

REPRESENTATIVE FOR PETITIONERS:

Milo E. Smith, Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Marilyn Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Ralph E. and Mary L. Anderson	)	Petition No.:	47-010-11-1-4-00082
	)		
Petitioners,	)	Parcel No.:	47-06-14-442-050.000-010
	)		
v.	)	County:	Lawrence
	)		
Lawrence County Assessor,	)	Township:	Shawswick
	)		
Respondent.	)	Assessment Year:	2011

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

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November 9th, 2015

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“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**

**PROCEDURAL HISTORY**

1. Petitioners contested the 2011 assessment for the above-captioned parcel. On December 20, 2012, the Lawrence County Property Tax Assessment Board of Appeals

(“PTABOA”) issued its determination. Petitioners timely filed a Form 131 petition with the Board on February 1, 2013.

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

2. A hearing was held on August 12, 2015, before Jacob Robinson, the Board’s designated Administrative Law Judge (“ALJ”). Neither the Board nor the ALJ inspected the subject property.
3. Milo Smith represented Petitioners. Attorney Marilyn Meighen represented the Lawrence County Assessor (“Respondent”).
4. The following people were sworn in as witnesses and testified under oath at the hearing:
  - For Petitioners: Milo E. Smith, Tax Representative
  - For Respondent: Kirk Reller, Vendor<sup>1</sup>
5. Petitioners submitted the following exhibits:
  - Petitioners Exhibit 1: 2011 property record card (“PRC”) for the subject property
  - Petitioners Exhibit 2: Income information requested from Petitioners
  - Petitioners Exhibit 3: Data analysis of the subject assessment
  - Petitioners Exhibit 1R: Excerpt from Appraisal Institute, The Appraisal of Real Estate (11<sup>th</sup> Edition)
6. Respondent submitted the following exhibits:
  - Respondent Exhibit A: Aerial photo of property and exterior photos
  - Respondent Exhibit B1: Support for cost approach worksheet
  - Respondent Exhibit B2: City of Bedford improvement permits
  - Respondent Exhibit B3: Abatement Statement of Benefits Real Estate Improvements - signed 8/12/2005 (“SB-1”)
  - Respondent Exhibit B4: Abatement Statement of Benefits Real Estate Improvements - signed 5/15/2015 (“CF-1”)
  - Respondent Exhibit B5: Federal Asset Reports FYE 12/31/2008-12/31/2011
  - Respondent Exhibit C1: Income analysis

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<sup>1</sup> April Stapp Collins, Lawrence County Assessor, was sworn in, but did not testify at the hearing.

- Respondent Exhibit C2: Schedule E from 2008/2009 – 2011/2012
- Respondent Exhibit C3: Band of investment calculation from appraisal
- Respondent Exhibit C4: Excerpt from International Association of Assessing Officials, Property Assessment Valuation (2<sup>nd</sup> Edition)
- Respondent Exhibit D: PRC and sales disclosure form for RAF Bedford, LLC
- Respondent Exhibit E: 2010 PRC for the subject property

7. The following items are also recognized as part of the record:
  - Board Exhibit A: Form 131 Petition and attachments
  - Board Exhibit B: Notice of Hearing
  - Board Exhibit C: Hearing Sign-In Sheet
8. In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.
9. The subject property consists of a retail center and outbuilding located at 1113-1157 16<sup>th</sup> Street in Bedford.
10. The PTABOA determined the assessed values of the subject property to be:
 

Land:	\$127,300
Improvements:	\$912,000
Total:	\$1,039,300

**BURDEN OF PROOF**

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. Of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax

year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).

13. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use.
15. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence that suffices to prove the property’s correct assessment, it reverts to the previous year’s value. I.C. § 6-1.1-15-17.2(b).
16. The parties agreed on the record that Respondent has the burden of proof in this appeal.

#### **SUMMARY OF RESPONDENT’S CONTENTIONS**

17. Respondent engaged Kirk Reller to assist in establishing a value for the subject property. Mr. Reller received his Level II certification in 1987 and has worked in twenty-two Indiana counties providing assessment services on a contractual basis. He is a former

real estate salesperson and owns a small real estate company. Mr. Reller has been involved in real estate since graduating from Indiana University and has worked in Lawrence County since 1993. *Reller testimony.*

18. Respondent submitted an aerial photograph of the subject property and four photographs of the exterior of the property. Respondent submitted the 2010 PRC to explain the large increase in the assessment from 2010 to 2011. Mr. Reller testified that the small part of the “L” portion of the structure, containing 3,828 square feet of space, was inadvertently priced at \$0 on the PRC, while the storage building was omitted completely. Thus, the only part of the property that was actually assessed in 2010 was the longer side of the “L” portion, which contains 12,012 square feet. Mr. Reller pointed out that Respondent also failed to price the heat and air systems for the long side of the “L” portion in 2010. *Reller testimony; Resp’t Exs. A and E.*

19. Respondent offered a summary of three variations of the cost approach to support the 2011 assessment.

20. The first calculation relied on information from the PRC and a spreadsheet listing the building and improvement permits issued by the City of Bedford from March of 2005 to February of 2006. Petitioners purchased the vacant land in 2004 for \$240,000. The City of Bedford issued the following four permits for construction of improvements:

- a foundation permit for improvements of \$75,000 on November 7, 2005,
- a building permit for, \$750,000 on December 1, 2005,
- an interior finish permit for, \$20,000 on March 14, 2007, and
- a permit for Cox and Kimball Insurance for an unspecified amount on November 4, 2009.

The total value of improvements reflected in these construction permits was \$845,000, bringing Petitioners’ total cost for both land and improvements to \$1,085,000. *Reller testimony; Resp’t Exs. B1, B2, and E.*

21. The second calculation relied on the SB-1 and the CF-1 forms filed by Petitioners with the Lawrence County Auditor as part of their abatement request. The SB-1 form, dated August 12, 2005, summarized Petitioners' proposed real estate improvements and estimated the employees and salaries that the project would generate. It shows that Petitioners believed the value of their property prior to the improvements was \$520,000, and they estimated the cost of their proposed improvements to be \$1,000,000. Petitioners certified that the net estimated value upon completion of the project would be \$1,520,000. The CF-1, dated May 15, 2015, reported the actual cost and values of the completed project. The CF-1 shows that the actual value before the project was \$518,591, and that the actual value of the proposed improvements was \$1,208,783. Thus, the net value upon completion of the project was \$1,727,374.<sup>2</sup> *Reller testimony; Resp't Exs. B3 and B4.*
22. Respondent related the net value of \$1,727,374 back to the March, 1, 2011 assessment date by deducting the reported values of three permits taken out after the assessment date but before the CF-1 was filed in 2015. These included a beauty shop remodel permit for an unspecified amount on May 16, 2011, a permit for building three walls for improvements of \$2,500 on February 24, 2012, and a new bathroom remodel permit for improvements of \$50,000 on January 28, 2015. Subtracting the total value of these permits from the net value of the project upon completion still results in a value in excess of \$1.6 million as of March 1, 2011. This is in comparison to the assessed value of \$1.03 million. *Reller testimony; Resp't Ex. B1.*
23. The third calculation relied on information from Petitioners' federal asset reports that were filed as part of their federal tax returns in 2008, 2009, 2010, and 2011. Petitioners reported that the cost basis of the subject property's building for depreciation purposes was \$1,208,783. The depreciation reported for year-end 2010 included prior depreciation of \$96,858 along with \$30,994 in 2010, for a total of approximately \$130,000. The cost

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<sup>2</sup> The net value of \$1,727,734 listed on the CF-1 and repeated by Mr. Reller in his testimony is incorrect. The fifth and the sixth digits appear to have been transposed when Mr. Anderson reported the net value.

approach basically consists of cost less depreciation, which in this case results in a value of roughly \$1,070,000. Based on the information Petitioners provided to both the City of Bedford and the federal government, the assessed value is lower than the cost of the subject property. *Reller testimony; Resp't Ex. B5.*

24. Respondent's income approach started with an analysis of Petitioners' income and expenses for the subject property as reported on their Schedules E in 2008, 2009, 2010, and 2011. Respondent calculated a net operating income for each year using the rents received and the actual expenses, excluding non-allowable expenses such as mortgage interest, taxes, and depreciation. Based on Respondent's research, they selected an unloaded capitalization rate of 9%. Petitioners' tax abatement made their effective tax rate 0.64% in 2008 and 1.878% in 2011, for loaded capitalization rates of 9.64% and 10.878% respectively. This results in a value of \$691,400 when using the subject property's actual income and expenses for the year under appeal and the corresponding capitalization rate of 10.878%. *Reller testimony; Resp't Exs. C1 and C2.*
25. Respondent compared the subject property to two other shopping centers in Bedford to analyze value exclusive of variations due to management or expenses that are unique to the property.
26. Town Fair Center has smaller units that are less than 5,000 square feet and rent for about \$14 a square foot on average. While Town Fair Center's units are slightly larger than the subject property's units, they are the most comparable with vacancy rates between 12-15% for the smaller units. *Reller testimony; Resp't Ex. C1.*
27. Williams Crossing was built in 2006 and contains 50,000 square feet that is divided into 1,600 and 2,800 square foot units. The property is located about a mile from the subject property on a major thoroughfare. It was sold to RAF Bedford in July of 2012 for \$4.8 million, or \$96 per square foot. Actual rents average approximately \$13 per square foot in addition to a common area maintenance fee of approximately \$1.50 per square foot.

The vacancy rate dropped from 30% in 2009 to 10% in 2010. *Reller testimony; Resp't Ex. C1.*

28. Based on these two comparables, Respondent settled on a potential gross rent for the subject property of \$12.50 per square foot. Allowing for 25% vacancy and 25% for the operating expense ratio, Respondent calculated a potential net operating income of \$111,375. Using the loaded capitalization rates of 9.64% and 10.878%, Respondent calculated a range of values for the subject property from \$1,023,900 to \$1,155,300. *Reller testimony; Resp't Ex. C1.*

#### **SUMMARY OF PETITIONERS' CONTENTIONS**

29. Petitioners argue that they had to reduce rents to levels lower than the potential market rent and offer short-term leases in order to keep tenants. Despite these changes, 26% of the subject property's total space was vacant. *Smith testimony; Pet'rs Exs. 2 and 3.*
30. Petitioners contend that the subject property should be assessed based upon its actual rental income when using the income capitalization approach. In support, Mr. Smith quoted from the *The Appraisal of Real Estate* stating "In the income capitalization approach, the present value of the future benefits of property ownership is measured. A property's income streams and resale value upon reversion may be capitalized into a current, lump-sum value." *Appraisal Institute, The Appraisal of Real Estate (11<sup>th</sup> Edition).* Petitioners further contend that properties are to be assessed based upon their current value-in-use, not their potential use. *Smith testimony; Pet'rs Ex. 1R.*
31. Using Petitioners' actual income from 2010 of \$48,807 and Respondent's 9.64% loaded capitalization rate, Petitioners assert that the assessed value for 2011 should be \$506,300. Even using the actual income from 2011 of \$75,216 and Respondent's 9.64% loaded capitalization rate, Petitioners claim that the assessment should be no more than \$780,200. *Smith testimony; Resp't Ex. C1.*

## DISCUSSION AND ANALYSIS

32. Real property is assessed based on its "true tax value," which 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.
33. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2011 assessment year, the valuation date was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f).
34. Respondent bears the burden of proving that the 2011 assessment is correct. In other words, Respondent needs to prove that the 2011 assessed value is an accurate reflection of the subject property's true market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
35. Respondent presented three variations of the cost approach in an attempt to support the 2011 assessment. Again, the cost approach estimates the value of the land as if vacant

and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2.

36. Respondent's first calculation relied on Petitioners' purchase price of \$240,000 for the vacant land in 2004. Respondent failed to trend this value to the relevant valuation date of March 1, 2011. Respondent added the estimated value from four permits issued by the City of Bedford between November 2005 and November 2009 for construction of the improvements. However, Respondent failed to establish that the estimated values stated in Petitioners' permits are an accurate reflection of the actual construction costs incurred by Petitioners to construct the improvements. Respondent also failed to explain how the values stated in the permits relate to what the cost new of the improvements would have been on the valuation date. Additionally, Respondent failed to account for any accrued depreciation or explain why a deduction for depreciation was not warranted.
  
37. Respondent's second calculation used values reported by Petitioners to the City of Bedford as part of Petitioners' tax abatement. While Petitioners' net estimated value reported on the SB-1 and the net value upon completion reported on the CF-1 are clearly higher than the 2011 assessed value, Respondent failed to properly trend either value to the March 1, 2011 valuation date. While Respondent attempted to relate the net value from the CF-1 to the valuation date by deducting the value of three permits issued between the valuation date and May 15, 2015, the value reported on the CF-1 was certified by Petitioners to be for a project completion date of June 2006. Thus, it was necessary to trend the value forward from June 2006 to the valuation date, not trend it backward from May 2015 to the valuation date. Even if the trending had been for the correct time period, Respondent did nothing to explain how simply deducting the estimated values for the three permits complied with generally recognized appraisal principles for time-adjustments.
  
38. Respondent's third calculation relied on the cost of the improvements as reported on Petitioners' federal tax returns. According to Petitioners' federal asset reports, however

the reported cost was for improvements that were put into service on November 1, 2006. Respondent again failed to show how this value is relevant to the valuation date of March 1, 2011.

39. Respondent also presented an income approach to value. The income approach is used for income producing properties that are typically rented. It converts an estimate of income the property is expected to produce into value through a mathematical process known as capitalization. MANUAL at 2. The income approach to value is based on the assumption that potential buyers will pay no more for the subject property than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property. It considers the subject property as an investment and its value is based on the rent it will produce for the owner. MANUAL at 10.
  
40. While Respondent developed an income approach using the owners' actual rental data, they ultimately relied on an income approach using market data. Respondent developed a market rent by analyzing rents from two other commercial properties located in Bedford. Town Fair Center has units that rent for approximately \$14 per square foot. Although the units are slightly larger, Respondent believes that they are the most comparable. Williams Crossing has actual rents that average approximately \$13 per square foot and a common area maintenance fee of approximately \$1.50 per square foot. Based on these comparables, Respondent determined that the subject property's potential gross rent was \$12.50 per square foot. Using a 25% vacancy and a 25% operating expense ratio, Respondent calculated a potential net operating income of \$111,375. Applying a loaded capitalization rate of 10.878% resulted in an estimated value of \$1,023,900 for 2011.
  
41. Respondent's analysis has several flaws that undermine its probative value. While the two comparable properties may be located in the same area, Respondent offered few details of how these properties were actually comparable. Respondent also failed to make adjustments to the lease rates of the comparable properties to account for any differences and did nothing to explain how this relatively small sample was sufficient to

draw any inference concerning market rates. Further, both comparable properties' leasable units vary significantly in size from the subject property, but Respondent did nothing to explain how this was accounted for other than to assert that square foot rates are generally higher for smaller units. Despite this claim, Respondent applied a \$12.50 per square foot rate to all of the subject property's units, which vary in size from 768 square feet to 2,520 square feet.

42. Respondent failed to provide sufficient support for using an unloaded capitalization rate of 9%, merely citing to a single page of a restricted appraisal report that utilized a capitalization rate of 8.96%. Respondent failed to present any information regarding the property that was being appraised or the effective date of the restricted appraisal report. The Board is therefore unable to determine whether the rate was derived from national, regional, or local data, or whether it is relevant to the subject property's market for the year under appeal. The Board finds that the 9% unloaded capitalization rate is not unsupported by the evidence. The loaded capitalization rate of 10.878% is equally unsupported. Consequently, the value conclusions are not probative evidence of the true market value-in-use.
43. Respondent failed to make a prima facie case that the 2011 assessment is correct. Accordingly, Petitioners are entitled to have the 2011 assessment reduced to its 2010 value. But, that does not end the Board's inquiry because Petitioners sought an assessment lower than the 2011 value. Thus, the Board must evaluate Petitioners' evidence regarding the subject property's market value-in-use for 2011.
44. Petitioners contend that the subject property should be assessed based upon its actual rental income. The tax court has explained, "to provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses, and occupancy rates for the subject property, but the income, expenses and occupancy rates of comparable properties in the market as well." *Indiana MHC, LLC v. Scott Co. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013). Thus, Petitioner's

income capitalization approach lacks probative value because it does not consider market rents from comparable properties.

45. Even if Petitioner had shown that using only actual rental income was an acceptable method for calculating market value-in-use, Petitioners' calculations rely exclusively on Respondent's capitalization rates. As discussed above, Respondent's capitalization rates are unsupported by the evidence. Consequently, Petitioners' calculations of value employing Respondent's capitalization rates are not probative evidence of the subject property's true market value-in-use. Therefore, Petitioners have failed to make a prima facie case for a further reduction.

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

46. Respondent failed to make a prima facie case that the 2011 assessment was correct. Petitioners failed to make a prima facie case supporting a further reduction. Accordingly, the Board orders that the 2011 assessment be reduced to its 2010 value of \$753,900.

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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>>.