dalene McMillen (“ALJ”), held a hearing on Rosetta’s petition for the 2008 assessment year. The following people testified under oath: Edward Bradley, Steve Van Vooren, and John Libertowski, all of whom are members of Rosetta; and Michelle A. Farrington, an appraiser with Farrington Appraisals, Inc.<sup>3</sup>

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<sup>1</sup> The evidence offered at the Board’s hearing is less than clear regarding the assignment. Nonetheless, the Assessor did not dispute counsel’s representations about the assignment or otherwise contest Rosetta’s standing to bring this appeal.

<sup>2</sup> The letter appears to have been in response a Notice of Defect in Completion of Assessment Appeal Form issued by the Board.

<sup>3</sup> Rosemary Mandrici was sworn but did not testify.

6. Rosetta offered the following exhibits:

- Petitioner Exhibit 1: Property record card for the subject property,
- Petitioner Exhibit 2: Form 130 Petition,
- Petitioner Exhibit 3: Purchase agreement between Samar, Inc. and Edison Lake View Associates, LP, dated February 18, 2010,
- Petitioner Exhibit 4: Power of Attorney from Samar, Inc. to Joseph S. Grabill, dated March 30, 2010,
- Petitioner Exhibit 6: Summary appraisal report prepared by Michelle Farrington of Farrington Appraisals, Inc.,
- Petitioner Exhibit 7: Summary appraisal report prepared by Gregory P. Barkley of Baer, Barkley & Company,
- Petitioner Exhibit 8: LoopNet listing for the subject property,
- Petitioner Exhibit 9: 2012 and 2013 rent roll report for the subject property,
- Petitioner Exhibit 10: 2010 and 2011 utility expenses for the subject property,
- Petitioner Exhibit 11: 2012 income statement for the subject property,
- Petitioner Exhibit 12: 2010, 2011 and 2012 income analysis,
- Petitioner Exhibit 13: Form 134 Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting,
- Petitioner Exhibit 14: Sales history for the subject property.

7. The Assessor did not offer any exhibits.

8. The following additional items are part of the record:

- Board Exhibit A: Form 131 petition, October 26, 2011 cover letter from Sandra Bickel, and Notice of Defect in Completion of Assessment Form,
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet
- Board Exhibit D: January 5, 2012 letter from Bickel to the Board

9. The property under appeal contains a 28,928-square-foot building located at 3230 Rosetta Place in South Bend.

10. The property was assessed as follows:

Land: \$34,300          Improvements: \$980,100          Total: \$1,014,400

11. At the hearing, Rosetta requested a total assessment of \$500,000.
12. Neither the Board nor the ALJ inspected the property.

### **Parties' Contentions**

#### **A. Summary of Rosetta's case**

13. The subject property contains a building that was constructed as a freight terminal in 1992. The property sold for \$290,000 on May 17, 2010.
14. Rosetta hired Michelle Farrington, an Indiana Licensed General Appraiser, to appraise the property in connection with Rosetta's appeal. Farrington used the sales-comparison and income approaches to analyze the property's value. Based on those approaches, she valued the property at \$500,000 as of January 1, 2007. Farrington certified that she prepared her appraisal in conformance with the Uniform Standards of Professional Appraisal Practice. *Farrington testimony; Pet'r Ex. 6.*<sup>4</sup>
15. Rosetta asked for an assessment of \$500,000 in accordance with Farrington's appraisal. Rosetta further argued that the \$500,000 assessment should carry forward to 2009 and 2010, because the Assessor had assessed the property for the same amount (\$1,014,400) in all three years. For support, Rosetta pointed to Ind. Code § 6-1.1-15-1(e), which provides, in relevant part: "A change in an assessment made as a result of a notice for review filed by a taxpayer... remains in effect from the assessment date for which the change is made until the next assessment date for which the assessment is changed under this article."
16. The Assessor is wrong in claiming that Rosetta's voluntary withdrawal of its appeal for 2009 operated as a waiver of its claim that any change stemming from this appeal should carry forward to 2009 and 2010. Rosetta's withdrawal of its Form 131 petition for 2009

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<sup>4</sup> Rosetta submitted a second appraisal report from Gregory Barkley of Baer, Barkley & Company. Barkley valued the property at \$390,000 as of September 10, 2008. *Pet'r Ex. 7.*

is irrelevant to the question of whether a decision by the Board reducing the 2008 assessment carries forward. *Bickel argument.*

## **B. Summary of the Assessor's case**

17. Based on Farrington's appraisal, the Assessor agrees that the subject property's assessment for 2008 should be reduced to \$500,000. *Agostino argument.*
18. The Assessor, however, disagrees with Rosetta's claim that the change for 2008 carries forward to 2009 and 2010. Rosetta withdrew its 2009 appeal, explaining: "we have since learned that the appeal was intended to be only for the 2008 assessment...." *Bd. Ex. A.* The doctrines of waiver and estoppel therefore preclude Rosetta from claiming that the reduction for 2008 should carry forward. *Agostino argument.*

## **Discussion**

19. Through Farrington's appraisal, Rosetta offered probative evidence that the subject property's true tax value for the 2008 assessment was \$500,000. The Assessor agreed. Rosetta is therefore entitled to have the property's March 1, 2008 assessment reduced to \$500,000.
20. Although Rosetta argued that the 2008 assessment should carry forward to 2009 and 2010, those assessments are not before the Board in this appeal. The Board therefore makes no finding on that issue.

**SUMMARY OF FINAL DETERMINATION**

21. Rosetta offered probative evidence to show that the subject property’s true tax value was \$500,000 for the March 1, 2008 assessment, and the Assessor agreed. The Board therefore orders that the property’s 2008 assessment be reduced to \$500,000. The Board makes no finding regarding the effect of that reduction on the property’s assessment for later years.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.