

**Small Claims  
Final Determination  
Findings and Conclusions**

**Petition Number:** 26-024-06-1-4-00001  
**Petitioner:** Caborn Development, LLC  
**Respondent:** Gibson County Assessor  
**Parcel No.:** 26-23-09-300-001-041-024  
**Assessment Year:** 2006

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 an assessment appeal with the Gibson County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 12, 2008.
2. The PTABOA issued its decision through a letter from the county assessor dated December 10, 2008.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition on January 22, 2009. The Petitioner elected to have its case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 24, 2010.
5. The Board held an administrative hearing on April 28, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioners: William E. Gillenwater III, Petitioner<sup>1</sup>
  - b. For Respondent: Juanita Beadle, Gibson County Assessor  
Sandra Greubel, former Gibson County PTABOA president.

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<sup>1</sup> Jason P. Lueking of Bamberger, Foreman, Oswald and Hahn, LLP, appeared at the hearing representing the Petitioner. Mr. Gillenwater and his wife, Alice Gillenwater, are the sole members of Caborn Development, LLC.

## FACTS

7. The property at issue in this appeal is a 1.405-acre industrial parcel with an 11,150-square-foot building used as a machine shop and office, located at 1944 East 1200 South, Haubstadt, in Gibson County, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$56,200 for the land and \$272,200 for the improvements, for a total assessed value of \$328,400.
10. The Petitioner requested an assessed value of \$15,000 for the land, and \$85,000 for the improvements, for a total assessed value of \$100,000.

## ISSUES

11. Summary of the Petitioner's contentions in support of an alleged error in its assessment:
  - a. The Petitioner contends the property under appeal is over-assessed based on its market value-in-use. *Lueking argument*. In support of this contention the Petitioner's representative, Mr. Lueking presented an appraisal of the Petitioner's property prepared by Indiana Certified General Appraiser, Brian D. Shelton, MAI. *Lueking argument; Petitioner Exhibit 3*. In his appraisal, Mr. Shelton developed both the cost and sales comparison approaches to value and estimated the property's value to be \$100,000 as of March 1, 2007. *Petitioner Exhibit 3*.
  - b. Because the appraisal was prepared prior to the county-level PTABOA hearing and estimated the property's value as of March 1, 2007 – more than two years after the January 1, 2005, valuation date for a 2006 assessment – Mr. Shelton provided an addendum to his appraisal. *Gillenwater testimony*. Mr. Shelton's first amendment, dated January 5, 2009, addressed the county's criticism of his comparable properties and trended the property's estimated value to January 1, 2006. *Id; Petitioner Exhibit 4*. According to Mr. Shelton, "In order to trend the market value estimate back to January 1, 2006, the valuation date, the same set of sales are believed to be relevant as the sales dates range from 2002 through 2008 of which three occurred in 2006. My value opinion of \$15,000 for land and \$85,000 for improvements does not change if the effective date of the appraisal is changed to January 1, 2006." *Id*.
  - c. Mr. Shelton's second amendment adjusts the property's estimated value to January 1, 2005. *Petitioner Exhibit 5*. In his letter, dated February 11, 2009, the appraiser stated that "I do not believe any change in my value conclusion is justified." *Id*. According to Mr. Shelton, the market value of the property remained stable during the time frame. *Id*. In support of this contention, Mr. Shelton cites to the 2003 and 2006 sale of the same Gibson County commercial property, 432 Rural Route 1, at the identical

- price of \$115,000.<sup>2</sup> *Id.* Thus Mr. Shelton concludes the value of the property as of January 1, 2005, was still \$15,000 for the land and \$85,000 for the improvements. *Id.*
- d. The Petitioner's witness argues that its property is not worth its assessed value because of the property's rural location in a residential area surrounded by homes with pools. *Gillenwater testimony.* According to Mr. Gillenwater, the property is removed from similar industrial operations. *Id.* Further, he argues, the building is old and out-dated in its design. *Id.* Moreover, the property's location on a gravel road with limited parking and access, especially for large trucks, and the fact that there are no sewers and only aging septic systems, negatively impact the property's value. *Id.*
- e. In addition, the Petitioner argues, the increase in its property's 2006 assessment was unreasonable. *Lueking argument.* According to the Petitioner's representative, the county increased the property's assessment from \$15,400 for the land and \$99,900 for the improvements for a total of \$115,400, to \$56,200 for the land and \$272,200 for the improvements for a total of \$328,400 for 2006. *Id.; Petitioner Exhibit 1.* The Petitioner's witness contends that the increased assessment was based on the August 1, 2007, purchase of the property which was inaccurately reported on the sales disclosure form filed after the purchase. *Gillenwater testimony; Petitioner Exhibit 6.* Mr. Gillenwater testified that Caborn Development, LLC, and BMG, Inc., purchased the property and business assets of Thrust Industries, Inc., for a total price of \$2,200,000. *Id.* An Asset Purchase Agreement between the buyer and sellers allocated \$1,400,000 of the sales price to goodwill, \$350,000 to real estate, \$140,000 to inventory, \$300,000 to machinery, and \$10,000 to office equipment. *Id.*
- f. The Petitioner argues that the \$350,000 portion of the purchase price was attributed to Caborn Development because it had Section 1031 rollover funds to use. *Gillenwater testimony; Petitioner Exhibit 6.* However, the Petitioner's witness now argues that the amount attributed to the real estate was incorrect. *Id.* According to Mr. Gillenwater, the sales disclosure form should have designated \$100,000 for the real estate and \$250,000 for the business goodwill. *Id.* Mr. Gillenwater argues that he informed the county that the sales disclosure form was inaccurate, but he was told that it could not be corrected. *Id.*
- g. Finally, the Petitioner's witness argues that the Respondent's comparable properties are not comparable to the subject property because they are all located in Dubois County. *Gillenwater testimony.* According to Mr. Gillenwater, commercial property values are higher in Dubois County than they are in Gibson County. *Id.* Therefore they do not reflect Gibson County's property values. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

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<sup>2</sup> Mr. Gillenwater admits that the sales disclosure form records the 2006 purchase price as \$170,000 but, he argues, the appraiser told him that there was a modular home on the property worth \$55,000 when it sold in 2006. *Gillenwater testimony.*

- a. The Respondent contends that the Petitioner's 2006 assessment is correct based on the Petitioner's purchase of the property for \$350,000 on August 1, 2007, as reported on the sales disclosure form filed by Petitioner at the time of the sale. *Greubel argument; Respondent Exhibit 4*. The purchase price equates to \$31 per square foot; whereas the property's 2006 assessed value is only \$29 per square foot. *Id; Respondent Exhibit 3*. According to Ms. Greubel, contrary to the Petitioner's contentions, the disclosure form did not list any values for "goodwill" or anything other than the real estate. *Greubel testimony*.
- b. The Respondent further argues that the Petitioner's 2006 assessment is correct based on the property's market value-in-use. *Greubel testimony*. According to the Respondent's witness, the company that performed the state-ordered re-assessment for 2006 provided seven comparable properties that more appropriately reflect the value of the appealed property.<sup>3</sup> *Greubel testimony; Respondent Exhibit 3*. Ms. Greubel testified that those comparable sales range from \$24 per square foot to \$44 per square foot. *Id*. Thus, she concludes, the comparable sales support the 2006 assessed value of the property. *Id*.
- c. In addition, the Respondent contends the Board should give little weight to the Petitioner's appraisal. *Greubel testimony*. The Respondent's witness argues that the appraisal uses comparable properties that are not comparable to the subject property to reach its conclusion that the property is only worth \$9 per square foot. *Greubel testimony; Respondent Exhibit 3*. According to Ms. Greubel, the properties are of different sizes and uses from the subject property. *Id*. Some of the sales are very old and one property is unusable because the interior of the building is deteriorated. *Id*. Similarly, Ms. Greubel argues, the appraisal's land sales are inappropriate because the comparable properties are all residential and agricultural land. *Id*. The Respondent also argues that while the Petitioner contends the rural location and size of the Petitioner's property precludes industrial use, the property is located near a major transportation link in U.S. Highway 41. *Greubel argument*.
- d. Finally, the Respondent argues that the Petitioner's contention that the property at 432 Rural Route 1 sold twice over three years for the same price that Mr. Shelton relies upon to support his January 1, 2005, valuation, is incorrect. *Greubel argument*. According to the Respondent's witness, the property sold for \$115,000 in 2003, but sold for \$170,000 in 2006. *Greubel argument; Respondent Exhibit 1*. In support of this argument, the Respondent submitted sales disclosure forms for both sales. *Id*.

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<sup>3</sup> The Petitioner's representative Mr. Lueking objected to the Respondent's comparable properties because no one from the county's contractor Tyler Technologies-CLT Division was available to explain the county's evidence. The Board overrules the objection as it goes to the weight of the evidence rather than its admissibility. The Board also notes that the Petitioner had sufficient opportunity to conduct any discovery prior to hearing that it believed it needed under the Board's rules. *See* 52 IAC 2-8-3.

## **RECORD**

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 26-024-06-1-4-00001 Caborn,
- c. Exhibits:

- Petitioner Exhibit 1 – Property record card for the Petitioner’s property,
- Petitioner Exhibit 2 – Copies of the property’s 2006 and 2007 taxes,
- Petitioner Exhibit 3 – Appraisal report for the Petitioner’s property,
- Petitioner Exhibit 4 – Addendum to the appraisal report dated January 5, 2009,
- Petitioner Exhibit 5 – Second addendum to the appraisal report dated February 11, 2009,
- Petitioner Exhibit 6 – Form 131 with Exhibit A only,
- Petitioner Exhibit 7 – Notice of Appearance, Form 131 with all its attachments and a Notice of Additional Evidence,

- Respondent Exhibit 1 – Copy of the second addendum to the Petitioner’s appraisal report dated February 11, 2009, and sales disclosure forms for the appraiser’s cited sales,
- Respondent Exhibit 2 – An area map showing the property’s location and various land values,
- Respondent Exhibit 3 – Memorandum regarding the Petitioner’s evidence and copies of property record cards for the Respondent’s comparable properties,
- Respondent Exhibit 4 – Copy of the sales disclosure form for the subject property,
- Respondent Exhibit 5 – Copy of Petitioner’s Section III of Form 131,
- Respondent Exhibit 6 – The Petitioner’s appraisal’s comparable properties’ data sheets,
- Respondent Exhibit 7 – Data sheets for the Petitioner’s comparable land sales,

- Board Exhibit A – Form 131 Petition and the related attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet.

- 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 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).

- 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 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”).
  - 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case that its property is over-valued. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
  - b. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.

- d. Here, the Petitioner offered an appraisal report prepared by Brian D. Shelton that estimated the value of the Petitioner's property to be \$100,000 as of March 1, 2007. *Petitioner Exhibit 3*. Mr. Shelton is an Indiana certified appraiser who attested that he prepared the Petitioner's appraisal in accordance with USPAP standards. *Id.* The report shows that the appraiser applied both the sales comparison approach and the cost approach in estimating the property's value. *Id.*
- e. Because the valuation date for the March 1, 2006, assessment is January 1, 2005, Mr. Shelton provided two addendums to his appraisal. *Gillenwater testimony*. The first addendum trended the value to January 1, 2006, by stating "In order to trend the market value estimate back to January 1, 2006, the valuation date, the same set of sales are believed to be relevant as the sales dates range from 2002 through 2008 of which three occurred in 2006. My value opinion of \$15,000 for land and \$85,000 for improvements does not change if the effective date of the appraisal is changed to January 1, 2006." The second addendum adjusts the property's estimated value to January 1, 2005, stating that "I do not believe any change in my value conclusion is justified." According to Mr. Shelton, the market value of the property remained stable as shown by the 2003 and 2006 sales of 432 Rural Route 1 for an identical price of \$115,000.
- f. Contrary to Mr. Shelton's assertion, the Respondent's evidence shows that 432 Rural Route 1 sold for \$115,000 in 2003 and \$170,000 in 2006. The Petitioner's witness admits that the sales disclosure form records the 2006 purchase price as \$170,000 but, Mr. Gillenwater argues, the appraiser told him that there was a modular home on the property worth \$55,000 when it sold in 2006.<sup>4</sup> The property record card for 432 Rural Route 1, however, shows that the manufactured home, which is used as an office on the property, was constructed in 1997. Moreover, the assessed value of the improvement on the property, as reported on the sales disclosure forms, was \$32,600 in both 2003 and in 2006. Thus, the Board finds that 432 Rural Route 1 property included a modular home in both the 2003 and 2006 sales.<sup>5</sup>
- g. The appraiser based his conclusion that values did not change between the January 1, 2005, valuation date and his March 1, 2007, estimate of the property's value, solely on the sale of 432 Rural Route 1 for an identical price in 2003 and 2006. Because the Board has found that the property's value increased from \$115,000 in 2003 to \$170,000 in 2006, the appraiser's addendum has no probative value. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a

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<sup>4</sup> While the appraiser notes that the Broker involved in the sale "confirmed \$115,000 per the contract and all documentation" in his attachment to the addendum, a hearsay statement in a hearsay document is not probative of this matter.

<sup>5</sup> The appraiser may have removed the value of the modular home from the 2006 sale price in the appraisal in an effort to make the 432 Rural Route 1 property more comparable to the Petitioner's property for valuation purposes. However, the appraiser provided no evidence that that same modular home was not on the property in 2003.

deflator was a generally accepted appraisal technique). Left with an appraisal valuing the property as of March 1, 2007 – more than two years after the relevant valuation date – the Board finds the Petitioner failed to raise a prima facie case.

- h. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- i. Even if the Petitioner’s appraisal and the appraiser’s addendum can be seen as minimally raising a prima facie case, the Board finds that the sale of the subject property sufficiently rebuts the appraised value. The Petitioner’s sales disclosure form reports that the Petitioner purchased the real estate for \$350,000. While Mr. Gillenwater argues that the property’s value was reported in error, Mr. Gillenwater and the sellers signed the sales disclosure form under penalties of perjury. Further, Mr. Gillenwater argues that \$250,000 of that purchase price should have been allocated to goodwill. However, the allocation agreement between the parties already attributes \$1,400,000 of the purchase price to goodwill. Thus, any argument that the parties simply did not contemplate goodwill when they allocated the purchase price is not credible. Finally, the Petitioner’s witness argues that it made a mistake, but it presented no evidence that it tried to correct any mistake in the sales disclosure form. There were no letters evidencing any attempt to “correct” the sales disclosure form. Nor did the Petitioner submit any amended sales disclosure form that it filed or attempted to file soon after the sales disclosure form was filed. Mr. Gillenwater merely testified that the county told him he could not correct the form. This falls far short of the evidence required to overcome the probative value of the property’s sales disclosure form.
- j. After obtaining the tax benefit of using Section 1031 rollover funds by allocating \$350,000 of the purchase price to the real estate, the Petitioner now attempts to distance itself from that allocation in order to obtain more tax benefits in the form of reduced ad valorem property taxes. This the Board will not let it do.

**SUMMARY OF FINAL DETERMINATION**

- 16. The Petitioner failed to raise a prima facie case that the subject property is over-assessed. The Board finds in favor of the Respondent.

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

ISSUED: \_\_\_\_\_



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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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at: <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.