

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition Nos.:** 35-005-07-1-4-00311  
35-005-08-1-4-00120  
**Petitioner:** First Federal Savings Bank  
**Respondent:** Huntington County Assessor  
**Parcel No.:** 35-05-15-100-211.900-005  
**Assessment Years:** 2007 & 2008

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. First Federal Savings Bank appealed the subject parcel’s 2007 and 2008 assessments. On February 23, 2010, the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations lowering the property’s assessments, although not to the amount that First Federal had requested.
2. First Federal responded by timely filing two Form 131 petitions with the Board. First Federal elected to have its appeals heard under the Board’s small claims procedures.
3. On August 25, 2010, the Board held a single hearing on both petitions through its duly appointed administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were present and sworn-in at hearing:
  - a) For First Federal: David Schaadt, Integrity Tax Consulting  
John M. Thistlethwaite, John M. Thistlethwaite Interests, LLC
  - b) For the Assessor: Terri Boone, Huntington County Assessor  
Julie Newsome, Deputy Assessor

**Facts**

5. First Federal owns four parcels totaling .81 acres. Those parcels contain, among other things, a bank building, an automatic teller machine, and a parking area. The bank is a 3,660-square-foot building with a 3,548-square-foot finished basement. First Federal has appealed only the parcel containing the bank building. For purposes of these findings and conclusions, the Board will call the four parcels as a whole the “subject property” and the parcel under appeal the “subject parcel.”

6. The PTABOA determined the following values for the subject parcel:  
Land: \$64,000                      Improvements: \$626,200                      Total: \$690,200
7. At the hearing, First Federal requested a total assessment for the subject parcel of \$360,000.

### **Parties' Contentions**

8. Summary of First Federal's evidence and arguments:
- a) John M. Thistlethwaite, a certified general appraiser, prepared an appraisal report estimating the subject property's market value-in-use at \$360,000 as of January 1, 2006. *Pet'r Ex. 1.*
  - b) Mr. Thistlethwaite certified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. 1 at 3.* He considered three generally accepted valuation approaches—the cost, sales-comparison, and income approaches. He decided against using the cost approach because he believed that the bank building's reproduction costs far exceeded the property's economic utility and that he therefore would have needed to apply an extensive amount of depreciation to reach a valuation conclusion. *Thistlethwaite testimony; Pet'r Ex. 1 at 43.*
  - c) In his sales-comparison analysis, Mr. Thistlethwaite analyzed the sales of four banks that sold for prices ranging from \$120,000 to \$316,000, or \$83,000 to \$127,000 per square foot of building area. *Pet'r Ex. 1 at 45-49.* Mr. Thistlethwaite verified each sale and viewed each comparable property. He had appraised a couple of those properties and knew both the physical characteristics of the buildings and the market areas in which they were located. *Thistlethwaite testimony.*
  - d) While all four banks were from Indiana, none was from Huntington. Instead, those banks were from Roanoke, North Manchester, Wabash, and Winchester, respectively. *Pet'r Ex. 1 at 45-59.* The sale from Roanoke was the only one from the subject property's immediate market area. *Thistlethwaite testimony.* According to Mr. Thistlethwaite, when there are no comparable sales located in the same county as the property being appraised, it is appropriate to "spread out" and look for comparable buildings. *Id.* Mr. Thistlethwaite noted that the Assessor's witness, Ms. Newsome, had also used sales outside of Huntington in her sales-comparison analysis. *Id.*
  - e) Mr. Thistlethwaite referred to "adjustments" in both his appraisal report and his testimony. *See Thistlethwaite testimony; Pet'r Ex. 1 at 44-46, 51.* But Mr. Thistlethwaite did not explain how he qualitatively or quantitatively adjusted his comparable properties' sale prices. *See Pet'r Ex. 1; Thistlethwaite testimony.* For example, while Mr. Thistlethwaite's report contains a chart with the heading: "Improved Sales Considered: Presented for Illustration on Adjustment Grid," that

chart simply lists the location, sale date, size, unadjusted sale price, and unadjusted price per square foot of building space for each comparable property. *See Pet'r Ex. 1 at 45.* Similarly, under the heading "Reconciliation of Direct Sales Comparison Approach," Mr. Thistlethwaite wrote:

The Sales Comparison Approach as illustrated above reflects a unit value bracketing of \$83.00 to \$127.00 per square foot of building area (including land value).

Considering the information presented in the property descriptions offered with the individual adjustments applied, I have placed emphasis on \$100 per sq. ft. or a value opinion of: Three Hundred Sixty Six Thousand Dollars-[](\$366,000)[.]

*Pet'r Ex. 1 at 51.*

- f) For his analysis under the income approach, Mr. Thistlethwaite had to use less reliable information than he had used in his sales-comparison analysis. *Thistlethwaite testimony.* That was because he could not find certified income for bank branches in Huntington County. *Id.; Pet'r Ex. 1 at 54.* Mr. Thistlethwaite therefore relied on leases for two bank branches from Fort Wayne. Those leases called for annual rent of \$14.85 per square foot and \$23.68 per square foot, respectively. *Pet'r Ex. 1 at 54.* Both banks were leased "on an absolute net basis to structural repairs." *Id.*
- g) Based on those two leases, Mr. Thistlethwaite estimated the subject property's potential income at \$4,200 per month or \$50,400 annually, which translated to rent of \$14 per square foot "on a triple net basis." *Pet'r Ex. 1 at 52.* When multiplied by the subject bank's 3,600-square-foot first floor, that rent translated to potential gross income of \$50,400. *Id.* On cross-examination, Mr. Thistlethwaite acknowledged that he did not separately apply the \$14-per-square-foot lease rate to the subject building's 3,548-square-foot finished basement. He instead followed "ANSI" guidelines for measuring buildings and viewed that basement as an influence on the likely rental rate for the building's first floor. *See Thistlethwaite testimony on cross-examination.* According to Mr. Thistlethwaite, without a finished basement, the subject property's lease rate might have been only \$11 to \$12 per square foot. *Id.*
- h) Next, Mr. Thistlethwaite determined the property's effective gross income by subtracting 10% for vacancy and collection loss. *Pet'r Ex. 1 at 52.* From that effective gross income, he further subtracted amounts for reserve replacements and repairs, common area maintenance, and insurance. *Id.* Mr. Thistlethwaite took his replacement reserves from a national investor survey (*Realty Rates*) for the fourth quarter of 2008. *Id.; Thistlethwaite testimony.* While Mr. Thistlethwaite acknowledged that it would have been better to use information from 2006, he testified that reserve requirements typically do not change much. *See Thistlethwaite testimony on cross-examination.*

- i) Having estimated the subject property's net operating income, Mr. Thistlethwaite turned his attention to determining a capitalization rate. He calculated that rate assuming financing comprised of 70% debt and 30% equity. *See Thistlethwaite testimony; Pet'r Ex. 1 at 53-54.* For the debt portion, Mr. Thistlethwaite used a 15-year mortgage at 8% interest, and a 9% return on equity. *Id.* He relied on Korpacz, a national publication, to determine that equity rate. *Id.* After adding the two components, Mr. Thistlethwaite arrived at a capitalization rate of 10.729%, which when divided into the property's estimated net operating income, yielded a value of \$353,000. *Pet'r Ex. 1 at 55.*
- j) In reconciling his different value estimates, Mr. Thistlethwaite gave the greatest weight to his conclusions under the sales-comparison approach. *Thistlethwaite testimony; Pet'r Ex. 1 at 56.* Thus, he estimated the subject property's market value-in-use at \$360,000 as of January 1, 2006. *Id.* At the Board's hearing, Mr. Thistlethwaite testified that the value would have been the same as of January 1, 2007. *Thistlethwaite testimony.*

9. Summary of the Assessor's evidence and arguments:

- a) The Assessor asked Mr. Thistlethwaite a number of questions about his appraisal. In responding to those questions, Mr. Thistlethwaite acknowledged that his sales-comparison grid did not show an adjustment for time. *Thistlethwaite testimony on cross-examination; Pet'r Ex. 1 at 45.* Similarly, Mr. Thistlethwaite acknowledged that he had included the subject bank's basement area in estimating replacement reserves and repairs but that he had used only the property's first floor when estimating its potential gross income. *Thistlethwaite testimony on cross-examination; Pet'r Ex. 1 at 52.* But that basement was valuable; First Federal used it for office space. *Newsome testimony.*
- b) Ms. Newsome also performed her own sales-comparison analysis. *Newsome testimony; Resp't Exs. 10-18.* Due to a lack of sales in Huntington County, she used three sales of banks from counties that were similar to Huntington County both in the number of real estate parcels within the county and the county's population. *Newsome testimony.* Ms. Newsome adjusted each property's sale price by 1% for each unit of difference to account for following ways in which the sold properties differed from the subject property: building age, building size, wall height, and lot size. *See Newsome testimony; Resp't Ex. 17.* She also adjusted two of the three properties' sale prices by 20% to account for differences in location. *Id.* Ms. Newsome's adjusted sale prices ranged from \$163.02 to \$214.37 per square foot of building area. She gave the most weight to a sale from Wabash County (\$214.37 per sq. ft.) because it had the least number of adjustments and was closest to the subject property. *Id.*
- c) According to Ms. Newsome, the range of values for the three comparable sales supported the subject property's assessment, which equated to \$188.58 per square foot of building space for the two years under appeal. *Newsome testimony.*

## Record

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

- a) The Form 131 petitions,
- b) The digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Certified Appraisal,  
Petitioner Exhibit 2: Notice of Hearing on Petition,  
Petitioner Exhibit 3: Form 115,

Respondent Exhibit 1: List of Witnesses and Exhibits,  
Respondent Exhibit 2: Letter from Integrity dated January 15, 2010,  
Respondent Exhibit 3: Form 131 filed by Integrity for 2007 assessment year,  
Respondent Exhibit 4: Form 115 issued February 23, 2010,  
Respondent Exhibit 5: Form 130 dated August 4, 2008,  
Respondent Exhibit 6: Assessment Analysis,  
Respondent Exhibit 7: Description of Subject Property,  
Respondent Exhibit 8: Aerial Photograph/GIS,  
Respondent Exhibit 9: Property Record Card,  
Respondent Exhibit 10: Approach to Value Analysis,  
Respondent Exhibit 11: Sale Comparable #1,  
Respondent Exhibit 12: Property Record Card for Comparable #1,  
Respondent Exhibit 13: Sale Comparable #2,  
Respondent Exhibit 14: Property Record Card for Comparable #2,  
Respondent Exhibit 15: Sale Comparable #3,  
Respondent Exhibit 16: Property Record Card for Comparable #3,  
Respondent Exhibit 17: Sales Comparison Adjustment Grid,  
Respondent Exhibit 18: Indiana County Map,  
Respondent Exhibit 19: Concluding Comments,  
Respondent Exhibit 20: Deed Restriction for 10 West Franklin Street, Huntington,  
Respondent Exhibit 21: E-mail Correspondence with Bank President,

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice dated November 22, 2010,  
Board Exhibit C: List of Witness and Exhibits from Assessor dated October 26, 2010,  
Board Exhibit D: List of Witnesses and Exhibits from Petitioner dated October 28, 2010,  
Board Exhibit E: Additional list of Witnesses and Exhibits from Petitioner dated November 4, 2010,  
Board Exhibit F: Hearing sign-in sheet.

d) These Findings and Conclusions.

## **Analysis**

### Burden of Proof

11. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically 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).
12. 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”).
13. Once the taxpayer establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner’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.

### Discussion

14. First Federal did not meet its burden of proof. The Board reaches this conclusion for the following reasons:
  - a) 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 (2006)). While an assessment determined using the Real Property Assessment Guidelines for 2002 – Version A is presumed to accurately reflect a property’s market value-in-use, a taxpayer may rebut that presumption using evidence that is consistent with the Manual’s definition of 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) *reh’g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). Such evidence includes information compiled using generally accepted appraisal principles. MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). In that vein, the Indiana Tax Court has said that “the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *Kooshtard Property VI*, 836 N.E.2d at 506 n.6.

- b) Here, First Federal relied solely on an appraisal prepared by Mr. Thistlethwaite in which he estimated the subject property's value at \$360,000. *Schaadt testimony; Thistlethwaite testimony; Pet'r Ex. 1*. Mr. Thistlethwaite certified that he prepared his appraisal in accordance with USPAP, and he used two generally accepted appraisal methods—the sales comparison and income approaches—to arrive at his valuation opinion. Nonetheless, as apparent on the face of Mr. Thistlethwaite's appraisal report and as highlighted by at least one of the Assessor's questions on cross-examination, Mr. Thistlethwaite's sales-comparison analysis was almost entirely conclusory. The same is true for a key assumption in his analysis under the income approach. The Board therefore finds Mr. Thistlethwaite's valuation opinion insufficiently reliable to be probative of the subject property's market value-in-use.
- c) While Mr. Thistlethwaite referred to "adjustments" both in his appraisal report and his testimony, he did not point to any specific ways in which he adjusted his comparable properties' sale prices.<sup>1</sup> And the Board cannot find any. Although the report's "Adjustment Grid" shows each property's actual sale price both in gross and as a function of price per square foot, that grid does not quantify any adjustments to those prices. *Pet'r Ex. 1 at 45*. And rather than explaining how he arrived at his chosen value for the subject property, Mr. Thistlethwaite instead summarily asserted: "Considering the information presented in the property descriptions offered with the individual adjustments applied, I have placed emphasis on \$100 per sq. ft." *Pet'r Ex. 1 at 51*. Mr. Thistlethwaite may have reached that conclusion after qualitatively comparing the four sold properties to the subject property. Unfortunately, he did not share that comparison with the Board.
- d) Mr. Thistlethwaite's analysis under the income approach suffers from a similar problem. To estimate the subject property's potential gross income, Mr. Thistlethwaite looked at leases for two Fort Wayne banks. Both those leases, however, called for higher rent than the \$14 per square foot that Mr. Thistlethwaite settled on for the subject property. In fact, one of those banks leased for \$23.68 per square foot. Yet Mr. Thistlethwaite did not explain why he estimated the subject property's rent at little more than half that amount. The lack of explanation is especially troubling given Mr. Thistlethwaite's admission on cross-examination that the subject building's finished basement would enhance the building's rental value. Of course, Mr. Thistlethwaite also testified that he might have chosen a rate as low as \$11 or \$12 per square foot if the subject building had not had a basement. But that still begs the question: What about the subject property made it so inferior to the Fort Wayne Banks?
- e) Certainly, there were physical differences between the subject property and the two Fort Wayne banks, and Fort Wayne might be a more lucrative market. The Board, however, can only guess whether those factors led to the disparity between the rents for the Fort Wayne banks and the comparatively lower rent that Mr. Thistlethwaite chose for the subject property. Similarly, the two Fort Wayne banks leased on an

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<sup>1</sup> The Assessor highlighted the lack of adjustments when, on cross-examination, Ms. Newsome had Mr. Thistlethwaite confirm that he had not made any time-related adjustments to his comparable properties' sale prices.

“absolute net basis to structural repairs,” while Mr. Thistlethwaite premised his income and expense estimates for the subject property on a “triple net” lease. *Pet’r Ex. 1 at 53-54*. Perhaps that difference played a role in Mr. Thistlethwaite’s decision. Again, the Board can only guess. In fact, Mr. Thistlethwaite did not explain how the two types of lease terms differed from each other. If anything, the Board infers that the leases on an “absolute net basis to structural repairs” made the tenants responsible for some of the types of repair costs that Mr. Thistlethwaite deducted as expenses when he calculated the subject property’s net operating income. Under those circumstances, one would expect the triple net rent to be a little higher than the rent for an otherwise comparable property leased on an absolute net basis.

- f) That being said, the Board recognizes that Mr. Thistlethwaite did explain some of the other judgments that he made in applying the income approach. But given the importance of estimating a property’s income to an appraiser’s ultimate valuation opinion and Mr. Thistlethwaite’s own skepticism about the reliability of his underlying data for that purpose, the Board cannot place any weight on Mr. Thistlethwaite’s conclusions.
- g) In finding that Mr. Thistlethwaite’s valuation opinion lacks probative weight, the Board recognizes that Mr. Thistlethwaite is a certified general appraiser, and that he certified that he prepared his appraisal and report in conformity with USPAP. The Board will not lightly disregard such an appraisal. But even a recognized appraisal expert’s testimony lacks probative value when it is conclusory. *See Inland Steel Co. v. State Bd. of Tax Comm’rs*, 759 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(finding that an expert’s testimony that the Producer Price Index (“PPI”) should be used to convert obsolescence from 1993 dollars to 1985 dollars lacked probative value where the expert did not explain what the PPI represented, how it was calculated, or why it was appropriate). Where, as here, an appraisal report is highly conclusory and the opposing party has challenged the appraiser’s valuation opinion, the appraiser must do something to explain the basic judgments underlying his opinion. He cannot simply assert his expertise and ask the Board to take his word for it. And that is essentially what First Federal has asked the Board to do in this case—simply take Mr. Thistlethwaite’s word for it. The Board declines that invitation.

### **Conclusion**

- 15. Because Mr. Thistlethwaite’s valuation opinion was too conclusory to carry probative weight, the Board finds that First Federal failed to prove that the subject property’s 2007 and 2008 assessments were wrong.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review affirms the subject property’s assessments for the March 1, 2007 and March 1, 2008 assessment dates.



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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>.