

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

**Petition #'s:** 50-008-03-1-3-00002  
50-002-03-1-3-00003  
**Petitioner:** Brayco, LLC  
**Respondent:** Bourbon Township Assessor (Marshall County)  
**Parcel #'s:** 013-00970-00  
013-00990-00  
**Assessment Year:** 2003

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 two assessment appeals with the Marshall County Property Tax Assessment Board of Appeals (the PTABOA) by written documents on February 27, 2004.
2. The Petitioner received notices of the decisions of the PTABOA on August 12, 2005.
3. The Petitioner filed two appeals to the Board by filing Form 131 petitions with the county assessor on September 9, 2005. The Petitioner elected to have these cases heard in small claims.
4. The Board issued notices of hearing to the parties dated May 5, 2006.
5. The Board held an administrative hearing on July 12, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. Persons present and sworn in at hearing:
  - a. For Petitioner: David R. Holmes, Attorney for the Petitioner  
Matt Yeiter, Employee of the Petitioner
  - b. For Respondent: Gerald Ross, PTABOA Member  
Debra A. Dunning, Marshall County Deputy Assessor  
Michael D. Boys, Marshall County Assessor

Jennifer L. Becker, Bourbon Township Representative  
Edward J. Bisch Jr., Technical Advisor/Witness for  
Bourbon Township

### Facts

7. The properties under appeal consist of a 15,976 square foot light industrial manufacturing facility on 8.377 acres of land located at 4702 Lincolnway East (the Lincolnway Parcel), and 26,400 square feet of asphalt paving on 2.06 acres located at 502 East Old US 30 (the US 30 Parcel), Bourbon, Bourbon Township in Marshall County.
8. The ALJ did not conduct an on-site visit of the properties.
9. The PTABOA determined the assessed values of the properties to be \$112,900 for the land and \$1,011,500 for the improvements, for a total assessed value of \$1,124,400 for the Lincolnway Parcel and \$26,200 for the land and \$10,900 for the improvements, for a total assessed value of \$37,100 for the US 30 Parcel.
10. The Petitioner requested assessments of \$65,400 for the land and \$670,100 for the improvements, for the Lincolnway Parcel and \$19,500 for the land and \$5,000 for the improvements, for a total assessed value of \$24,500 for the US 30 Parcel on its Form 131 Petitions. At hearing, however, the Petitioner requested a total assessed value for both parcels of \$670,000.

### Issue

11. Summary of Petitioner's contentions in support of an error in assessment:
  - a. The Petitioner contends that the assessed values exceed the market values for the properties. *Holmes argument*. In support of this contention, the Petitioner submitted two appraisals and testified to the purchase of the properties.<sup>1</sup> *Id.* The two appraisals submitted were prepared by Rick Pitts, R.E. Pitts & Associates, Inc. *Petitioner Exhibits A-7 & A-8*. The first appraisal, dated July 15, 2003, estimated the total market value of the properties to be \$750,000.<sup>2</sup> *Petitioner Exhibit A-8*. The second appraisal was a Limited Appraisal with an effective valuation date of March 7, 2005. *Petitioner Exhibit A-7*. The March, 2005, appraisal estimated the total market value of the properties to be \$600,000 and the Liquidation Value to be \$480,000. *Id.*

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<sup>1</sup> The Petitioner testified that the subject properties were purchased together as a single property in 1997. The two appraisals submitted by the Petitioner also value the properties as a single property.

<sup>2</sup> The Petitioner's appraiser indicated in a cover letter that the appraisal report updated and incorporated by reference the original appraisal report for First Merit Corporation of Akron, Ohio, having an effective date of February 20, 1998, and an updated appraisal report also for First Merit Corporation having an effective valuation date of April 9, 2002. *Petitioner Exhibit A-8*. Neither of these appraisals, however, was submitted into evidence at the hearing.

- b. The Petitioner also testified that the properties were purchased in an arms length transaction from an unrelated party for \$400,000 in 1997. *Holmes argument*. The Petitioner stated that at the time of the purchase the older buildings were empty and not designed for their use but the facilities were made adaptable. *Holmes argument; Yeiter testimony*. In rebuttal, the Petitioner's witness testified that no significant changes were made to the property after it was purchased. *Yeiter testimony*.
  - c. The Petitioner argues that the assessed value of the subject properties should fall between the \$400,000 purchase price in 1998 and the \$750,000 appraised value in 2003. *Holmes argument*. The Petitioner, therefore, concludes that the properties' value is \$670,000. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that the properties are assessed in accordance with the 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) at \$1,124,400 for the Lincolnway Parcel and \$37,100 for the US 30 Parcel, for a total assessed value of the two parcels of \$1,161,500. *Becker testimony; Respondent Exhibit 3*.
  - b. The Respondent contends that property values in the area have depreciated from 1999 to 2005. *Ross testimony*.<sup>3</sup> Thus, to support the current assessed value for the properties, the Respondent used the market values established by the Petitioner's appraisals in 2003 and 2005 and calculated the appreciated value of the property as of January 1, 1999. *Becker testimony; Respondent Exhibits A-7 & A-8*. According to the Respondent, based on the Petitioner's appraisals, the properties' value depreciated \$150,000 from 2003 to 2005 or \$7,500 per month. *Id.* Therefore, to calculate the amount of appreciation between the July 24, 2003, appraisal and the January 1, 1999, valuation date, the PTABOA added \$7,500 per month for 55 months to the \$750,000 appraised value in 2003 and obtained a value of \$1,162,500 as of 1999. *Becker testimony; Ross testimony; Petitioner Exhibits A-7 & A-8; Respondent Exhibit 7*.
  - c. The Respondent further contends that the appraisals submitted by the Petitioner, dated July 24, 2003, and March 7, 2005, fail to establish the properties' value as of the January 1, 1999, statutory valuation date. *Becker testimony*.
  - d. Finally, the Respondent agreed with the Petitioner that the properties were empty and were purchased as a single property in 1997 for \$400,000. *Ross testimony*. However, the Respondent contends that by 1999, improvements had been made to the properties. *Id.* Therefore, the Respondent contends that the properties were assessed based upon their value-in-use rather than as vacant. *Id.*

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<sup>3</sup> Mr. Gerald Ross is a certified licensed appraiser in Indiana.

## Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled STB #5186,
- c. Exhibits:

Petition: #50-008-03-1-3-00002 (parcel #013-00970-00):<sup>4</sup>

- Petitioner Exhibit A-1 – Form 131 petition,
- Petitioner Exhibit A-2 – Notification of Final Assessment Determination – Form 115,
- Petitioner Exhibit A-3 – Subject property record card (PRC) – parcel #013-00970-00,
- Petitioner Exhibit A-4 – Form 130 petition,
- Petitioner Exhibit A-5 – Petition for Correction of an Error – Form 133, dated March 1, 2002,
- Petitioner Exhibit A-6 – Petition for Correction of an Error – Form 133, dated March 1, 2001,
- Petitioner Exhibit A-7 – Limited Appraisal prepared by Rick Pitts, R.E. Pitts & Associates, Inc., dated March 7, 2005,
- Petitioner Exhibit A-8 – Summary Appraisal Update Report prepared by Rick Pitts, R.E. Pitts & Associates, Inc., dated July 15, 2003,

Petition: #50-002-03-1-3-00003 (parcel #013-00990-00):

- Petitioner Exhibit A-1 – Form 131 petitions,
- Petitioner Exhibit A-2 – Notification of Final Assessment Determination – Form 115,
- Petitioner Exhibit A-3 – Subject PRC – parcel #013-00990-00,
- Petitioner Exhibit A-4 – Form 130 petition,
- Petitioner Exhibit A-5 – Petition for Correction of an Error – Form 133, dated March 1, 2002,
- Petitioner Exhibit A-6 – Petition for Correction of an Error – Form 133,

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<sup>4</sup> The Petitioner requested that the information attached to the Form 131 petitions previously submitted to the Board, be incorporated as the Petitioner's evidence for both petitions. There was no objection from the Respondent. The attachments were read into the record and labeled as Petitioner Exhibits A-1 through A-8. In addition, Respondent's exhibits were also read into the record with no objections from the Petitioner and are labeled Respondent Exhibits 1 through 8.

- dated March 1, 2001,  
Petitioner Exhibit A-7 – Limited Appraisal prepared by Rick Pitts, R.E. Pitts & Associates, Inc., dated March 7, 2005,  
Petitioner Exhibit A-8 – Summary Appraisal Update Report prepared by Rick Pitts, R.E. Pitts & Associates, Inc., dated July 15, 2003,
- Respondent Exhibit 1 – Bourbon Township Assessor’s response to Form 131 petition issues,  
Respondent Exhibit 2 – Notice of Appearance of Consultant from Max Watkins, Bourbon Township Assessor to Jennifer Becker and Edward J. Bisch, Jr., Indiana Assessment Service,  
Respondent Exhibit 3 – Subject Properties’ PRCs,  
Respondent Exhibit 4 – Letter from Jennifer Becker, Indiana Assessment Service to David R. Holmes, dated February 23, 2005,  
Respondent Exhibit 5 – Notifications of Final Assessment Determination – Form 115 for parcel #013-00970-00 and #013-00990-00,  
Respondent Exhibit 6 – *William & Dorothy Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005),  
Respondent Exhibit 7 – Copy of the Final Determination True Tax Value calculation prepared by the PTABOA,  
Respondent Exhibit 8 – Respondent Signature and Attestation Sheet prepared by Max Watkins, Bourbon Township Assessor and Jennifer Becker, Township Representative, dated July 6, 2006,
- Board Exhibit A – Form 131 petitions,  
Board Exhibit B – Notices of Hearing,  
Board Exhibit C – Hearing sign-in sheets,

d. These Findings and Conclusions.

### **Analysis**

14. The most applicable governing cases are:
- a. 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 Township 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 Township 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.
15. The Petitioner failed to provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the two parcels under appeal should be assessed for a total of \$670,000. *Holmes argument*. In support of this contention the Petitioner presented two appraisals. *Petitioner Exhibit A-7 & A-8*. The first appraisal has an effective date of July 15, 2003, and establishes a value for the properties at \$750,000. *Petitioner Exhibit A-7*. The appraisal has an effective date of March 7, 2005, and establishes a value for the properties at \$600,000. *Petitioner Exhibit A-8*. The Petitioner further argues that the Petitioner's purchase of the properties for \$400,000 in 1997 supports its requested value. *Holmes argument*. According to Mr. Yeiter, no significant changes were made to the properties after their purchase. *Yeiter testimony*.
  - b. Real property in Indiana is assessed on the basis of its “true tax value.” See Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 (incorporated by reference at 50 IAC 2.3-1-2). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
  - c. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulation provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the

appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

- d. Here, the Petitioner submitted two appraisals with effective dates of July 15, 2003, and March 7, 2005. *Petitioner Exhibits A-7 & A-8.* The Petitioner, however, failed to show the relevance of these appraisals to the January 1, 1999, statutory valuation date as required by *Long*. The Petitioner further argues that the Petitioner's purchase of the properties for \$400,000 in 1997 supports its requested value. *Holmes argument.* Contrary to the Petitioner's testimony, however, the Petitioner's 2005 appraisal indicates that the property was purchased for \$420,000 and substantial improvements were made to the property subsequent to its purchase.<sup>5</sup> *Petitioner Exhibit A-7 at 10 and 17.* In addition, the Petitioner's 2003 appraisal indicates that the value of the properties, estimated to be worth \$750,000 in 2003, had decreased in value since the "original appraisal report" in 1998. *Petitioner Exhibit A-8 at 18 and 22.* According to the Petitioner's appraiser "[t]his is driven in part by generally weaker market conditions and the older age and current physical condition of the subject building improvements." *Id.* Thus, the Petitioner's evidence shows that the properties' value on January 1, 1999, exceeded its 1997 purchase price due to the improvements made to the properties. Further, the Petitioner's evidence shows that the value of the properties in 1999 exceeded their 2003 appraised value due to the decline in the market. While the properties may, in fact, be over-valued, the Petitioner failed to present sufficient evidence of the proper value of the properties as of January 1, 1999. *See Meridian Towers East & West*, 805 N.E.2d at 478 (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).
- e. Where the Petitioner has not supported its claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### Conclusion

16. The Petitioner failed to make a prima facie case regarding an error in the assessment. The Board finds in favor of the Respondent.

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<sup>5</sup> As indicated in the 2005 appraisal submitted by the Petitioner, the subject properties were acquired on April 21, 1997, for \$420,000 and that subsequent capital improvements such as electrical upgrade, new lighting, and construction of a hi-bay section for their process equipment were made to modify the subject properties to their current use. *Petitioner Exhibit A-7 at 10.*

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: **October 3, 2006**

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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 <->. 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>>.