

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

**Petition Nos.:** 45-023-06-1-3-00001  
45-023-06-1-3-00002  
45-023-06-1-3-00003  
**Petitioner:** President's Plaza, LLC  
**Respondent:** Lake County Assessor  
**Parcel Nos.:** 45-06-01-483-015.000-023  
45-06-01-483-016.000-023  
45-06-01-483-017.000-023  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated assessment appeals with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) on February 8, 2008.
2. The PTABOA issued its determinations on April 12, 2011.
3. The Petitioner filed its appeals with the Board on May 19, 2011. The Petitioner elected to have its cases heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 24, 2011.
5. The Board held an administrative hearing on October 3, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:
  - For Petitioner: Rex D. Hume, Taxpayer's representative,  
Robert Xenos, Petitioner's agent
  - For Respondent: Robert W. Metz, Lake County Assessor's representative.

## Facts

7. The subject property is a 13,050 square foot office/retail strip center located at 6406-16 Calumet Avenue in Hammond, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of Parcel No. 45-06-01-483-015.000-023 (Parcel 15) to be \$300,600 for the land and \$1,114,800 for the improvements, for a total assessed value of \$1,415,400; the assessed value of Parcel No. 45-06-01-483-016.000-023 (Parcel 16) to be \$32,700 for the land and \$2,200 for the improvements, for a total assessed value of \$34,900; and the assessed value of Parcel No. 45-06-01-483-017.000-023 (Parcel 17) to be \$49,100 for the land and \$3,200 for the improvements, for a total assessed value of \$52,300.
10. The Petitioner requested an assessment of \$1.1 million for all three parcels.

## Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its properties' assessments:
  - a. The Petitioner's representative contends that the properties are over-assessed based on the properties' appraised value. *Hume testimony*. In support of this contention, the Petitioner presented an appraisal prepared by Lee & Associates, Inc., in accordance with the Uniform Standards of Professional Appraisal Practice. *Petitioner Exhibit 2*. The appraiser, a certified general appraiser and MAI, valued the Petitioner's properties using the three approaches to value and estimated their value to be \$1.1 million as of December 1, 2004. *Id.*
  - b. The Petitioner's representative further contends that, because the valuation date for the March 1, 2006, assessment was January 1, 2005, the appraisal values the property within a month of the valuation date. *Hume testimony*. Despite the proximity of the appraisal date to the valuation date, Mr. Hume testified that he looked at trending indexes to see if there was a need to adjust the appraised value. *Id.* According to Mr. Hume, the best evidence he found was the Bureau of Labor Statistics Producer Price index for leasing of shopping centers and retail stores which indicated there was a decline in lease prices of 1%. *Id.*; *Petitioner Exhibit 1*. Because the index is not seasonally adjusted, however, Mr. Hume contends that such a small a change in prices indicated that no time adjustment was required. *Id.*
  - c. Finally, Mr. Hume contends that the assessor's "income approach" valuation should be given little weight. *Hume argument*. According to Mr. Hume, the assessor's analysis was based on a methodology error because the net operating income he used included tax reimbursements, but his expenses did not include the property taxes. *Hume testimony*; *Respondent Exhibit 1*. Because the assessor failed to subtract the

property taxes as an expense or capitalize the property taxes, Mr. Hume contends, the assessor's value for the properties was too high. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

The Respondent's representative, Mr. Metz, contends that the properties' assessments were correct for 2006 based on the income approach to value. *Metz testimony.* According to Mr. Metz, he extracted the net operating income from a prior representative's submission and applied the 10.5% capitalization rate used by the Petitioner's appraiser. *Id.; Respondent Exhibit 1.* Mr. Metz contends that the PTABOA approved his income approach calculation. *Metz testimony.*

**Record**

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

- a. The Petitions,
- b. The compact disk recording of the hearing labeled President's Plaza,
- c. Exhibits:

- Petitioner Exhibit 1 – Memorandum of appeal issues,
- Petitioner Exhibit 2 – Summary Appraisal Report prepared by Lee & Associates, Inc.,
- Petitioner Exhibit 3 – Form 131 petitions,
- Petitioner Exhibit 4 – PTABOA determinations,
- Petitioner Exhibit 5 – Request for review of assessment,
- Petitioner Exhibit 6 – Power of attorney,

- Respondent Exhibit 1 – Income approach prepared by Robert White and excerpt of the appraisal report,

- Respondent Exhibit 2 – Income approach prepared by Rex Hume,

- Board Exhibit A – Form 131 petitions,
- Board Exhibit B – Notices of Hearing dated August 24, 2011,
- Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

**Analysis**

14. The most applicable governing cases are:

- a. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b. 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. Washington Township 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”).
  - c. 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 478.
15. The Petitioner raised a prima facie case for a reduction in its properties’ assessed values. The Board reached this decision for the following reasons:
- a. 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). Appraisers have traditionally 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the Guidelines. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.*
  - b. A property’s market value-in-use as determined using the Guidelines is presumed to be accurate. *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 Ct. 2006). A taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Taxpayers may also offer actual 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.
  - c. 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.

- d. The Petitioner here argues that its properties were over-valued for the 2006 assessment year based on the properties' appraised value. *Hume argument*. In support of its contention, the Petitioner submitted an appraisal prepared by Lee & Associates, Inc., that estimated the value of the properties to be \$1.1 million as of December 1, 2004. *Petitioner Exhibit 2*. The appraiser is an Indiana certified appraiser and MAI who attested that he prepared the Petitioner's appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* Further, the appraisal values the property within one month of the relevant valuation date. *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that its properties were over-assessed for the March 1, 2006, assessment.
- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
- f. Here, the Respondent argues that the Petitioner's properties' assessed values were correct for 2006 based on an income approach calculation. *Metz argument*. In support of this contention, Mr. Metz purports to present an income approach valuation in the amount of the properties' assessed values as established by the PTABOA. The Board notes, however, that the only "income approach" calculations that the assessor's representative presented were a calculation from Uzelac & Associates that valued the property at \$1,381,000 and a second calculation that valued the property at \$973,600. While it is possible that applying a 10.5% capitalization rate to the net operating income in one of those calculations would support the assessed values as Mr. Metz argues, nowhere in the record is there any such analysis and the Board will not construct such an analysis for the Respondent. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis." *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). The Board therefore finds that the Respondent failed to rebut the Petitioner's prima facie case.

### **Conclusion**

16. The Petitioner raised a prima facie case that its properties were over-valued for the March 1, 2006, assessment year. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and determines the value of all three parcels together was \$1,100,000 for the 2006 assessment year.

**Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the subject properties should be reduced to \$1,100,000 for the three parcels together for the March 1, 2006, assessment.

ISSUED: \_\_\_\_\_

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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

-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>>