

REPRESENTATIVE FOR PETITIONER:
Cindy Stanford, Integrity Financial & Tax Consulting

REPRESENTATIVE FOR RESPONDENT:
Christopher A. Buckley, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Rodgers, LLC,)	Petition Nos.: 64-004-07-1-4-00064
)	64-004-08-1-4-00013
Petitioner,)	
)	Parcel No.: 64-09-26-101-003.000-004
v.)	
)	
Porter County Assessor,)	County: Porter
)	
Respondent.)	Assessment Years: 2007 and 2008

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

December 1, 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 was over-stated for the 2007 and 2008 assessment years.

PROCEDURAL HISTORY

2. The Petitioner initiated its 2007 assessment appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) on March 25, 2009. The Petitioner filed its appeal for the 2008 assessment year on October 20, 2009. The PTABOA issued its assessment determinations on January 31, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on March 4, 2011, petitioning the Board to conduct an administrative review of its property's 2007 and 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 September 19, 2011, in Valparaiso, Indiana.
5. The following persons were sworn at the hearing:
 - For the Petitioner:
 - Cindy Stanford, Integrity Financial & Tax Consulting,
 - John Thistlethwaite, Appraiser, John M. Thistlethwaite Interests, LLC,
 - For the Respondent:
 - Jon M. Snyder, Porter County Assessor,
 - Timothy A. Jorczak, Director of Commercial Operations, Porter County.

6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Notice of Hearing,
 - Petitioner Exhibit 2 – PTABOA determination,
 - Petitioner Exhibit 3 – Opinion of Market Value-in-Use of Automotive Dealership Building and Land.
7. The Respondent did not present any exhibits.
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, dated August 10, 2011,
 - Board Exhibit C – Hearing sign-in sheet.
9. The subject property is an auto dealership with a 24,694 square foot building on 5.46 acres located at 1756 U.S. Highway 30, in Valparaiso, Indiana.
10. The ALJ did not conduct an on-site inspection of the property.
11. For 2007, the PTABOA determined the assessed value of the Petitioner’s property to be \$1,026,800 for the land, and \$1,122,000 for the improvements, for a total assessed value of \$2,148,800. For 2008, the PTABOA determined the assessed value of the property to be \$1,026,800 for the land, and \$1,122,100 for the improvements, for a total assessed value of \$2,148,900
12. The Petitioner contends the assessed value of its property should be \$1,482,000 for 2007 and 2008.

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits 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 was over-stated for 2007 and 2008 based on the property's appraised value. The Petitioner presented the following evidence in support of its contentions:
- A. The Petitioner presented an appraisal prepared by John Thistlethwaite, a certified general appraiser. *Petitioner Exhibit 3*. Mr. Thistlethwaite testified that he performed an analysis and prepared his report in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Thistlethwaite testimony; Petitioner Exhibit 3*. In his appraisal report, Mr. Thistlethwaite estimated the value of the property to be \$1,482,000 as of January 1, 2006. *Id.*
- B. Mr. Thistlethwaite contends that, under USPAP, he is required to consider all three approaches to value and, if they are applicable, fully develop them. *Thistlethwaite testimony*. According to Mr. Thistlethwaite, he considered the cost approach to value but did not develop an analysis because the age, condition, and layout of the Petitioner's buildings would have required the application of excessive depreciation. *Id.* Similarly, Mr. Thistlethwaite testified that he considered the income approach to value but found no reliable market data to establish economic rent. *Id.* Mr. Thistlethwaite contends that auto dealerships are seldom leased and, in the few instances where rental information is available, the rent offered for the dealership is based on the dealership's position in the market and expected sales, rather than on the economic value of the land and buildings. *Id.; Petitioner Exhibit 3, pp. 8 and 60.*
- C. Thus, Mr. Thistlethwaite testified, he valued the property based on the sales comparison approach. *Thistlethwaite testimony*. Mr. Thistlethwaite testified that he used sales from 2005 and 2006 to value the property for the 2007 assessment year as instructed by the Department of Local Government Finance. *Thistlethwaite testimony; Petitioner Exhibit 3, p.5*. According to Mr. Thistlethwaite, he found one

local, vehicle-related sale and four out-of-town sales that occurred within the relevant time period. *Thistlethwaite testimony; Petitioner Exhibit 3, pp. 69-73.* Mr. Thistlethwaite testified that he adjusted the comparable properties for market conditions, the location of the property and the size, age, condition and quality of the structures. *Id.* Mr. Thistlethwaite testified that the property located at 1656 U.S. Highway 30, Valparaiso, which is next door to the subject property, sold for \$101 per square foot, or \$86.76 after his adjustments. *Id.* Mr. Thistlethwaite argues that this sale was far outside of the range of sale prices of the other comparable properties, but he felt obligated to include it because it occurred within the correct time frame. *Id.* The remaining properties sold for adjusted prices of \$37.42, \$42.84, \$63.79 and \$69.01 per square foot, respectively, from which Mr. Thistlethwaite estimated the property's value to be \$60 per square foot, or \$1,482,000 as of January 1, 2006. *Id.* Mr. Thistlethwaite contends, however, that the comparable sales in his report did not reflect the rapid drop in commercial values that occurred in 2007 and 2008. *Thistlethwaite testimony.*

D. Finally, Mr. Thistlethwaite testified that his appraisal fee was paid prior to the initiation of the assignment to eliminate any question of bias. *Thistlethwaite testimony.*

18. The Respondent contends that the Petitioner's property was assessed correctly and equitably. The Respondent presented the following evidence in support of the assessment:

A. The Respondent contends that the Petitioner's appraisal should be given little weight. *Snyder argument.* According to the Respondent's counsel, the Petitioner hired the appraiser to conduct an appraisal specifically for the purpose of appealing its property taxes. *Buckley argument.* Therefore, Mr. Buckley argues, the appraiser had an interest in valuing the Petitioner's property in conformance with the taxpayer's interest in a low assessed value for the property. *Id.*

- B. In addition, the Respondent's witness argues, the Petitioner's appraiser only used one approach to value the property, and therefore the appraisal is not as credible as an appraisal in which all three approaches to value are developed. *Jorzak testimony*. Moreover, Mr. Jorzak contends the appraisal is flawed because, except for one property in Valparaiso, the locations of the properties used by the appraiser are not comparable to the subject property. *Id.* According to Mr. Jorzak, the appraisal contains no analysis of the value attributable to the physical location of the subject property, which is on a highly traveled thoroughfare. *Id.*
- C. The Respondent's witness further contends the Petitioner's appraised value, which values the property as of January 1, 2006, would not be applicable to the Petitioner's 2008 appeal. *Jorzak testimony*.
- D. Finally, the Respondent's witness contends that the property is properly assessed. *Jorzak argument*. According to Mr. Jorzak, the sale in Valparaiso used by the Petitioner's appraiser is the most comparable property to the Petitioner's property because properties in Valparaiso have a higher market value than other areas of the state. *Jorzak testimony*. Multiplying the appraiser's adjusted price per square foot of \$86.76 for the comparable property by the area of the Petitioner's building results in a rounded value of \$2,142,500 for the Petitioner's property. *Id.*

ANALYSIS

19. 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.

20. 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.
21. 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3. For the March 1, 2008, assessment, the valuation date was January 1, 2007. *Id.*
22. Here, the Petitioner's representative contends that the Petitioner's property is over-valued based on its appraised value. *Stanford testimony*. In support of this contention, the Petitioner submitted an appraisal report prepared by Mr. Thistlethwaite that estimated the value of the property to be \$1,482,000 as of January 1, 2006. *Petitioner Exhibit 3*. Mr. Thistlethwaite is an Indiana certified appraiser who attested that he prepared the Petitioner's appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* Therefore the Board finds that the Petitioner raised a prima facie case that the property is over-assessed for the 2007 assessment date. *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). In addition, Mr. Thistlethwaite testified that the value of commercial real estate dropped in 2007 and 2008. Thus, the property's value for the 2008 assessment year would not be any higher than the property's value for the 2007 assessment year. Therefore, the Board finds that the Petitioner's appraiser provided "some explanation" relating the property's January 1, 2006, appraised value to the its January 1, 2007, market value-in-use for the 2008 assessment year. *See Long*, 821 N.E.2d at 471 ("Consequently, the Longs were required to provide some explanation as to how these values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. Because the Longs provided no such explanation, these documents likewise do not carry any probative value.")/

23. 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). To rebut or impeach the Petitioner's 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).
24. The Respondent's counsel first argues that the Petitioner's appraisal is not credible. According to the Respondent's counsel, the appraiser performed the appraisal specifically for the purpose of the Petitioner's tax appeal, and, therefore, had an interest in preparing an appraisal that under-valued the property. However, Mr. Thistlethwaite testified that he was compensated before he initiated work on the appraisal to eliminate any question of bias. Similarly, in his appraisal, Mr. Thistlethwaite stated that his engagement was contingent upon his having no direct or indirect interest, financial, or otherwise, in the property or the transaction and was not based on a requested minimum value or a specific valuation. *Petitioner Exhibit 3, pp. 10 and 77*. Thus, absent proof of bias, the Board will not attribute a pecuniary interest to the appraiser merely because an appraisal was prepared for the purposes of a property tax appeal.

25. In addition, the Respondent contends that the appraisal is not credible because the appraiser only developed the sales comparison approach to value the property. The appraiser, however, explained that he considered the cost approach but did not develop it because the functional inadequacies of the lot's shape and traffic patterns, as well as the age and condition of the primary showroom and service buildings would require him to apply excessive depreciation. Mr. Thistlethwaite also testified that he considered the income approach to value but found no reliable market data to establish economic rent because auto dealerships seldom lease their property. Thus, while an appraisal in which all three approaches to value are employed may be more credible, it appears the appraiser provided sufficient information to comply with USPAP requirements.
26. The Respondent further contends that the appraiser included only one sale in the Valparaiso area. According to the Respondent, the other comparable sales are in locations that are inferior to the subject property. The Board finds this argument similarly unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by an appraiser, the weight given to the sales, or the adjustments made by the appraiser in a USPAP-compliant appraisal are deemed to be reasonable.
27. Finally, the Respondent argues that the Petitioner's property is properly assessed based on the comparable sale located in Valparaiso, identified in the Petitioner's appraisal. According to Mr. Jorczak, if the appraiser's adjusted price per square foot of \$86.26 were applied to the area of the Petitioner's building, the value of the Petitioner's property was over \$2.1 million in 2006. Thus, Mr. Jorczak used Mr. Thistlethwaite's sales-comparison analysis as his starting point, but he only used one of Mr. Thistlethwaite's comparable sales. That seriously risks distorting Mr. Thistlethwaite's analysis. An appraiser's analysis is not purely mathematical – one cannot simply plug in different data and automatically say what result he would have reached had he used that revised data.

CONCLUSION

28. The Petitioner raised a prima facie case that its property was over-valued for the 2007 and 2008 assessment years. The Respondent failed to rebut the Petitioner's case. The Board therefore finds in favor of the Petitioner and holds that the Petitioner's property should be assessed for \$1,482,000 for the 2007 and the 2008 assessment years based on the property's January 1, 2006, appraised value and the appraiser's testimony that commercial property values fell in 2007 and 2008.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed values of the Petitioner's property should be changed for the 2007 and 2008 assessment years.

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>