

REPRESENTATIVE FOR PETITIONER:

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

REPRESENTATIVE FOR RESPONDENT:

Sherry Stone-Lucas, Director of Real Estate, Lake County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Hammond Hotel, LLC,)	Petition Nos.: 45-026-06-1-4-00005
)	45-026-07-1-4-00003
)	45-026-08-1-4-00002
Petitioner,)	
)	Parcel No.: 007-26-34-0360-0001
)	
v.)	
)	
)	
Lake County Assessor,)	County: Lake
)	
)	Assessment Years: 2006, 2007, and 2008
Respondent.)	

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

March 11, 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 issue presented for consideration by the Board is whether the assessed value of the Petitioner's property is over-stated for the March 1, 2006, March 1, 2007, and March 1, 2008, assessment dates.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written document. The Petitioner filed its 2006 appeal on January 31, 2008, the Petitioner filed its 2007 appeal on March 2, 2009, and the Petitioner filed its 2008 appeal on October 13, 2009.
3. The PTABOA failed to hold a hearing on the Petitioner's appeals within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
4. The Petitioner filed appeals to the Board by filing Form 131 petitions for the 2006, 2007, and 2008 assessment years on July 14, 2010. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under a subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.")
5. The Board issued notices of hearing to the parties dated November 19, 2010.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on December 20, 2010, in Crown Point, Indiana.

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

For the Petitioner:

Carla D. Bishop, certified tax representative,
Sara H. Coers, Mitchell Appraisal, Inc.

For the Respondent:

Sherry Stone-Lucas, Director of Real Estate, Lake County.

8. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Summary of the issues,
Petitioner Exhibit 2 – Appraisal dated August 31, 2010,
Petitioner Exhibit 3 – Copies of the Form 131 petitions,
Petitioner Exhibit 4 – Letter dated November 29, 2010,
Petitioner Exhibit 5 – Letter dated December 16, 2010.

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9. The Respondent presented no exhibits.¹

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

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing dated November 19, 2010,
Board Exhibit C – Hearing sign-in sheet.

¹ On December 16, 2010, the Petitioner's representative faxed a letter to the Board in which the Petitioner's representative stated that the Respondent failed to provide a witness list, evidence list, and copies of the Respondent's exhibits as required by statute. The taxpayer, therefore, requested that any evidence or testimony presented by the Respondent at the hearing be excluded. On December 17, 2010, the Respondent sent a letter to the Board requesting a continuance of the matters pending. The Board denied the request for continuance.

11. The subject property is an 86-room hotel on 2.58 acres located at 7813 Indianapolis Boulevard, Hammond.
12. The ALJ did not conduct an on-site inspection of the subject property.
13. For 2006, the Assessor determined the assessed value of the property to be \$516,000 for the land, and \$1,982,000 for the improvements, for a total assessed value of \$2,498,000. For 2007, the Assessor determined the assessed value of the property to be \$710,700 for the land, and \$1,895,500 for the improvements, for a total assessed value of \$2,606,200 and for 2008, the Assessor determined the assessed value of the property to be \$710,700 for the land, and \$1,652,000 for the improvements, for a total assessed value of \$2,362,700.
14. The Petitioner contends the total assessed value should be \$950,000 for 2006, \$600,000 for 2007, and \$950,000 for 2008.

JURISDICTIONAL FRAMEWORK

15. 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; and (3) property tax exemptions; 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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

16. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).

17. 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. Wash. 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”).
18. 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.

PARTIES’ CONTENTIONS

19. The Petitioner contends that the assessed value of its property is over-stated for the March 1, 2006, March 1, 2007, and March 1, 2008, assessment years based on an appraisal. The Petitioner presented the following evidence in support of its contentions:
 - A. The Petitioner’s representative contends that the property is over-valued for the 2006, 2007 and 2008 assessment years based on an appraisal of its property. *Bishop argument*. In support of this contention, Ms. Bishop presented an appraisal prepared by Ms. Sara Coers, a certified general appraiser and MAI. *Petitioner Exhibit 2*. In her report, the appraiser estimated the value of the Petitioner’s property to be \$950,000 as of January 1, 2005, for the March 1, 2006, assessment year; \$600,000 as of January 1, 2006, for the March 1, 2007, assessment year; and \$950,000 as of January 1, 2007, for the March 1, 2008, assessment year. *Petitioner Exhibit 2*.

- B. Ms. Coers testified that in preparing her appraisal, she considered the specific attributes of the property, the market at the time of each assessment, and the applicable approaches to value the property. *Coers testimony*. According to Ms. Coers, the subject property is an older hotel, which is considered to have functional obsolescence due to its age, design, limited visibility, and lack of frontage on a major road. *Id.* In addition, Ms. Coers testified, for the March 1, 2008, assessment date, the property was considered to have external obsolescence due to the deterioration of the market. *Id.*
- C. Ms. Coers testified that she considered all three approaches to value the property. *Coers testimony*. However, she argues, she did not develop the cost approach because functional obsolescence can affect a hotel property even in the construction phase. *Id.* In addition, buyers would never consider the cost of construction when buying an existing property because they are motivated by the income stream. *Id.* Similarly, Ms. Coers testified that the sales comparison approach is useful only as a secondary check on a hotel property's value because there is a limited number of sales and because there are so many conditions that affect the sale of a hotel property that cannot be adequately adjusted for without an intimate knowledge of the sale. *Id.* Thus, Ms. Coers testified, she fully developed the income approach and only developed the sales comparison approach as a secondary check on her estimated values. *Id.*
- D. In preparing her income approach calculation, Ms. Coers testified that she considered the historical income and expenses for the subject property. *Coers testimony*. Ms. Coers then compared the historical income against the hotel's competitive set, which is "a peer group of competitive hotels selected by hotel management to benchmark the subject's performance." *Id.*; *Petitioner Exhibit 2, pp. 41-42*. Based on the property's performance index, Ms. Coers used the actual room rent in her income pro forma for each year. *Id.* Similarly, Ms. Coers testified that for the other revenue and expenses, she compared the actual revenue and expenses against comparable properties throughout the state and made adjustments to the revenue and expenses

where adjustments were warranted resulting in a net income for the property for each assessment year. *Coers testimony; Petitioner Exhibit 2, pp. 43-52.*

- E. Ms. Coers testified, however, that a hotel's value is comprised of four components: land, improvements, the going concern, and personal property. *Coers testimony; Petitioner Exhibit 2, page 40.* Thus, she argues, the only appropriate way to arrive at the value of the real estate is to isolate the net income attributable to the personal property and the going concern from the overall net income and capitalize the result. *Id.* According to Ms. Coers, she calculated the net income attributable to the personal property using the replacement cost of the personal property from the Petitioner's personal property tax return. *Coers testimony; Petitioner Exhibit 2, pp. 53-54.* She also deducted the value of the going concern by deducting the property's management and franchise fees. *Id.*
- F. To capitalize the net income, Ms. Coers testified that she referenced several sources for capitalization rates, including sales and market publications. *Coers testimony; Petitioner Exhibit 2, pp.55-56.* According to Ms. Coers, she felt that the average of the surveys for each year was consistent, reasonable, and accounted for the subject property's age, location, condition, and amount of risk. *Id.* Based on her research, Ms. Coers determined the overall capitalization rates to be 10.26% for 2006, 10.31% for 2007, and 10.31% for 2008. *Id.* After adding the net tax rates for each year, Ms. Coers testified that she calculated the loaded capitalization rates to be 14.92% for 2006, 14.87% for 2007, and 14.77% for 2008, resulting in an estimated value of the property of \$1,000,000 for the March 1, 2006, assessment year, \$600,000 for the March 1, 2007, assessment year, and \$980,000 for the March 1, 2008, assessment year. *Coers testimony; Petitioner Exhibit 2, page 57.*
- G. In order to trend her estimated values to the appropriate valuations dates, Ms. Coers testified that she considered several factors, including the change in the Consumer Price Index and the change in the market surveys of overall rates. *Coers testimony; Petitioner Exhibit 2, pp. 84-86.* According to Ms. Coers, the resulting retrospective

market values-in-use were \$950,000 for January 1, 2005, \$600,000 for January 1, 2006, and \$950,000 for January 1, 2007. *Id.*

- H. Finally, Ms. Coers testified that she also considered the sales comparison approach as a secondary check on the property's value. *Coers testimony*. Ms. Coers testified that she looked at ten sales throughout the state, but she concluded that all of the sales included the property's going concern, the value of the brand, the value of the operations, and personal property. *Id.*; *Petitioner Exhibit 2, pp. 61-83*. According to Ms. Coers, because there are no good recommendations for adjusting the sales adequately, she added personal property and going concern back into the subject property's value to determine if that resulted in a value per room that fell within the range of sales. *Id.* Because the subject property's value fell within the range of sales, Ms. Coers testified, she considered her estimates of value to be a valid result. *Id.*
22. The Respondent's representative, Ms. Stone-Lucas, contends the Petitioner did not submit the appraisal information when it filed the appeal. *Stone-Lucas testimony*. According to Ms. Lucas, because the assessor's office did not receive the Petitioner's information until December 2, 2010, the assessor did not have adequate time to employ an appraiser to do an appraisal or to review the Petitioner's appraisal. *Id.*

ANALYSIS

23. 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). 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.

24. 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.
25. 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. For the March 1, 2007, assessment, the valuation date was January 1, 2006, and for the March 1, 2008, assessment, the valuation date was January 1, 2007. *Id.*
26. Here, the Petitioner's representative argues that the Petitioner's property is over-valued based on its appraised value. *Bishop argument*. In support of this contention, Ms. Bishop submitted an appraisal prepared by Sara Coers that estimated the value of the Petitioner's property for the 2006, 2007, and 2008 assessment years. *Petitioner Exhibit 2*. Ms. Coers is an Indiana certified appraiser who attested that she prepared the Petitioner's appraisal in accordance with USPAP. *Id.* The appraiser used the income approach and sales comparison approach to value the property and she estimated the property's value as of the correct valuation dates. *Id.* Thus, the Board finds that the Petitioner raised a prima facie case that its property is over-assessed for each of the tax years at issue. *See Meridian Towers*, 805 N.E.2d at 479 (An appraisal performed in

accordance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued).

27. 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent failed to present evidence to rebut or impeach the Petitioner's appraisal.

CONCLUSION

28. The Petitioner raised a prima facie case. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the property's assessment should be \$950,000 for the 2006 assessment, \$600,000 for the 2007 assessment, and \$950,000 for the 2008 assessment.

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 the Petitioner's property for the March 1, 2006, March 1, 2007, and March 1, 2008, assessment dates should be changed.

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>