REPRESENTATIVE FOR PETITIONER:
Paul M. Jones, Ice Miller, LLP

REPRESENTATIVE FOR RESPONDENT:
Brenda Brittain, Morgan County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Echo Lake, LLC,	)	Petition Nos.: 55-016-09-1-4-00001
	)	55-016-09-1-4-00002
	)	55-016-09-1-4-00003
Petitioner,	)	
	)	
	)	Parcel Nos.: 55-01-32-200-001.000-016
v.	)	55-01-32-200-002.000-016
	)	55-01-32-200-003.000-016
	)	
Morgan County Assessor,	)	
	)	County: Morgan
	)	
Respondent.	)	Assessment Year: 2009

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

November 4, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 issues presented for consideration by the Board are whether the Respondent has the burden of proof in these appeals and whether the assessed values of the Petitioner's properties were over-stated for the 2009 assessment year.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeals with the Morgan County Property Tax Assessment Board of Appeals (the PTABOA) on April 14, 2010. The PTABOA issued its assessment determinations on November 9, 2010.

3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on November 16, 2010, petitioning the Board to conduct an administrative review of its properties' 2009 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing on August 23, 2011, in Martinsville, Indiana. At hearing, the Petitioner withdrew its Petition No. 55-016-09-1-4-00002, appealing Parcel No. 55-01-32-200-003.000-016.

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

For the Petitioner:

Carla D. Bishop, Meritax Property Tax Consultants, Inc.

For the Respondent:

Brenda Brittain, Morgan County Assessor,
Reva Brummett, PTABOA member,
Robin Davidson, Deputy Assessor.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Property record card for the subject property,[1]
Petitioner Exhibit 2 – Summary sheet of the Respondent's comparable properties,
Petitioner Exhibit 3 – Graph showing the assessed value comparison between the subject property and the Respondent's comparable properties,
Petitioner Exhibit 4 – Information on the county's sixth comparable property,
Petitioner Exhibit 5 – Real Property Ad Valorem Report,
Petitioner Exhibit 6 – Echo Lake, LLC, income statements for 2005, 2006, and 2007,
Petitioner Exhibit 7 – Echo Lake, LLC, rent roll for May 2007,
Petitioner Exhibit 8 – Revised income analysis using the capitalization rate from one of the county's comparable property,
Petitioner Exhibit 9 – Summary of the Issues.

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Copy of the Petitioner's request for informal hearing,
Respondent Exhibit 2 – Copy of an income and expense worksheet provided by the Petitioner,
Respondent Exhibit 3 – Copy of the proposed property record cards for 2009 for the appealed properties,
Respondent Exhibit 4 – Copy of 2007 aerial maps of Echo Lake Mobile Home Park,
Respondent Exhibit 5 – Sales disclosure forms and property record cards for two mobile home parks in Morgan County,
Respondent Exhibit 6 – Property record cards for three mobile home parks showing the properties' values set through their appeals,
Respondent Exhibit 7 – Realtor listings for two mobile home parks including income and expense information,
Respondent Exhibit 8 – 2001 Standard on Mass Appraisal of Real Estate, page 9.

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

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing dated July 1, 2011,
Board Exhibit C – Hearing sign-in sheet.

9. At hearing, the Petitioner submitted its "Petitioner's Motion for Determination Concerning Burden of Proof" and its "Brief in Support of Petitioner's Motion for

[1] Petitioner Exhibit 1 was inadvertently referred to on the record as Petitioner Exhibit A.

Determination Concerning Burden of Proof," (the Petitioner's Brief). The Respondent was granted time to file a responsive brief and timely filed its "Legal Analysis for Burden of Proof Issue" (Respondent's Brief) in response.

10. The subject property is a mobile home park on three parcels. Parcel 55-01-32-200-001.000-016 (Parcel No. 1) consists of 62.24 acres with 200 mobile home pad sites, two apartments, 28 RV sites and outbuildings. Parcel 55-01-32-200-002.000-016 (Parcel No. 2) is 2.6 acres improved with a single-family home and a tennis court. The Petitioner's appeal of Parcel No. 55-01-32-200-003.000-016 (Parcel No. 3), a vacant parcel of approximately 25 acres of land, was withdrawn at hearing. The mobile home park is located at 825 West Greencastle Road in Mooresville, Indiana.

11. The ALJ did not conduct an on-site inspection of the subject property.

12. For 2009, the PTABOA determined the assessed value of Parcel No. 1 to be $352,100 for the land and $2,381,300 for the improvements, for a total assessed value of $2,733,400. The PTABOA determined the assessed value of Parcel No. 2 to be $44,000 for the land and $174,800 for the improvements, for a total assessed value of $218,800.

13. For 2009, the Petitioner contends that, if the Respondent had the burden of proof in this case and failed to meet its burden, the total assessed value of Parcel No. 1 and Parcel No. 2 together should be reduced to their 2008 assessed values which totaled $1,279,000. If, however, the Board determines that the Petitioner had the burden of proof and the Petitioner presented evidence of a prima facie case that was not rebutted, the Petitioner argues, a value of $2.3 million should be applied to the parcels.

JURISDICTIONAL FRAMEWORK

14. 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, (3) property tax exemptions, and (4) property tax credits 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

BURDEN OF PROOF

15. In its "Brief in Support of Petitioner's Motion for Determination Concerning Burden of Proof," the Petitioner's counsel, Mr. Jones, argues that, because the Morgan County Assessor increased the assessed values of the two parcels remaining at issue in the Petitioner's appeal by 147%, the burden is on the Respondent to prove the properties' assessments are correct.[2] *Petitioner's Brief at 1 and 2*. In support of this argument, the Petitioner's counsel cites Indiana Code § 6-1.1-15-17, which states, "This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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." *Id*.

16. The Petitioner's counsel argues that Indiana Code § 6-1.1-15-17 is unambiguous and should be construed according to its clear and plain meaning. *Petitioner's Brief at 2*. Mr. Jones further contends that the current statute clarifies the intent of the Legislature and resolves concerns about the prior burden-shifting statute promulgated at Indiana Code § 6-1.1-15-1(p). *Id.* While the Board found the prior statute ambiguous because it did not state whether the burden-shifting provision applied only to PTABOA hearings or whether it extended to Board hearings, Mr. Jones argues that the new statute clearly applies to

[2] While there was no change in value for the smaller parcel, Parcel No. 2, the value of Parcel No. 1 increased by 177% between 2008 and 2009, resulting in an aggregate increase of 147% for the two parcels at issue in this appeal. *Jones argument.*

"any appeals taken to the Indiana board of tax review or to the Indiana tax court." *Id. at 3.*

17. The Petitioner's counsel argues that Indiana Code § 6-1.1-15-17 applies to the Petitioner's appeals. *Petitioner's Brief at 5.* According to Mr. Jones, when the General Assembly revises a law while a case is pending, the courts and administrative boards should apply the substantive provisions of the prior law and the procedural provisions of the new or current law. *Id.* Mr. Jones argues that the burden of proof is a procedural change, and therefore he contends Indiana Code § 6-1.1-15-17 applies to appeals pending at the time of the amendment, and not only to future assessments or to appeals filed at some later date. *Id. at 6.*

18. The Petitioner's counsel argues that, if the Legislature intended for the law to apply to assessments after a certain date, it would have specified the assessment date in the new statute. *Petitioner's Brief at 6 and 7.* Having left that unsaid, Mr. Jones argues, the Legislature intended that the statute be enforced prospectively on July 1, 2011, for "any review or appeal" in the docket. *Id.*; citing *Staple v. Richardson,* 212 N.E.2d 904 (Ind. Ct. App. 1966) ("Where no new rights are given or existing rights taken away, and the new legislation only provides a new remedy for the enforcement of an existing right, retroactive operation may be given to a remedial statute where such construction is necessary to carry out the purpose of the new law.").

19. In its "Legal Analysis for Burden of Proof Issue," the Respondent's counsel, Ms. Meighen, argues that the Petitioner should have the burden of proof in these appeals.[3] *Respondent's Brief.* According to Ms. Meighen, the "event" which triggers the imposition of a property tax is the assessment of a property. *Id. at 7,* citing *Indiana Department of State Revenue, Inheritance Tax Division v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax Ct. 2000). Because Indiana Code § 6-1.1-15-17 provides an effective date of July 1, 2011, Ms. Meighen argues, the burden shifting provision should only apply to assessments that occur after July 1, 2011. *Respondent's Brief at 2.*

[3] The Respondent did not dispute it had the burden of proof at the hearing, but later filed a responsive brief arguing that the Petitioner had the burden of proof in this matter.

20. The Respondent's counsel argues that, absent explicit language for a retroactive application, legislation must be construed as prospective in application. *Respondent's Brief at 2,* citing *Metro Holding Co. v. Mitchell*, 589 N.E.2d 217,219 (Ind. 1992); and *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1062 (Ind. Tax Ct. 1992) (statutes are given prospective effect only, unless the legislature unambiguously and unequivocally intended retroactive affect). *Id*. While Ms. Meighen admits that legislation may be applied retroactively, she argues that retroactive application is appropriate only where the General Assembly "changes a mode or procedure, or where the statute is remedial." *Id. at 5.* Because the statute does not correct a defect or "remedy some mischief" and because the statute does not "unequivocally and unambiguously reveal retrospective application," Ms. Meighen argues, the legislation must be applied prospectively. *Id.*

21. Ms. Meighen contends that the General Assembly knows how to craft legislation so that the statute applies to pending appeals and, in fact, included such language in other statutes during the 2011 session. *Respondent's Brief at 2 and 3,* citing Ind. Code § 6-1.1-15-0.3 and Ind. Code § 6-1.1-15-0.6. Therefore, Ms. Meighen argues that, had the Legislature intended Indiana Code § 6-1.1-15-17 to apply to appeals pending as of July 1, 2011, it would have inserted language to that effect in the statute. *Id.*

22. Finally, Ms. Meighen argues that there are compelling reasons for a prospective application of Indiana Code § 6-1.1-15-17. *Respondent Brief at 5.* According to Ms. Meighen, if the statute is applied retroactively, taxpayers and assessors alike will be treated differently under the new legislation depending solely upon where the taxpayers' petitions are in the appeal process. *Id.* If the Board grants the Petitioner's motion, Ms. Meighen argues, the Petitioner's 2009 assessment appeals would be judged by a different standard than the Board has applied in the 65 appeals it previously decided for the 2009 and 2010 assessment years. *Id. at 6.* Ms. Meighen concludes that the General Assembly could not have intended such an unreasonable or absurd result. *Id. at 7.* Thus, giving consideration to all taxpayers and not just one, Ms. Meighen concludes, it is fair, logical,

and legally sound to apply Indiana Code § 6-1.1-15-17 only to assessments made for the March 1, 2012, assessment date and future assessment dates. *Id*.

23. The parties here argue whether Indiana Code § 6-1.1-15-17 should be applied prospectively or retroactively. The Board, however, is unconvinced that the application of Indiana Code § 6-1.1-15-17 to this case would, in fact, be a retroactive application of the law.[4] "While statutes are generally given prospective effect absent a contrary legislative intent, it is also true that the jurisdiction in pending proceedings continues under the procedure directed by new legislation where the new legislation does not impair or take away previously existing rights, or deny a remedy for their enforcement, but merely modifies procedure, while providing a substantially similar remedy." *Tarver v. Dix*, 421 N.E.2d 693,696 (Ind. Ct. App. 1981). According to the U.S. District Court in the Northern District of Indiana, "applying newly enacted procedure to a case awaiting trial in district court is not, strictly speaking, a retroactive application of the law" because the court has not yet "done the affected thing" when the new law is applied. *Brown v. Amoco Oil Co.*, 793 F. Supp. 846, 851 (N.D. Ind. 1992).

24. In *City of Indianapolis v. Wynn*, 157 N.E.2d 828, 834-835 (Ind. 1959), the Indiana Supreme Court held that a statutory amendment, which specified that evidence of certain factors would constitute primary determinants of an annexation's merit, was a procedural amendment and therefore applied to a proceeding where the remonstrators had filed their challenge, but no hearing had yet occurred. The Court reasoned that because the amendment "changes the method of procedure and elements of proof necessary to sustain an annexation ordinance, and does not change the tribunal or the basis of any right, it must be presumed that the Legislature intended that the proceedings instituted under the

[4] To the extent that applying the amendment to these proceedings would be a retroactive application, the Board finds that the burden of proof is a procedural amendment and therefore can be applied retroactively. "In general form procedural law can be defined as that body of law regulating the conduct and relationship of individuals, courts, and officers in the course of judicial litigation." *State ex rel. Blood v. Gibson Circuit Court*, 157 N.E.2d 475,478 (Ind. 1959). "Substantive law" to the contrary "can be defined as including that body of rules which regulates the conduct and relationship of members of society and the state itself…" *Id.* Because the "burden of proof" exists only in the field of litigation and has no application in the regulation of conduct among members of society in general, the Board finds that the legislative change in the "burden of proof" in Board proceedings was a procedural change to the law, rather than a substantive change.

[prior version of the statute] should be continued to completion under the method of procedure prescribed by the [amendment]." *Id.*, *see also Tarver v. Dix*, 421 N.E.2d 693, 696 (Ind. Ct. App. 1981) (A statutory presumption of legitimacy applied to a case filed prior to its enactment but heard after the legislation was passed because "the new legislation … provided a substantially similar remedy while delineating more clearly the procedure to be followed in determining and enforcing this right.").

25. The Respondent argues that the assessment is the "thing affected." However, Indiana Code § 6-1.1-15-17 does not change the rules or standards for determining whether an assessment is correct. Nor does the statute make any change to the assessor's duties in making assessments. Assessors are tasked with assessing property based on its "true tax value" which is defined 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). This definition "sets the standard upon which assessments may be judged." *Id.* Moreover, under the trending rules, property values are to be adjusted each year to reflect the change in a property's market value between general reassessment years.[5] Ind. Code § 6-1.1-4-4.5. Whether the assessor will have the burden of proof at trial based on how much that property's value changes year over year should have no impact on the assessor's obligation to value property according to its market value-in-use. In fact, the Respondent made no claim that it would have assessed the Petitioner's properties differently if the burden shifting provision had been promulgated prior to the time that the assessments were made.

26. Indiana Code § 6-1.1-15-17 places the burden of proof on an assessor when the assessed value of a property increases by more than five percent between assessment years. Thus, the "affected thing" would be the evidentiary hearing wherein the Board evaluates the proof offered by the parties. If the General Assembly had not intended the law to apply

[5] Indiana Code § 6-1.1-4-4.5 states "The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took place." Ind. Code § 6-1.1-4-4.5.

to pending appeals, it could have inserted language to that effect, stating that the law only applied to future assessments. This the Legislature did not do.

27. The Board recognizes that the Respondent raises a valid argument that taxpayers will be treated differently depending on when their hearings are scheduled. However, that is often the result of a change in the law – some litigants enjoy the benefits of the new legislation while others are deprived of the same rights simply based on the date on which some action occurs.

28. The Board finds that because the law applies to all pending appeals and because the assessed values of the Petitioner's properties increased by more than 5% over the previous year's assessed values, the Respondent has the burden of proof in this proceeding.

RESPONDENT'S CONTENTIONS

29. Although the Respondent admits that Parcel No. 1 is over-valued for the March 1, 2009, assessment year and should be reduced to $2,413,600 for 2009, the Respondent contends that the assessed value of Parcel No. 2 is correct and should remain $218,800. The Respondent presented the following evidence in support of its contention:

A. The Respondent contends that the properties' revised assessed values are correct. *Brittain argument.* According to Ms. Brittain, she re-calculated Parcel No. 1's value based on the sale of two mobile home parks and income and expense information from three other mobile home parks whose assessments were appealed. *Brittain testimony; Respondent Exhibits 3, 5 and 6*. In addition, Ms. Brittain testified, she reduced the number of lots in the Petitioner's mobile home park to 200. *Brittian testimony; Respondent Exhibit 4.* According to Ms. Brittain, the average price per lot based on the comparable sale prices and appeal values was $10,106.38. *Brittain testimony*. Applying the average lot price to Parcel No. 1's 200 lots, Ms. Brittain

argues, results in a value of $2,021,276 for the Petitioner's mobile home park and the land to support it. *Id*.

B. Moreover, Ms. Brittain argues, Parcel No. 1 includes a commercial building, a rental property and other small outbuildings that are not typically associated with a mobile home park. *Brittain testimony.* According to Ms. Brittain, she valued these structures and the land supporting the structures based on the Guidelines' cost approach. *Id.* Thus, Ms. Brittain argues, the store was valued at $25,300, the rental house was valued at $193,100, and the outbuildings were assessed a total value of $21,800. *Id.; Respondent Exhibit 3.* Further, Ms. Brittain testified, she assessed $31,000 for the home site and $50,000 for the commercial land on which the store is located. *Id.* Adding the $2,021,276 for the mobile home lots and the land, Ms. Brittain concludes, the value of Parcel No. 1 totaled $2,342,476 for 2009.[6] *Id.* .

C. The Respondent argues that the assessed value of Parcel No. 1 is correct based on the market value of other comparable properties. *Brittain argument.* According to the Respondent's witness, the assessed value of the Frakers Mobile Home Court was $10,588.24 per pad or $527,200 and the property sold for $540,000.[7] *Davidson testimony*. Similarly, Ms. Davidson testified, the Paragon Mobile Home Park was assessed at $8,522.64 per lot or $271,000 for the property as a whole and sold for $325,000. *Id*. According to Ms. Davidson, neither of the properties had additional buildings such as apartments, a house, or a store like the Petitioner's property. *Id*.

D. In addition, the Respondent argues, Parcel No. 1 is valued correctly based on the assessed values of other mobile home parks. *Brittain argument.* Ms. Davidson testified that the Respondent's third comparable property, which was appealed, was valued at approximately $9,500 per lot. *Davidson testimony; Respondent Exhibit 6*.

[6] The Respondent prepared a revised property record card using a value of $2,413,600 for Parcel No. 1 and argued that this represented the value of Parcel No. 1. However, her evidence in hearing "supporting" that assessment totaled $2,342,476 for Parcel No. 1. Ms. Brittain did not explain the difference in value. She merely argued that the comparable properties' values supported the $2,413,600 value she used on the revised property record card.

[7] Ms. Davidson testified, however, that the assessed value of the property was reduced to $156,600 after a flood destroyed all of the property's mobile home pads. *Davidson testimony; Respondent Exhibit 5*.

According to Ms. Davidson, the property is inferior to the Petitioner's property because of its age and condition and is therefore valued lower. *Id.* The Respondent's fourth comparable property is similarly valued to the subject property at approximately $10,100 per lot and the fifth property is valued at $11,700 per pad based on 118 mobile home pads. *Id.* Ms. Davidson also presented two current listings for mobile home parks, with listing prices of $9,400 and $13,000 per pad respectively. *Davidson testimony; Respondent Exhibit 7*. Thus, Ms. Davidson concludes, the assessed value of Parcel No. 1 for 2009 was reasonable. *Davidson argument.*

E. Further, Ms. Brittain contends that the assessed value of Parcel No. 2 was correct for 2009. *Brittain argument.* Ms. Brittain testified that Parcel No. 2 contains a house and a tennis court, which, she argues, are not a part of the Petitioner's mobile home park. *Brittain testimony*. According to Ms. Brittain, Parcel No. 2 is a separate parcel that does not have any mobile home pads on it. *Id.* Therefore, Ms. Brittain argues, because Parcel No. 2 does not support the mobile home park and could be sold separately from the park, it was properly assessed as a residential parcel for $218,800. *Brittain argument.*

F. Finally, the Respondent contends that the Petitioner's income analysis should be given little weight by the Board. *Brittain argument.* According to Ms. Brittain, the Petitioner's witness, Ms. Bishop, supplied conflicting income and expense data prior to the Petitioner's appeal to the Board. *Id.* In addition, Ms. Brittain argues, Ms. Bishop made adjustments to the income and expense figures on her income approach worksheet without any explanation for the adjustments. *Id.*

PETITIONER'S CONTENTIONS

30. The Petitioner argues that the Respondent failed to raise a prima facie case that its assessed values for the Petitioner's properties were correct and therefore Parcel No. 1 and Parcel No. 2 should be valued according to their 2008 assessed values. Alternatively, the

Petitioner contends that the assessed value of the Petitioner's properties are over-stated for the March 1, 2009, assessment year based on an income approach valuation. The Petitioner presented the following evidence in support of its contentions:

A. The Petitioner's counsel argues that the Respondent did not meet its burden of proof to present a prima facie case supporting the properties' current assessed values, which exceed $3 million; nor did the Respondent support her revised value of over $2.6 million for the two parcels at issue in this appeal. *Jones argument*. According to Mr. Jones, the Respondent merely offered property record cards for properties that are not comparable to the Petitioner's properties. *Id.* Similarly, she presented listings that are not relevant to the valuation date at issue. *Id.* Therefore, Mr. Jones argues, the 2009 assessed values of Parcel No. 1 and Parcel No. 2 should be reduced to their 2008 assessed values which totaled $1,279,900. *Id*.

B. Alternatively, Mr. Jones argues, if the Respondent met its burden of proof, the value of the Petitioner's properties should be $2.3 million based on the Petitioner's income approach analysis. *Jones argument.*

C. The Petitioner's witness testified that Parcel No. 1 is a mobile home park with 200 mobile home pads, two apartments, and 28 RV sites. *Bishop testimony*. According to Ms. Bishop, Parcel No. 2 includes a house which is the onsite manager's residence and also acts as the park's office. *Id*. Ms. Bishop contends that Parcel No. 2 is a part of the mobile home park and benefits the park's operations regardless of whether the parcel was purchased separately or could be sold separately. *Id*.

D. Ms. Bishop argues that the Petitioner's properties are over-valued based on their income value. *Bishop testimony*. In support of this contention, Ms. Bishop presented a "Real Property Ad Valorem Report" wherein she estimated the properties' value to be $2.3 million. *Petitioner Exhibit 5.* Ms. Bishop contends that she considered the sales comparison approach but did not develop it because she was unable to identify a sufficient quantity of comparable sales in the market. *Bishop testimony; Petitioner Exhibit 5 at 9*. Similarly, Ms. Bishop testified that she considered the cost approach,

but due to the age, condition, and nature of the property she did not develop that approach. *Id.*

E. Ms. Bishop testified that she compared the property's rental rates to the rent charged at other mobile home parks. *Bishop testimony*. According to Ms. Bishop, lot rents ranged from $205-$365 per month. *Id.; Petitioner Exhibit 5.* Because the subject property's lot rate was within the range of other parks' rent and because the property was well managed, Ms. Bishop testified, she used the property's $280 rent for the mobile home lots. *Id*. Similarly, Ms. Bishop testified that she reviewed rental rates for RV sites and determined that $300 was market rent for an RV pad. *Id*. Ms. Bishop also surveyed two apartment complexes and determined that the apartments' $650 per month rent represented market rent. *Id.* Based on these rates, Ms. Bishop determined the property's gross potential income to be $788,400. *Id.* Ms. Bishop subtracted 25% for vacancy and collection loss based on the property's historic performance and interviews with property management. *Id.; Petitioner Exhibits 5 through 7.* Ms. Bishop then added miscellaneous income of $16,000, resulting in an effective gross income of $607,300 as of January 1, 2008. *Id.*

F. The Petitioner's witness next determined the property's operating expenses by reviewing historic information for 2006 and 2007. *Bishop testimony; Petitioner Exhibit 5 and 6.* From that information, Ms. Bishop calculated the property's "stabilized" expenses to be $352,000, resulting in an estimated net operating income of $255,300. *Bishop testimony; Petitioner Exhibit 5*. According to Ms. Bishop, she did not use the property's actual income of $180,193 because, she argues, the resulting value would represent the "leased fee" value of the property rather than the property's fee simple interest value. *Bishop testimony*.

G. Ms. Bishop testified that she obtained her income capitalization rate from the RealtyRates Investor Survey for the 4th quarter of 2007. *Bishop testimony; Petitioner Exhibit 5, Appendix A.* According to Ms. Bishop, she took the 9.45% rate for mobile homes and RV parks and added the property's effective tax rate of 1.6939% to develop a "loaded" capitalization rate of 11.14%. *Bishop testimony; Petitioner*

Exhibit 5. Applying the loaded capitalization rate to the property's stabilized net operating income, Ms. Bishop testified, resulted in an income value of $2,291,741, or approximately $2.3 million. *Id.* Alternatively, Ms. Bishop contends that using the 11% capitalization rate advertised in one of the Respondent's listings would result in a loaded capitalization rate of 12.7% and a income value of $2 million for the Petitioner's properties. *Bishop testimony*; *Petitioner Exhibit 8*.

H. Finally, the Petitioner's counsel contends that the subject property is not assessed uniformly and equally with the mobile home parks presented by the Respondent as comparable properties. *Jones argument*. In support of its contention, the Petitioner submitted a spreadsheet with a summary and a graph comparing the assessed values of the Petitioner's properties with the Respondent's "comparable" properties. *Petitioner Exhibits 2 and 3*. According to the Petitioner, the assessed value of the Petitioner's two parcels is $12,903.92 per pad, which is considerably higher than the property's market value-in-use and is more per pad than any of the Respondent's comparable properties. *Bishop testimony*. The Petitioner's counsel argues that if the Respondent's comparable properties were, in fact, truly comparable, they would not be assessed at a lower value than the subject property. *Jones argument*.

ANALYSIS

30. 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." MANUAL at 2. The appraisal profession traditionally has 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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).

31. A property's assessment under the Guidelines is generally 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). As noted above, however, Indiana Code § 6-1.1-15-17 places the burden of proof on an assessor when the assessed value of a property increases by more than five percent between assessment years. Thus, in this case, the Respondent has the burden to establish a prima facie case that the current assessment is correct. 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. Parties may also offer construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

32. 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, 2009, assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3.

33. The Respondent admitted that Parcel No. 1 was over-assessed for 2009, but she contends the correct value for the property was $2,413,600 for 2009 based on comparable sales and the assessed values of other similar properties. *Brittain argument.* In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that 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.") 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.* Here, however, the Respondent presented no evidence to show that the offered properties were comparable to the subject property. Further, while the Respondent's witness identified some differences between the age, condition and location of some of the mobile home parks, the Respondent made no attempt to value those differences. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor,* 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These standards are no less applicable to assessing officials*." 836 N.E.2d at 1082 (citations omitted and emphasis added).

34. In addition, the Respondent testified that she valued the commercial building, the rental properties and the outbuildings on Parcel No. 1 based on the Guidelines' cost approach. *Brittain testimony.* Similarly, Ms. Brittain testified, Parcel No. 2 contains a house and a tennis court, which, she argues, was properly assessed as a residential parcel for $218,800. *Id*. However, Ms. Brittain made no attempt to show that the values she calculated under the mass appraisal version of the Guidelines reflected the properties' actual market value in use. In order to carry her burden, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs,* 694 N.E.d2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case). Because the Respondent failed to sufficiently show that the properties' assessed values reflected the properties' market values-in-use, the Respondent failed to raise a prima facie case that the Petitioner's properties were assessed correctly for the March 1, 2009, assessment year.

35. Where a party has not supported its claim with probative evidence, the opponent'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). Despite this, however, the Petitioner offered "rebuttal" evidence that its properties should be valued at $2.3 million for the 2009 assessment year. Although the Petitioner argues that its evidence should only be considered if the Petitioner was found to have the burden of proof or if the Respondent was assigned the burden and was found to have raised a prima facie case, the Board holds that once probative evidence is submitted on the record, the Board cannot turn a blind eye to its value.[8]

36. The Petitioner here essentially asks for a "judgment on the evidence" (or the equivalent of a "directed verdict" in a jury trial) that the Respondent failed to raise a prima facie case that the Petitioner's properties were assessed correctly for the 2009 assessment year and therefore the properties should be valued according to their 2008 assessed values. Despite asking for such a remedy, the Petitioner submitted its own valuation evidence which supported a higher value than the properties' 2008 assessed values. This is analogous to the situation in *Hoosier Ins. Co. v. Ogle*, 276 N.E.2d 876 (Ind. Ct. App. 1971). In that case, the defendant filed a motion for a directed verdict. Rather than rule on the defendant's motion, the trial court took the matter under advisement. 276 N.E. 2d at 877. The defendant then elected to proceed with the submission of his evidence. *Id.* On appeal, the Appellate Court found that if a party moving for a directed verdict thereafter presents its own evidence, it waives any claim that the trial court erred in denying its motion. 276 N.E.2d at 878. Similarly, in *Pinkston v. State*, 325 N.E.2d 497 (Ind. Ct. App. 1975), the Court of Appeals stated "Traditionally, where such a motion

[8] This is consistent with previous rulings wherein the Board ordered a reduction in an assessed value where a taxpayer failed to raise a prima facie case, but the Respondent presented evidence of a lower value for the property. *See e.g. Holsapple v. Monroe County Assessor,* Petition No. 53-006-06-1-5-00027 *et al*. (Ind. Bd. of Tax Rev., May 8, 2009) ("Nonetheless, Mr. Surface testified that that the property's value was around the $120,000 that they paid for it and described that sale price as the being the most indicative of the property's value. The Board commends Mr. Surface for his candor, given that the sale price is actually less than the property's assessments. And the Board finds that the sale demonstrates that the subject property is assessed for more than its true tax value."); and *Anderson v. Center Twp. Ass'r,* Petition No. 64-004-02-1-5-00027 (Ind. Bd. of Tax Rev., April 18, 2006) ("Despite having no duty to support the assessment, however, the Respondent testified that the Township Assessor's office, upon review of the property record card, discovered that the land assessment did not reflect that the subject property contains wetlands. Therefore, according to the Respondent, the land assessment should be reduced from $37,800 to $34,800. Further, the Respondent testified that the grade factor assigned to the improvements should be changed to a D grade, which reduces the improvement assessment from $77,000 to $61,600.")

was denied, the movant was put to an election. She could stand on the record and seek reversal on appeal, or she could proceed to present her own evidence. If she elected to proceed, the introduction of evidence constituted a waiver of any error in the ruling on the motion." 325 N.E. 2d at 498. In that case, the matter is decided on the record as a whole which promotes "substance over form" and serves the policy of deciding cases on their merits. *Id.*

37. Here the Petitioner's representative argued that the Petitioner's properties were over-valued for the 2009 assessment date based on the properties' income value. *Hume argument*. "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." MANUAL at 14. The income approach considers the property as an investment and therefore values the property based on the rent it will produce for its owner. *Id.* In support of its argument, the Petitioner's witness testified that she prepared an income analysis using the property's actual income and expenses, which she compared to other properties to determine if the income and expenses were a reasonable estimate of market values. *Bishop testimony*. Further, Ms. Bishop based her capitalization rate on values she obtained from nationally recognized published rates. *Id; Petitioner Exhibit 5*. While Ms. Bishop's employer was being compensated on a contingent fee basis and therefore her estimate of value may not be as persuasive as a similar analysis made by a non-contingently paid licensed appraiser, Ms. Bishop supported her calculation with verifiable market evidence. Thus, Ms. Bishop's valuation opinion is sufficient to show that the assessed value of Parcel No. 1 and Parcel No. 2 together should be $2.3 million for the March 1, 2009, assessment date.[9]

CONCLUSION

[9] The Petitioner appears to agree that if it proves a different value "which may be more or less than the prior year's assessed value," that value should apply. *Petitioner's Brief at 5.*

38. The Respondent failed to raise a prima facie case that the assessed values of Petitioner's Parcel No. 1 and Parcel No. 2 were correct. The Petitioner, however, presented probative evidence that the value of its properties totaled $2.3 million. The Board therefore finds that the value of both parcels together is $2.3 million for the March 1, 2009, assessment date.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of Parcel No. 1 and Parcel No. 2 together for the March 1, 2009, assessment date should be lowered to $2.3 million. The Petitioner's appeal of Parcel No. 3 was withdrawn by the Petitioner's counsel at hearing and therefore is not changed by the Board's ruling in these matters.

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
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.