

REPRESENTATIVE FOR PETITIONER:
Carla D. Bishop, Meritax Property Tax Consultants

REPRESENTATIVE FOR RESPONDENT:
Laurie Renier, Kosciusko County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JVR Properties, LLC,	)	Petition No:	43-032-06-1-4-00019
)		
Petitioner	)	Parcel No:	04-726003-92
)		
v.)		
	)	County:	Kosciusko
Kosciusko County Assessor,	)	Township:	Wayne
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of
Kosciusko Property Tax Assessment Board of Appeals

April 8, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the property exceeds its market value-in-use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Carla D. Bishop of Meritax Property Tax Consultants (Meritax), on behalf of JVR Properties, LLC filed a Form 131 Petition for Review of Assessment on November 14, 2007, petitioning the Board to conduct an administrative review of the above petition. The Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on October 2, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on February 20, 2008, in Warsaw, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Carla Bishop, Meritax Property Tax Consultants

For the Respondent:

Richard Shipley, PTABOA Member

Brock Ostrom, PTABOA Member

Gerald Bitner, PTABOA Member

Susan Myrick, PTABOA Member

Laurie Renier, Kosciusko County Assessor
Jan Chiddister, Kosciusko County Deputy Assessor
Darby Davis, Kosciusko County Commercial Appraiser
Jennifer Ladd, Kosciusko County Commercial Assistant
Lori B. Shortz, Wayne Township Deputy Assessor

5. The Petitioner presented the following evidence:

Petitioner Exhibit 1 – Petitioner’s summary of issues,
Petitioner Exhibit 2 – Evaluation Report prepared by Meritax,
Petitioner Exhibit 3 – JVR Properties’ profit and loss statements for 2004 and 2005,
Petitioner Exhibit 4 – JVR Properties’ 2005 rent rolls,
Petitioner Exhibit 5 – Sales listing of the Woodland Plaza Shopping Center, dated September 10, 2007,
Petitioner Exhibit 6 – 1st quarter market survey from RealtyRates.com for 2005,
Petitioner Exhibit 7 – Letter from CB Richard Ellis to Mr. Russ Kucera, JVR Properties, dated November 28, 2007, and sales flyer on the Woodland Plaza Shopping Center,
Petitioner Exhibit 8 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, Notification of Final Assessment Determination – Form 115, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130 and JVR Properties’ property record card,
Petitioner Exhibit 9 – Power of Attorney from JVR Properties to Carla Bishop, dated February 15, 2008.

6. The Respondent presented the following evidence:

Respondent Exhibit 1 – Wayne Township’s proposed findings,
Respondent Exhibit 2 – Sales listing and sales flyer for the Woodland Plaza Shopping Center for November 4, 2005, and January 28, 2008,
Respondent Exhibit 3 – Sales listing for the MarketPlace Shopping Center for August 26, 2005, and July 30, 2007,
Respondent Exhibit 4 – Sales listing for Belt US 30 E Strip Center, dated July 18, 2007,
Respondent Exhibit 5 – Rental rate listing for Woodland Plaza Shopping Center, dated July 9, 2007,
Respondent Exhibit 6 – Rental rate listing for The MarketPlace of Warsaw, dated July 9, 2007,

- Respondent Exhibit 7 – Evaluation Report, JVR Properties’ profit and loss statements for 2004 and 2005, market survey and JVR Properties’ 2005 rent rolls presented by Meritax at PTABOA hearing,
- Respondent Exhibit 8 – List of advertised rents of strip centers in the Warsaw area,
- Respondent Exhibit 9 – Kosciusko County’s income approach to value on the subject property and current and historical cap rates,
- Respondent Exhibit 10 – Sales Disclosure from E.H. Properties to JVR Properties, dated October 18, 2002,
- Respondent Exhibit 11 – Sales Disclosure from United Properties to Warsaw Plaza, dated January 12, 2007, and United Properties’ property record card,
- Respondent Exhibit 12 – Respondent’s witness list for February 20, 2008,
- Respondent Exhibit 13 – Aerial map of the area of the subject property.

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

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing, dated January 15, 2008,
- Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a 31,006 square foot neighborhood shopping center containing 14 retail units on 5.35 acres located at 3620 Commerce Drive in Warsaw, Wayne Township in Kosciusko County, Indiana.

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

10. For 2006, the PTABOA determined the assessed value of the property to be \$368,800 for land and \$1,299,400 for the improvements, for a total assessed value of \$1,668,200.

11. At the Board hearing, the Petitioner requested an assessed value of \$1,400,000.¹

¹ On the Form 131 petition, Ms. Bishop indicated the subject property’s market value-in-use as \$900,000 for the assessment year of March 1, 2006.

JURISDICTIONAL FRAMEWORK

12. 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 Ind. 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

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. 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”).
15. 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 evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

16. The Petitioner contends the subject property is valued in excess of its market value-in-use. *Bishop testimony.*

17. The Petitioner presented the following evidence and testimony in regard to these issues:
 - A. The Petitioner argues the subject property is income producing and therefore the best indication of the property's market value-in-use would be derived from the income approach to value. *Petitioner Exhibit 1; Bishop testimony.* The Petitioner's representative testified that using the property's actual income and expenses, she determined the property's value to be \$800,000 to \$900,000 for 2004 and 2005. *Bishop testimony.* Under her "market proforma," however, Ms. Bishop determined a value of \$1,400,000. *Id.* In support of this contention, the Petitioner submitted an exhibit labeled "Evaluation Report" showing financial information for 2004 and 2005 along with financial information labeled "Proforma." *Petitioner Exhibit 2; Bishop testimony.*

 - B. For the 2004 and 2005 analyses, Ms. Bishop testified that she used actual income and expense information from the subject property with a market capitalization rate of 10.57%. *Id.* In her proforma analysis, Ms. Bishop testified she used a 2007 market rental rate of \$10.50 per square foot per year to calculate the gross income and the actual vacancy rate, plus a market expense ratio and a capitalization rate of 8.8% obtained from RealtyRates.com. *Petitioner Exhibit 2 and 6; Id.* The Petitioner further submitted its 2004 and 2005 profit and loss statements and its 2005 rent roll. *Petitioner Exhibit 3 and 4.* According to the Petitioner's witness, the rent rolls show that the property had a high vacancy rate in 2005. *Bishop testimony.*

 - C. The Petitioner also contends the property is over-valued based on the price at which it would sell. *Bishop testimony.* Ms. Bishop testified that the subject property is

currently listed for sale for \$1,800,000. *Petitioner Exhibit 7; Bishop testimony.* However, Ms. Bishop argued, the Petitioner does not expect to be able to sell the property for \$1,800,000. *Bishop testimony.* In fact, the property's listing agent, CB Richard Ellis, determined the property would likely sell for only \$1,400,000. *Id.* In support of this contention, the Petitioner submitted a letter from CB Richard Ellis to the Petitioner dated November 28, 2007, estimating the value of the subject property to be approximately \$1,400,000. *Petitioner Exhibit 7.*

D. Finally, the Petitioner argues that its 2002 purchase of the property is not a good indicator of the property's value for the 2006 assessment date. *Bishop testimony.* According to Ms. Bishop, the Petitioner purchased the property in 2002 for \$1,900,000. *Id.* Ms. Bishop argues, however, that if the Petitioner had known at the time of its purchase that the local Walmart would be moving to a different location, the Petitioner would not have paid the \$1,900,000 for the subject property. *Id.* In addition, Ms. Bishop contends the 2002 purchase price of the subject property is not an indication of the market value-in-use as of January 1, 2005. *Id.*

18. The Respondent presented the following evidence and testimony in regard to this issue:
- A. The Respondent contends the subject property is valued correctly. *Davis testimony.* According to Ms. Davis, the township calculated the value of the subject property using the Petitioner's evidence of advertised market rent and actual expense information received at the PTABOA hearing, which showed a range of values from \$971,818 to \$2,142,821. *Respondent Exhibit 5 and 9; Id.* Thus, the Respondent argues, almost any value can be obtained by changing small numbers in an income valuation. *Davis testimony.*
- B. In addition, the Respondent argues, the assessed value is correct based on the Petitioner's listing price for the property. *Davis testimony.* According to the

Respondent, the Petitioner listed the subject property for sale in 2005 for \$2,350,000.² *Respondent Exhibit 2; Davis testimony.* Although the Petitioner lowered the listed sale price of the subject property to \$1,800,000 in 2008, the current listing price is still above the assessed value of the property. *Respondent Exhibit 2; Id.* The Respondent argues, however, that the 2008 list price should not be considered for the January 1, 2005, valuation date. *Davis testimony.*

- C. The Respondent also contends the assessment is correct based on the listed sales prices or market value of other neighboring shopping centers. *Respondent Exhibits 2, 3, 4 and 11; Davis testimony.* According to Ms. Davis, the per square foot price of the properties listed for sale range from \$64.29 per square foot to \$70.65 per square foot in 2006. *Id.* Further, the United property sold for \$600,000 or \$58.82 per square foot on January 12, 2006. *Respondent Exhibit 11; Id.* According to Ms. Davis, the subject property is currently assessed at \$56.12 per square foot, which is well below the square foot price for similar neighborhood shopping centers in the area. *Respondent Exhibit 1; Id.*
- D. Finally, the Respondent agrees the subject property was purchased on October 18, 2002, for \$1,900,000 by the Petitioner. *Respondent Exhibit 10; Davis testimony.* The Respondent disagrees, however, that Walmart's move to a different location had any affect on the \$1,900,000 purchase price of the subject property. *Davis testimony.* According to Ms. Davis, Walmart moved to its new location in November 2001. *Id.*

² Ms. Davis testified that a listed sale price is an indication of market value. *Davis testimony.* Ms. Davis further testified the county's research of the local market has shown that most of the commercial properties listed for sale in the area tend to sell for approximately 10% under the listed price. *Id.*

ANALYSIS

19. Real property is assessed based on its “true tax value.” True tax value is “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.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
20. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation of how it demonstrates or is relevant to, the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
21. The Petitioner contends the subject property should be valued using the income approach. *Bishop testimony*. According to Ms. Bishop, she calculated the value of the Petitioner’s property using the property’s 2004 and 2005 rents and expenses. *Id.* She also presented a proforma analysis based on market rents and expenses, the property’s actual vacancy rate and a capitalization rate from RealtyRate.com. *Petitioner Exhibits 2 and 6; Id.* Considering the proforma calculation and a CB Richard Ellis opinion of value, the Petitioner argues, the market value-in-use of the subject property would be approximately \$1,400,000. *Petitioner Exhibit 7; Id.*

22. “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, thus, focuses on the intrinsic value of the property, not upon the Petitioner’s operation of the property because property-specific rents or expenses may reflect elements other than the value of the property “such as quality of management, skill of work force, competition and the like.” *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E. 2d 613, 619 (Ind. Tax Ct. 1992). See also MANUAL at 5 (“[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data”).
23. Here the Petitioner offered 2004 and 2005 rental and expense information from the subject property. The Petitioner, however, provided no evidence to demonstrate whether the income and expenses were typical for comparable properties in the market. Thus, any low rental income or high expense levels may be attributable to the Petitioner’s management of the properties as opposed to their market value. See *Thorntown Telephone Company*, 588 N.E.2d at 619. See also, *Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property).
24. Ms. Bishop also presented a “proforma” analysis using market rents and expenses but failed to present any evidence to show how she determined the market rent or expense ratios. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioner*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). The Proforma

calculation also used the Petitioner's actual vacancy and recovery income without presenting any evidence that such values were typical for the market.

25. Additionally, the Petitioner did not adequately support its capitalization rate. A capitalization rate "reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Here the Petitioner based its capitalization rate on a RealtyRates.com market survey. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. It is not sufficient to merely present a print out of a website and purport to rely on the data without showing that RealtyRates.com is a credible data service that is typically relied upon by appraisal professionals as representative of the local market.
26. Finally, the Petitioner failed to show that its income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, the Petitioner's income approach calculation lacks probative value in this case. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
27. In addition, the Petitioner argued that its real estate agent estimated the property's market value to be approximately \$1,400,000 in a letter dated November 28, 2007. *Petitioner Exhibit 7*. The Petitioner provided no evidence, however, that the agent used generally accepted appraisal principals to estimate the value. Consequently, the opinion of value is

not probative of the subject property's market value-in-use. Further, the required valuation date for a 2006 assessment is January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. The Petitioner failed to explain how the 2007 estimate of value demonstrates or relates to the property's value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 812 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005).

28. The Petitioner failed to present probative evidence in support of its contentions.³ Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

29. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

³ To the extent that the Petitioner sought to raise an issue of value based on its high vacancy rate, we find that the Petitioner failed to adequately present such a case. High vacancy could support a claim for obsolescence. For a Petitioner to show that he is entitled to receive an adjustment for obsolescence, however, the Petitioner must both identify the causes of obsolescence the Petitioner believes is present and quantify the amount of obsolescence he believes should be applied to its property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Here the Petitioner failed to present evidence regarding either the cause of the purported obsolescence or the amount of obsolescence it contends is present in the property. Merely contending the property has a high vacancy rate is insufficient to prove an error in the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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> .