

REPRESENTATIVE FOR PETITIONER:  
Carla Bishop, Meritax Property Tax Consultants

REPRESENTATIVE FOR RESPONDENT:  
John Gerard, Center Township Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

TNT-Holland Motor Express Inc.,	)	Petition No.:	82-019-02-1-3-00261
	)	Parcel:	02-170-02-477-007
Petitioner,	)		
	)		
v.	)		
	)	County:	Vanderburgh
John Gerard,	)	Township:	Center
Center Township Assessor	)	Assessment Year:	2002
	)		
Respondent.	)		

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

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**September 25, 2006**

**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. The issue presented for consideration by the Board was whether the assessed value of the subject property exceeds its market value in use.

## **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Carla Bishop with Meritax Property Tax Consultants, on behalf of TNT-Holland Motor Express Inc. (the Petitioner), filed a Form 131 Petition for Review of Assessment on September 24, 2004, petitioning the Board to conduct an administrative review of the above petition. The Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on September 3, 2004.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ) Debra Eads, held a hearing on April 5, 2006, in Evansville, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Carla Bishop, Tax Representative

For the Respondent:<sup>1</sup>

John Gerard, Center Township Assessor

Donald Cobb, Center Township Real Estate Deputy Assessor

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Summary of Issues

Petitioner Exhibit 2 – Information concerning 201 N. Congress Avenue

Petitioner Exhibit 3 – Sales Information on similar properties in Indianapolis

Petitioner Exhibit 4 – Copy of the Form 131 Petition

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Narrative of Respondent's contentions

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 Petition

Board Exhibit B – Notice of Hearing dated January 23, 2006

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<sup>1</sup> Tiffany Collins of the Vandenberg County Assessor's Office was also in attendance as an observer.

Board Exhibit C – Notice of County Assessor appearance  
Board Exhibit D – Hearing Sign-In Sheet

8. The subject property is a commercial truck terminal located at 8901 N. Kentucky Avenue in Center Township, Evansville, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2002, the PTABOA determined the assessed value of the subject property to be \$278,200 for the land and \$599,800 for the improvements, for a total assessed value of \$878,000.
11. For 2002, the Petitioner contends the assessed value of the property should be no more than \$540,000.

**JURISDICTIONAL FRAMEWORK**

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

**ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

13. 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).

14. 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”).
15. 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

16. The Petitioner contends that the assessment of the subject property exceeds its market-value-in-use based on the truck terminal market in Indianapolis and a sale of a purportedly comparable property located at 201 N. Congress Avenue in Evansville. *Bishop testimony*. The Petitioner relies on a “per door” valuation of truck terminal sales in Evansville and Indianapolis. *Id*.
17. The Respondent contends that the current assessment of the subject property is correct. *Cobb testimony*. The Respondent further argues that the Petitioner submitted insufficient evidence to support a change from the assessed value determined through the cost approach. *Id*. Finally, the Respondent contends, the Petitioner’s “price per door” method of assessment is not a generally accepted assessment method in Indiana. *Id*.
18. The Petitioner presented the following evidence and testimony in regard to this issue:
  - A. The Petitioner contends that the subject property is over-valued on the basis of a “comparable” sale in Evansville. According to the Petitioner, the subject property is a truck terminal with 34 doors and whose current assessed value (\$878,300) represents a value of \$25,833 per door. *Bishop testimony*. The Petitioner argues that a 40 door truck terminal of “similar construction and of the same use” was sold in an

arms' length transaction on January 21, 2004, for \$635,000 or \$15,875 per door.<sup>2</sup> *Bishop testimony; Petitioner Exhibit 2.* However, the Petitioner admitted the comparison property was in a superior location and of a different age than the subject property. *Id.* The Petitioner concludes that the subject property should be assessed for \$540,000, or \$15,875 per door, on the basis of this sale. *Bishop testimony.*

- B. The Petitioner also argues that the subject property is over-valued compared to truck terminal sales in Indianapolis. According to the Petitioner, sales in Indianapolis ranged from \$19,662 per door to \$23,529 per door. *Bishop testimony.* The Petitioner contends, these sales values are significantly lower than the assessed value currently assigned to the subject property. *Id.*
- C. The Petitioner further contends that a “per door price” as a unit of comparison between properties is a proper method of comparison. *Bishop testimony.* The Petitioner Representative testified that, according to the client, the “price per door” is how truck terminal operators buy, sell, and trade truck terminal properties. *Id.* The Petitioner argues that the age of a truck terminal has little impact in a properties’ value. *Id.* In support of this contention, the Petitioner offered into evidence Exhibit 3 to illustrate that the age of a truck terminal makes very little difference in the resulting market value per door price. *Id.; Petitioner Exhibit 3.*

19. The Respondent presented the following evidence and testimony in regard to this issue:

- A. The Respondent contends the Petitioner does not establish the comparability of the properties being examined. *Cobb testimony.* According to the Respondent, the Petitioner does not identify characteristics of the purportedly comparable properties and explain how the differences between the properties affect their relative market

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<sup>2</sup> The Petitioner also argues that the “comparable” is assessed at \$479,600, which equates to \$11,990 per door. *Bishop testimony.*

- values-in-use. *Id.* Further, the Respondent argues, the Petitioner provided no comparison of the comparable properties other than the price per door calculation.<sup>3</sup>
- B. The Respondent contends that the sale of the property located at 201 N. Congress Avenue does not represent an arms length transaction because the property was in a state of bankruptcy. *Cobb testimony; Petitioner Exhibit 2.* The Respondent also contends that the Petitioner provided no evidence that properties in Indianapolis are comparable to properties in Evansville. *Id.* Also, according to the Respondent, the Petitioner’s “comparables” have a lower “par” value, a larger percentage of office space, and are generally larger buildings which result in a lower cost per square foot than the subject property. *Id.*
- C. Finally, the Respondent contends that the price per door method is not an approved method in the State of Indiana for arriving at a value. *Cobb testimony.* According to the Respondent, a “price per door” valuation method does not account for the amount of land being assessed, the subject improvement’s age and condition, nor the ratio of office space to truck terminal space, and other factors that affect value. *Id.*
20. Real property in Indiana is assessed on the basis of its “true tax value”. *See* IC 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL) at 12. 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 Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*

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<sup>3</sup> The Petition did not enter a property record card into evidence that would allow comparison.

21. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. 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. Instead, 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.*
22. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Id.*, 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.*
23. Here, the Petitioner argues that a 40 door truck terminal of “similar construction and of the same use” was sold in an arms’ length transaction on January 21, 2004, for \$635,000 or \$15,875 per door.<sup>4</sup> *Bishop testimony; Petitioner Exhibit 2.* Thus, the Petitioner contends, the subject property should be assessed for no more than \$15,875 per door for a total of \$540,000. The Petitioner, however, made no attempt to compare the purportedly comparable facility to the subject property other than to compare the number of doors. Further, the Petitioner admitted the “comparable” property was in a superior location and of a different age than the subject property.<sup>5</sup> *Id.* Finally, we note, the Petitioner failed to

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<sup>4</sup> The MANUAL describes three approaches to valuation, cost, sales comparison, and income approaches that are recognized as an acceptable application of generally recognized methods of appraisal. Although the Petitioner’s representative claims that a “price per door” is an acceptable way of valuing truck terminals based upon conversations the Petitioner’s representative had with her client, no other evidence was submitted that supported such a methodology or to show that this was an acceptable application of generally recognized methods of valuation. More importantly, we note that the Petitioner’s “price per door” method fails to take into consideration variables that affect the assessed value of a truck terminal such as difference in wall heights, use classifications, parcels size, square footage, and others.

relate the January 21, 2004 “comparable” sale, to the January 1, 1999, valuation date. *See Long*, 821 N.E.2d at 470.

24. The Petitioner also offered “comparable” sales of facilities in Indianapolis. Again, the Petitioner made no comparison of the characteristics of the Indianapolis properties, other than the number of doors of the various truck terminals. In addition, the Petitioner failed to show how the Indianapolis and Evansville markets compare with respect to the valuation of truck terminal properties. The Petitioner, therefore, failed to raise a prima facie case that the subject property is over-valued.
25. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Industries v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

35. The Petitioner failed to make a prima facie case for a reduction in the assessment. The Board finds in favor of the Respondent and holds that no change in the assessment is warranted.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**