

REPRESENTATIVE FOR PETITIONER:  
Phyllis J. Hobbs, Trustee, *pro se*,

REPRESENTATIVE FOR RESPONDENT:  
Cheryl Heath, Madison County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Colonial Properties Irrv. Liv. Trust,	)	Petition No.:	48-003-07-1-4-07803
	)		
Petitioner,	)	Parcel No.:	18543-2
	)		
v.	)	County:	Madison
	)		
Madison County Assessor,	)	Township:	Anderson
	)		
Respondent.	)	Assessment Year:	2007

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

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**December 13, 2010**

**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**

**Introduction**

1. In many cases, an appraiser’s opinion may be probative of a property’s market value-in-use. But the appraiser must explain enough about the basis underlying his opinion to allow the Board to infer that the opinion is reliable. In this assessment appeal, Colonial Properties Irrevocable Living Trust relied primarily on a real estate broker’s appraisal

report that was almost entirely conclusory. Because that report and Colonial's other evidence lack probative value, the Board affirms the subject property's assessment.

### **Procedural History**

2. On November 9, 2009, Colonial filed a Form 130 petition contesting the subject property's 2007 assessment. On March 4, 2010, the Madison County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Colonial relief.
3. Colonial then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Colonial's appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
4. On September 15, 2010, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on Colonial's appeal. Neither the Board nor the ALJ inspected the subject property.

### **Hearing Facts and Other Matters of Record**

5. The following people were sworn in and testified:
  - Phyllis J. Hobbs, Trustee, Colonial Properties Irrevocable Living Trust<sup>1</sup>
  - Cheryl Heath, Madison County Assessor
  - Jennifer Robbins, Deputy Madison County Assessor
6. Colonial submitted the following exhibits:
  - Petitioner Exhibit 1: Page 2 of a Form 131 petition signed by Phyllis Hobbs on September 2, 2010,
  - Petitioner Exhibit 2: Appraisal prepared by Carl Chambers, broker with F.C. Tucker/O.C. Clark Realtors,
  - Petitioner Exhibit 3: Property record cards and copies of photographs for 1132 Central Avenue, copies of photographs of 1128 Central Avenue, 202 East 13<sup>th</sup> Street, 206 East 13<sup>th</sup> Street, and a brick building; copy of photograph of the subject property's awning,

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<sup>1</sup> Ms. Hobbs actually referred to herself as the "owner of the Colonial Properties Irrevocable Living Trust." The Board infers from Ms. Hobbs' statement that she is the trustee.

- Petitioner Exhibit 4: “Broker Price Opinion” by Mark Volk of Mark Volk Realty & Auction,
- Petitioner Exhibit 5: Copy of photograph and PRC for the Notre Dame Bookstore located at 1219 Fletcher Street,
- Petitioner Exhibit 6: Copies of photographs and PRC for the Stanley property located at 218 East 13<sup>th</sup> Street,
- Petitioner Exhibit 7: Copy of photograph and PRC for the Davis property located at 1231 Central Avenue,
- Petitioner Exhibit 8: Copy of photos and PRC for the Doll Apartments located at 300 East 12<sup>th</sup> Street,
- Petitioner Exhibit 9: Two aerial maps with properties highlighted in yellow,
- Petitioner Exhibit 10: Cover page and letter from a 2002 Appraisal Report prepared by Sharon J. Williams, Williams Appraisal Services, Inc.,
- Petitioner Exhibit 11: Settlement statement from 2003 purchase of the subject property,
- Petitioner Exhibit 12: Subject property PRC given to Colonial by the Assessor on August 30, 2010,
- Petitioner Exhibit 13: Copy of photograph and PRC for Wood property located at 311 East 13<sup>th</sup> Street,
- Petitioner Exhibit 14: Income and Expenses for 2006 through 2008,
- Petitioner Exhibit 15: Summary of Taxes for 2007, 2008, and 2009.

7. The Assessor did not submit any exhibits.
8. The Board recognizes the following additional items as part of the record of proceedings:
  - Board Exhibit A: Form 131 petition,
  - Board Exhibit B: Hearing notice,
  - Board Exhibit C: Hearing sign-in Sheet.
9. The subject property contains a two-story 3,068-square-foot house on a 72-foot-by-144-foot lot located at 1222 Central Avenue, Anderson, Indiana. The Family Network Agency, a nonprofit organization, previously leased the property. As of the Board’s hearing, the building was vacant.
10. For 2007, the PTABOA determined the following values for the subject property:
 

Land: \$13,300	Improvements: \$100,400	Total: \$113,700
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11. At the hearing, Colonial requested the following assessment:  
Land: \$6,000                      Improvements: \$44,000                      Total: \$50,000

### **Administrative Review and the Parties' Burdens**

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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").
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

## **Analysis**

### **Parties' Contentions**

#### **A. Colonial's Contentions**

15. Colonial primarily argues that the subject property's assessment is too high in light of an appraisal report prepared by Carl Chambers, a real estate broker with F.C. Tucker/O.C. Clark Realtors. The report consists of 10 pages, broken down as follows:
- A two-page letter dated August 31, 2010. On the first page, Mr. Chambers defines market value, explains that there are three valuation approaches commonly used by appraisers, and briefly explains the sales-comparison approach in general terms. On the second page, he describes the subject property and its 2006

assessment and sets forth his conclusions under the sales-comparison and income approaches;

- A letter dated September 1, 2010, in which Mr. Chambers amends the appraisal to reflect the subject property's assessment information for 2007;
- Copies of six photographs of the subject property;
- A list of Mr. Chambers' qualifications;
- A "Statement of Limiting Conditions";
- An "Appraiser's Certification," which does not contain a signature line or indicate that Mr. Chambers prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"); and
- Listing sheets for the three properties that Mr. Chambers used in his sales-comparison analysis.

16. For his sales-comparison analysis, Mr. Chambers identified three sales: 329 West 11<sup>th</sup> Street, which sold for \$45,000 on February 22, 2005; 1716 Fletcher Street, which sold for \$16,300 on November 3, 2006; and 1621 West 11<sup>th</sup> Street, which sold for \$36,000 on November 28, 2006. *Id.* Mr. Chambers explained that the three properties were "similar" to the subject property, but that "each sale price must be adjusted for differences in location, lot size, age, size, condition, and amenities offered." *Id.* Mr. Chambers, however, did not indicate the amounts by which he adjusted those sale prices. *See id.* He settled on an estimate of \$50,000 under the sales-comparison approach. *Id.*
17. For his income-approach analysis, Mr. Chambers used net income of \$3,954 and a capitalization rate of 8% to arrive at a net indicated value of \$49,500. *Id.* But he did not explain how he determined that net operating income or capitalization rate. *See id.* After considering his conclusions under the two approaches, Mr. Chambers settled on an estimate of \$50,000 for the subject property. *Id.*

18. Colonial also points to two other valuation opinions. First, Mark Volk, of Mark Volk Realty & Auction, gave Ms. Hobbs a “Broker’s Price Opinion” letter. *Hobbs testimony; Pet’r Ex. 4*. In that letter, Mr. Volk thanked Ms. Hobbs for allowing him to evaluate the subject property for a possible sale and concluded that the property’s “Suggested Buy it Now Price” and “Fair Market Value” as of March 23, 2010, was \$69,900. *Hobbs testimony; Pet’r Ex. 4*. Mr. Volk noted that “condition is a serious issue in this evaluation.” *Pet’r Ex. 4*. He explained that, while the exterior was in average-to-good condition, the interior had several “plaster/wall covering issues” needing repair and that the antiquated heating/cooling system needed to be replaced. *Id.* According to Ms. Hobbs, Mr. Volk told her that Colonial would be hard pressed to get \$69,900 for the property. Ms. Hobbs also testified that Mr. Volk verbally estimated the land’s value at \$6,000. *Hobbs testimony*.
19. Second, Colonial offered a cover sheet and letter from an appraisal prepared by Sharon Williams of Williams Appraisal Services, Inc. Ms. Williams estimated the property’s market value at \$92,000 as of December 26, 2002. *Pet’r Ex. 10*. Ms. Williams had prepared the appraisal for mortgage purposes in conjunction with a contemplated sale to different buyer. Ms. Hobbs then asked about buying the subject property and obtained a copy of the appraisal. *Hobbs testimony*. Colonial ultimately bought the property for \$92,000 on April 16, 2003. *Id.; Pet’r Ex. 11*. According to Ms. Hobbs, the property’s current value should be lower than \$92,000 because the market has declined dramatically since Colonial bought the property. *Hobbs testimony*.
20. In addition, Colonial offered assessment information and copies of photographs for five properties from the subject property’s immediate neighborhood. The 2007 assessments for those five properties ranged from \$22,200 to \$60,200—all well below the subject property’s assessment. *Hobbs testimony; Pet’r Exs. 5-8, 13*.
21. More generally, Ms. Hobbs testified that the presence of numerous vacant properties has hurt sale prices and rental income in the subject property’s neighborhood. *Hobbs*

*testimony.* In fact, the subject property is immediately surrounded by several vacant or abandoned properties. *Hobbs testimony; Pet'r Exs. 3, 9-10.*

22. Colonial also offered Ms. Hobbs' handwritten statement of income and expenses for 2006-08. *Pet'r Ex. 14.* For 2006, the subject property had rental income of \$7,000 and expenses of \$9,518. Those expenses included cleaning and maintenance, repairs, insurance, and utilities. Colonial also replaced an awning on the property. *Hobbs testimony; Pet'r Ex. 14.* The property did not generate any income for 2007-08 because the tenant, Family Network Agency, moved out. Expenses were \$6,602 for 2007 and \$6,503 for 2008. Ms. Hobbs did not include property taxes as an expense because Colonial had filed an appeal. *Id.*
23. Finally, Colonial asks the Board to address whether the subject property was entitled to an exemption. *Hobbs argument.* According to Ms. Hobbs, the property had been exempt from property taxes because it was leased by Family Network. The Madison County Auditor removed the exemption after Family Network moved out. *Id.* Although Family Network's director resigned in December 2006, its other employees continued to occupy the property into 2007. *Hobbs testimony.*

## **B. The Assessor's Contentions**

24. The Assessor supports the PTABOA's decision not to change the subject property's assessment. *Heath testimony.* The Assessor worked with Ms. Hobbs; she even accompanied Ms. Hobbs to the county auditor's office to see if she could help Colonial keep its exemption for the subject property. *Heath testimony.* The auditor, however, had removed the exemption after being notified that Family Network had ceased operating at the subject property. *Robbins testimony.*<sup>2</sup>

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<sup>2</sup> In one of Colonial's exhibits and in her presentation at the Board's hearing, Ms. Hobbs said that she objected to the fact that the Assessor had not given her any evidence to prove that the property had been correctly assessed. *Hobbs objection; Pet'r Ex. 1.* It is unclear whether Ms. Hobbs was simply describing her belief that the Assessor should be required to justify the subject property's assessment or whether she was instead objecting to the Assessor offering any evidence at the hearing, presumably on grounds that the Assessor failed to comply with the Board's rule governing pre-hearing exchanges. See 52 IAC 2-7-7(b)(requiring a party to give all other parties witness and exhibit lists at least 15 business days before the Board's hearing and copies of documentary evidence and summaries of witness testimony at least five business days before the hearing). To the extent that Ms. Hobbs interposed an objection under the Board's pre-hearing exchange rule, the Board overrules her objection. The Assessor did not offer any exhibits, and her limited testimony did not address the substance of the subject property's assessment.

## Discussion

25. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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 traditionally have used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
26. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 USPAP often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
27. Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dept’ of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”)(emphasis added). For March 1, 2007 assessments, the valuation date was January 1, 2006. 50 IAC 21-3-3(2006).



### **A. Valuation opinions**

28. Colonial offered three different opinions of the subject property's market value—Mr. Chambers' appraisal report, the cover letter from Ms. Williams' appraisal report, and Mr. Volk's broker's opinion of value. Two of those opinions—Mr. Volk's broker's opinion and Ms. Williams' cover letter—were for dates substantially removed from January 1, 2006, which is the effective valuation date in this case. And Colonial offered no probative evidence to explain how those opinions related to the subject property's market value-in-use as of January 1, 2006. At most, Ms. Hobbs conclusorily asserted that property values had declined dramatically since Colonial bought the property in 2003. Thus, those two opinions (and the property's 2003 sale price) lacked probative value.
29. Mr. Chambers, by contrast, estimated the subject property's value as of 2006. The Board therefore turns to the substance of his opinion. Mr. Chambers formed his opinion using two generally accepted methods—the sales-comparison and income approaches to value. But in each case, his opinion was almost entirely conclusory.
30. In order to effectively use a sales-comparison analysis as evidence in a property assessment appeal, the proponent must show that the properties on which that analysis is based are truly comparable to the property under appeal. As the Indiana Tax Court explained in *Long v. Wayne Twp. Assessor*, conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the appealed property's characteristics and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, he must explain how any differences between the properties affect their relative market values-in-use. *Id.*
31. While Mr. Chambers might have engaged in the type of analysis contemplated by *Long*, his report does not reflect it. For example, Mr. Chambers acknowledged that each sale

price from his appraisal needed to be adjusted for differences with the subject property in terms of location, traffic count, lot size, age, size, condition, and amenities offered. Given that Mr. Chambers estimated a value of \$50,000 for the subject property, which was more than any of the three comparable sales, he presumably made at least some adjustments along those lines. Yet he did not indicate what any of those adjustments were. Mr. Chambers' income-approach analysis was equally conclusory: he did not explain how he estimated the subject property's net operating income or determined his 8% capitalization rate.

32. Because Mr. Chambers' appraisal report was almost entirely conclusory, the Board cannot give it any probative weight. In reaching that decision, the Board recognizes that many appraisal reports do not include all of the facts and judgments underlying the appraiser's ultimate valuation opinion. But those reports typically offer enough information to allow the reliability of the appraiser's opinion to be tested in an evidentiary hearing. And the appraisers typically certify that they have complied with USPAP. Here, the core of Mr. Chambers' appraisal consisted of two pages, the first of which defined fair market value and offered basic information on generally accepted valuation approaches. *See Pet'r Ex. 2*. Mr. Chambers' analysis was confined to less than one page and lacked any explanation about key judgments underlying his ultimate valuation opinion. Plus, Mr. Chambers did not certify that he had complied with USPAP.

## **B. Neighborhood assessments and vacancies**

33. Colonial also offered property record cards for, and copies of photographs of, several neighborhood properties, all of which were assessed for at least \$50,000 less than the subject property. But except for a few general statements about those other properties, Ms. Hobbs did not meaningfully compare them to the subject property. And the property record cards showed that those properties differed significantly from the subject property in a number of ways, including the relative sizes of their buildings and lots. Also, unlike the subject property, which was assessed as using the cost schedules for residential properties, two of the five purportedly comparable properties were assessed using the models and price schedules for commercial buildings. *See Pet'r Exs. 6-7, 12.* Ms. Hobbs did not explain how any of those differences affected the properties' relative assessments.
34. Similarly, the mere fact that the subject property is surrounded by vacant buildings does little to show that the property's assessment fails to reflect its market value-in-use. While the surrounding neighborhood's condition might well affect the subject property's value, Colonial offered nothing to quantify that effect or to otherwise demonstrate how the condition of surrounding properties translated to a likely range of values for the subject property.

## **C. The subject property's actual income and expenses**

35. Like the condition of the surrounding neighborhood, the subject property's income and expense information does little to show that the property was inaccurately assessed. The income approach assumes that an investor will pay no more for a property than it would cost to buy an equally valuable substitute investment with the same risk and return. MANUAL at 14. To determine what that amount is, a person applying the income approach converts anticipated future benefits, such as rent and reversion of the property, to present value. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1233 (Ind. Tax Ct. 2003)(explaining that, under the income approach, one divides a property's net operating income by an appropriate capitalization rate to convert that income to present value). Ms. Hobbs made no attempt to convert the subject property's

raw income and expense data to a value estimate using generally accepted appraisal principles.

**D. Colonial's request for an exemption**

36. Finally, Colonial asks the Board to review the loss of the subject property's exemption for 2007. That issue, however, is not before the Board. Colonial's Form 131 petition addresses only the subject property's assessment.

**SUMMARY OF FINAL DETERMINATION**

37. Because Colonial did not offer probative evidence to show the subject property's market value-in-use as of the relevant January 1, 2006 valuation date, Colonial failed to meet its burden of proof. The Board therefore finds for the Assessor.

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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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

## **IMPORTANT NOTICE**

### **- 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>>.