

REPRESENTATIVE FOR PETITIONER:
Thomas N. Logan, Withered, Burns & Persin, LLP

REPRESENTATIVE FOR RESPONDENT:
Phyl Olinger, Indiana Assessment Service

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Millennium Real Estate	)	Petition No.:	04-007-08-1-3-00007
Investment, LLC,	)		04-007-08-1-3-00007A
	)		04-007-08-1-3-00007B
)		
Petitioner,)		
	)	Parcel No.:	04-14-13-444-004.000-007
	)		04-14-13-443-001.000-007
v.	)		04-14-13-443-003.000-007
)		
)		
Benton County Assessor,	)	County:	Benton
	)	Township:	Grant
)		
Respondent.	)	Assessment Year:	2008

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

July 6, 2010

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 values of the Petitioner's parcels are over-stated.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeals by filing Form 130 Petitions to the Property Tax Assessment Board of Appeals for Review of Assessment on July 2, 2009. The Benton County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations on October 12, 2009.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on November 23, 2009, petitioning the Board to conduct an administrative review of the properties' 2008 assessments.

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), Ellen Yuhan, held a hearing on April 7, 2010, in Fowler, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

L. Gene McGowen, President, Millennium Real Estate Investment, LLC,
Dale Webster, MAI Appraiser, Cornerstone Appraisal Group,

For the Respondent:

Phyl Olinger, Indiana Assessment Service,
Kelly Rose, Benton County Assessor.

6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Exhibit coversheet,
 - Petitioner Exhibit 2 – Summary of the Petitioner’s contentions and testimony,
 - Petitioner Exhibit 3 – Appraisal by Dale Webster,
 - Petitioner Exhibit 4 – Property record cards for the appealed parcels,
 - Petitioner Exhibit 5 – Asset Purchase Agreement, dated June 30, 2008,
 - Petitioner Exhibit 6 – Form 115, Notice of Final Assessment Determination,
 - Petitioner Exhibit 7 – HUD-1 Settlement Statement, dated June 30, 2008.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Exhibit coversheet,
 - Respondent Exhibit 2 – Summary of testimony,
 - Respondent Exhibit 3 – Power of Attorney,
 - Respondent Exhibit 4 – Property record cards for the appealed parcels,
 - Respondent Exhibit 5 – Appraisal by Wayne G. Baer,
 - Respondent Exhibit 6 – Sales disclosure form for the subject property, dated June 30, 2008,
 - Respondent Exhibit 7 – Excerpt of the Baer appraisal,
 - Respondent Exhibit 8 – Form 115, PTABOA determination,
 - Respondent Exhibit 9 – Transcript of the October 8, 2009, PTABOA hearing,
 - Respondent Exhibit 10 – Representative Signature and Attestation.

8. 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 – Reschedule dated February 22, 2010,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject properties are an industrial parcel with a 52,980 square foot building and four Quonset storage buildings located at 209 W. Mauzy Street, Parcel No. 04-14-13-443-003.000-007 (Parcel No. 3); a vacant agricultural parcel located on Mauzy Street, Parcel No. 04-13-14-444-004.000-007 (Parcel No. 4); and a vacant residential parcel located on Mauzy Street, Parcel No. 04-14-13-001.000-007 (Parcel No. 1). In these findings, the Board will address the Petitioner’s three parcels collectively as “the property”.

10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2008, the PTABOA determined the assessed values of the properties to be \$199,100 for the land, and \$409,000 for the improvements, for a total assessed value of \$608,100 for Parcel No. 3; \$21,500 for the land on Parcel No. 4; and \$10,200 for the land on Parcel No. 1.
12. The Petitioner contends the total assessed value for the three parcels should be \$193,817.

JURISDICTIONAL FRAMEWORK

13. 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

14. 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).
15. 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”).

16. 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

17. The Petitioner contends that the assessed value of its property is over-stated based on its purchase price and appraised value. The Petitioner presented the following evidence in support of its contentions:

- A. The Petitioner’s witness, Mr. McGowen, contends the property was purchased in an arm’s length transaction on June 30, 2008, for \$193,817. *McGowen testimony*. In support of this contention, the Petitioner presented the settlement statement and the asset purchase agreement.¹ *Petitioner Exhibits 5 and 7*. Mr. McGowen admitted that the property was never listed with a realtor. *McGowen testimony*. However, he argues, the previous owner tried for a couple of years to sell the property but was unsuccessful. *McGowen testimony*. Mr. McGowen further admits that the sales disclosure form he signed under penalties of perjury stated that the sale was a distressed sale, but he argues that was a mistake. *Id.*; *Respondent Exhibit 6*. According to Mr. McGowen, the seller was having financial difficulties, but the property was not in foreclosure, nor was there a threat of foreclosure. *McGowen testimony*.

¹ The Petitioner’s Asset Purchase Agreement shows that the Petitioner’s purchase price was \$535,000. *McGowen testimony*; *Petitioner Exhibit 5*. However, only \$193,817 of that amount was allocated to the purchase of the parcels at issue. *Id.* The remaining amounts were allocated to the purchase of two other properties and the purchase of the accounts receivables, inventory, equipment, and goodwill of the company along with non-compete agreements from the business and the sellers. *Id.*

- B. The Petitioner further contends that its property is over-valued based on an appraisal of the property. *Logan argument*. In support of this contention, the Petitioner presented the appraisal of Mr. Dale Webster, a certified general appraiser and MAI. *Petitioner Exhibit 3*. Mr. Webster estimated the value of the property to be \$325,000 as of March 1, 2008. *Id.*
- C. Mr. Webster testified that he inspected the property in February of 2010 and noted the property had varying types of construction, the buildings were of different ages and levels of condition, and the properties had different uses. *Webster testimony*. According to Mr. Webster, he observed that the property exhibited functional obsolescence, particularly in the placement of the overhead doors and dock doors. *Id.* Based on the property's characteristics, Mr. Webster determined that the cost approach would not reliably estimate the value of the property. *Id.*
- D. Mr. Webster testified that he first estimated the value of the property using the income approach. *Webster testimony*. According to Mr. Webster, he used similar properties that had been leased and made adjustments to the lease rates for differences in size, type of construction, location, and usage of those comparable properties. *Id.* After making those adjustments, Mr. Webster calculated the price per square foot to be \$2.11, for an annual gross rent of \$111,840. *Id.*; *Petitioner Exhibit 3*. Mr. Webster testified that he deducted 35% for vacancy and rent loss which resulted in an effective gross income of \$72,696. *Id.* In addition, Mr. Webster deducted \$32,150 for expenses resulting in a net operating income at \$40,546. *Id.* Finally, Mr. Webster capitalized the net operating income using a capitalization rate of 11.49% resulting in an estimated value of \$353,000 for the property using the income approach. *Id.* In response to questions, Mr. Webster testified that he believed the major difference between his estimate of value using the income approach and Mr. Baer's estimate was because there was a significant increase in vacancy and rent loss, which Mr. Baer did not consider. *Webster testimony*.

- E. Mr. Webster also estimated the value of the property using the sales comparison approach to value. *Webster testimony; Petitioner Exhibit 3*. According to Mr. Webster, he located five comparable properties and made adjustments for financing, date of sale, and market conditions, as well as for physical differences in the properties such as size, location, construction quality, and site size. *Id.* Using the sales comparison approach, Mr. Webster estimated the value of the property to be \$325,000. *Id.* In response to questions, Mr. Webster testified that he believed the difference between his appraised value of \$325,000 and Mr. Baer's value of \$650,000 was simply a difference of opinion. *Webster testimony*. According to Mr. Webster, Mr. Baer made no reference to functional or external obsolescence and did not describe the westernmost building as being in rough condition or as more of a barn than an industrial building. *Id.*
- F. Finally, Mr. Webster testified that, although he valued the property as of March 1, 2008, there would not be a significant change in the value of the property from 2007 to 2008 or 2009. *Webster testimony*. According to Mr. Webster, the change in value would be no more than \$10,000 or \$15,000. *Id.*
17. The Respondent contends the property's assessed value is correct and equitable. The Respondent presented the following evidence in support of the assessment:
- A. The Respondent's representative, Ms. Olinger, contends the property is correctly assessed based on its appraised value. *Olinger argument*. In support of this contention, Ms. Olinger submitted an appraisal report prepared by Wayne G. Baer, an Indiana certified appraiser and MAI. *Respondent Exhibit 5*. The appraiser valued the property according to the Uniform Standards of Professional Appraisal Practices (USPAP) and used the income approach and sales comparison approach to value. *Id.* According to the appraisal report, Mr. Baer estimated the value of the property to be \$640,000 as of January 10, 2007. *Id.*

- B. Ms. Olinger further argues that the Board should give little weight to the Petitioner's appraisal. *Olinger testimony*. According to Ms. Olinger, the Petitioner's appraiser valued the property as of March 1, 2008, whereas the valuation date for the March 1, 2008, assessment is January 1, 2007. *Id.* The Respondent's appraisal, on the other hand, values the property as of January 10, 2007, which is within days of the proper valuation date. *Id.*
- C. Similarly, Ms. Olinger contends, the Petitioner's purchase of the property should be given little weight because the sale was not an arm's-length transaction. *Olinger testimony*. In support of this contention, Ms. Olinger presented the sales disclosure form filed by the Petitioner. *Respondent Exhibit 6*. According to the form, the sale was "a result of foreclosure or express threat of foreclosure, divorce, court order, judgment, condemnation, or probate." *Respondent Exhibit 6*. Further, Ms. Olinger contends, the property was not listed with a realtor and was not exposed on the open market, nor was an appraisal or comparable sales analysis done to establish the purchase price. *Olinger testimony*. Thus, Ms. Olinger concludes, the Petitioner's multi-parcel purchase was a distressed sale and not valid as an arm's-length transaction. *Id.*

ANALYSIS

18. 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.

19. 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.
20. 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
21. The Petitioner first argues that its property is over-valued based on the Petitioner's purchase of the parcels. *Logan argument*. In support of this contention, the Petitioner presented a settlement statement and asset purchase agreement. *Petitioner Exhibits 5 and 7*.
22. The sale of a property can be the best evidence of the property's value. Here, however, the Petitioner's purported purchase price fails to raise a prima facie case that its assessment is in error for several reasons. First, the sale occurred almost eighteen months after the January 1, 2007, valuation date and the Petitioner failed to provide any evidence relating the June 30, 2008, purchase price to the property's January 1, 2007, value. Further, the Petitioner's purchase price totaled \$535,000. The only evidence that the three parcels at issue in this appeal were purchased for \$193,817 was an asset allocation between the parties. The Petitioner presented no evidence to support the values in its allocation. Standing alone, the allocation is little more than an unsupported conclusion.

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 Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

23. In addition, the Petitioner's sales disclosure form indicates that the sale was the result of a "foreclosure" or "threatened foreclosure." While Mr. McGowen argued that the property was not, in fact, threatened with foreclosure, Mr. McGowen and the sellers signed the sales disclosure form under penalties of perjury. Therefore, without substantial evidence to the contrary, the Board finds that the sale is not probative of the property's market value-in-use. This finding is supported by Mr. McGowen's testimony that the Petitioner "got a deal" on the property. This finding is further supported by the Petitioner's appraisal, which values the property at \$325,000 – or more than 40% higher than the Petitioner purportedly paid for the three parcels at issue in this appeal. Moreover, the property was not listed for sale. According to Mr. McGowen, the seller only offered the property to a few "contacts." While Mr. McGowen argues this is common for "closely-held companies in small communities," it strains the definition of a market sale. Thus, the Board finds the Petitioner failed to raise a prima facie case on the basis of its purchase of the property.
24. The Petitioner also argues that its property is over-valued based on its appraised value. *Logan argument*. In support of this contention, the Petitioner submitted an appraisal prepared by Dale Webster that estimated the value of the property to be \$325,000 as of March 1, 2008. *Petitioner Exhibit 3*. Mr. Webster is an Indiana certified appraiser who attested that he prepared the Petitioner's appraisal in accordance with USPAP and used the income approach and sales comparison approach.² *Id.* While generally the 2008 assessment is to reflect the value of a property as of January 1, 2007, pursuant to 50 IAC 21-3-3(a), "local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March

² Mr. Webster assigned little weight to his income analysis because, he argued, the category of property at issue in this appeal is typically owner occupied.

1, 2006, assessment date. For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.” Because the Petitioner’s appraiser estimated the property’s value using three properties that sold in 2007, the Board finds the appraisal has some probative value. Thus, the Board finds that the Petitioner raised a prima facie case that its property is over-assessed. *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).

25. 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 presented an appraisal of the subject property prepared by Wayne G. Baer, an Indiana certified appraiser, as of January 10, 2007.³ Like Mr. Webster, Mr. Baer deemed the cost approach to be an unreliable indication of value and therefore only applied the income approach and the sales comparison approach to value the property. Based on his review of the property, Mr. Baer estimated the value of the property to be \$640,000. Therefore, the Board concludes that the Respondent rebutted the Petitioner’s evidence. *See Meridian Towers*, 805 N.E.2d at 479.
26. Both the Petitioner’s appraisal and the Respondent’s appraisal occurred sufficiently contemporaneously with the statutory valuation date to be probative. The Board must, therefore, weigh the evidence presented by both parties and determine the most persuasive evidence of the property’s value.
27. In their income approaches to value, Mr. Baer calculated a gross rent of \$1.85 per square foot and deducted 20% for the vacancy rate; whereas Mr. Webster calculated \$2.11 per square foot and applied a 35% vacancy rate. Mr. Webster, however, provided no evidence of the properties he used to compare with the Petitioner’s property. Mr. Baer on

³ The Baer appraisal was submitted for a 2007 appeal on the subject property by the previous owner, Mr. Robinson.
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the other hand provided pictures and leasing information for five properties in support of his income analysis. Thus, the Board gives more weight to the Respondent's comparable analysis. Further, Mr. Webster attributed the higher vacancy rate in his appraisal to the Respondent's appraiser failing to allow for a "significant increase in vacancy" in his income valuation. However, Mr. Webster admitted the market was declining. Because the Respondent's appraisal valued the property within days of the proper valuation date, the Board finds its vacancy rate more credible than the higher vacancy rate used by the Petitioner's appraisal which valued the property as of fourteen months beyond the valuation date in a declining market.

28. Both appraisals also estimated the value of the property using the sales comparison approach. Mr. Baer used five comparable properties that sold between August of 2003 and March of 2006 and valued the property as of January 10, 2007. Mr. Webster similarly used five properties, but those properties sold between May of 2007 and December of 2009 and he valued the property as of March 1, 2008. Thus, while the Respondent's appraisal values the property within days of the valuation date, the Petitioner's appraisal values the property more than fourteen months after the proper valuation date. More troubling – rather than adjusting the 2008 and 2009 sales upward to reflect the healthier market that existed in 2007, Mr. Webster adjusted the 2007 sales downward to reflect the declining market that existed a year or two later. Mr. Baer also inspected the property on January 25, 2007, which is less than one month after the valuation date; whereas Mr. Webster's inspection of the subject property took place on February 17, 2010 – almost two years after the March 1, 2008, assessment date, and three years after the relevant valuation date. Finally, in Mr. Webster's sales comparison approach, he made net adjustments of -12%, -48%, -95%, -40%, and -36% to his comparable properties' sale prices; whereas Mr. Baer's net adjustments were 10%, -15%, -15%, -25%, and -30% respectively. This indicates that Mr. Baer's comparable properties were more similar to the subject property than Mr. Webster's. The Board therefore finds that the Baer appraisal is the better indicator of the property's market value-in-use.

CONCLUSION

29. The Petitioner raised a prima facie case. The Respondent rebutted the Petitioner’s case. The Board finds that the weight of the evidence supports the Respondent and holds that no change in the Petitioner’s assessment is warranted.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessed values should not be changed.

ISSUED: _____

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>