

REPRESENTATIVE FOR PETITIONER:
Michael L. Muenich, Attorney

REPRESENTATIVE FOR RESPONDENT:
Robert W. Metz, Lake County Deputy Assessor
Melody Kikkert, St. John Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Schilling Brothers Lumber and	)	Petition Nos.:	45-035-06-1-3-00001
Supply Company,	)		45-035-06-1-3-00002
	)		45-035-06-1-3-00003
	)		45-035-06-1-3-00004
Petitioner,	)		45-035-06-1-3-00005
	)		45-035-06-1-3-00006
	)		45-035-06-1-3-00007
v.	)		45-035-06-1-3-00008
	)		45-035-06-1-3-00009
	)		45-035-06-1-3-00010
Lake County Assessor,)		
	)	Parcel Nos.:	009-22-12-0005-0009
	)		009-22-12-0005-0048
Respondent.	)		009-22-12-0005-0049
	)		009-22-12-0005-0051
	)		009-22-12-0005-0053
	)		009-22-12-0005-0057
	)		009-22-12-0005-0060
	)		009-22-12-0005-0091
	)		009-22-12-0005-0147
	)		009-22-12-0005-0170
)		
	)	County:	Lake
)		
	)	Assessment Year:	2006

January 24, 2013

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 2006 assessment year.

PROCEDURAL HISTORY

2. The Petitioner's representative initiated the Petitioner's 2006 assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by letter dated June 22, 2007. The Lake County PTABOA failed to hold a hearing within 180 days of Petitioner's request and, on January 19, 2011, the Petitioner filed its Form 131 Petitions for Review of Assessment with the Board. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor).

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Tom Martindale, held a hearing on October 29, 2012, in Crown Point, Indiana.
4. The following persons were sworn at the hearing:

For the Petitioner:¹

Thomas S. Bochnowski, Consultant,

For the Respondent:

Robert W. Metz, Lake County Deputy Assessor,
Melody Kikkert, St. John Township Assessor,
Doug Hensley, St. John Township Deputy Assessor,
Diana Sukta, St. John Township Deputy Assessor,
Jacqueline Rokosz, St. John Township Deputy Assessor.

5. The Petitioner presented the following exhibits:²

Petitioner Exhibit A:	Two maps and sales data of comparable properties,
Petitioner Exhibit B:	Excerpt of a tract map of St. John Township,
Petitioner Exhibit C:	Appraisal of 9545 North Industrial Drive, St. John, Indiana, dated July 8, 2009, ³
Petitioner Exhibit D:	2010 zoning map for the Town of St. John,
Petitioner Exhibit F:	A single sheet identified as “1 of 4,” listing four locations, zoning information, comparable properties and a range of values per square foot,
Petitioner Exhibit G:	Letter from St. John Township Assessor dated November 1, 2007, and Petitioner’s responsive letter dated November 27, 2007,
Petitioner Exhibit H:	Letter from Howard Cyrus, dated November 7, 2006, and “Valuation of multiple family vacant lots for Dyer, St. John, and Schererville Indiana” prepared by Thomas S. Bochnowski dated November 7, 2006,
Petitioner Exhibit I:	Sales disclosure data from Lake County,
Petitioner Exhibit J:	Spreadsheet containing the assessed values of the subject property and additional properties, handwritten notes on various properties, and aerial photographs and parcel information sheets for the comparable properties,
Petitioner Exhibit K:	Deposition of Hank Adams taken October 11, 2007,
Petitioner Exhibit L:	Assessment information 9085 Wicker Avenue and 9125 Wicker Avenue,

¹ Michael L. Muenich appeared as counsel for the Petitioner.

² Mr. Muenich withdrew Petitioner’s Exhibit E and Petitioner’s Exhibit M was a duplicate that was not introduced into evidence.

³ The Respondent objected to the appraisal of 9545 North Industrial Drive as irrelevant to the valuation of 8900 Wicker Avenue. The Respondent’s objection, however, goes to the weight of the evidence rather than its admissibility.

Petitioner Exhibit N: Spreadsheet of the subject property's change in assessed value from 2003 through 2006.

6. The Respondent did not present any exhibits at hearing.
7. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:⁴

Board Exhibit A – Form 131 Petitions with attachments,
Board Exhibit B – Notice of Re-Hearing, dated August 30, 2012,
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a commercial lumber company commonly known as Schilling Brothers Lumber Company, comprised of Parcel No. 009-22-12-0005-0009, Parcel No. 009-22-12-0005-0048, Parcel No. 009-22-12-0005-0049, Parcel No. 009-22-12-0005-0051, Parcel No. 009-22-12-0005-0053, Parcel No. 009-22-12-0005-0057, Parcel No. 009-22-12-0005-0060, Parcel No. 009-22-12-0005-0091, Parcel No. 009-22-12-0005-0147, and Parcel No. 009-22-12-0005-0170, located at 8900 Wicker Avenue, in St. John, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For March 1, 2006, the property was assessed as follows: \$623,400 for the land and \$2,300 for the improvements for Parcel No. 009-22-12-0005-0009; \$327,100 for the land and \$770,600 for the improvements for Parcel No. 009-22-12-0005-0048; \$386,100 for the land and \$554,900 for the improvements for Parcel No. 009-22-12-0005-0049; \$265,100 for the land for Parcel No. 009-22-12-0005-0051; \$192,400 for the land for Parcel No. 009-22-12-0005-0053; \$126,400 for the land for Parcel No. 009-22-12-0005-0057; \$167,700 for the land for Parcel No. 009-22-12-0005-0060; \$186,900 for the land

⁴ At the conclusion of the hearing, the Respondent requested an opportunity to prepare a post hearing brief. The ALJ ruled that the Respondent would be given three weeks to submit a brief, and then the Petitioner would have three weeks thereafter to submit a response to the Respondent's brief. Both sides agreed to this timeline; however, neither side filed a post hearing brief.

for Parcel No. 009-22-12-0005-0091; \$246,300 for the land for Parcel No. 009-22-12-0005-0147; and \$205,100 for the land for Parcel No. 009-22-12-0005-0170. The assessments of all of the parcels at issue in this appeal total \$2,726,500 for the land and \$1,327,800 for the improvements, for a total assessed value of \$4,054,300.

11. The Petitioner contends that the subject property's land assessment was too high in 2006. However, the Petitioner failed to request any specific value for the subject property on its Petitions.

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, (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.

PARTIES' CONTENTIONS

13. The Petitioner contends that the assessed value of its property's land was over-stated for the 2006 assessment year. The Petitioner presented the following evidence in support of its contentions:

- A. The Petitioner's representative contends that the Petitioner's property was over-valued for the 2006 assessment year based on the sales of similar properties. *Muenich argument.* In support of this contention, the Petitioner presented sales data from several commercial and light industrial properties. *Petitioner's Exhibits A, F, I, J and L.* Mr. Muenich also presented an appraisal of 9545 North Industrial Drive to

show that the Assessor's valuation of 8900 Wicker Avenue was incorrect.

Petitioner's Exhibit C.

- B. Further, Mr. Muenich contends that the subject property was over-assessed because the location of the subject property was not taken into consideration. *Muenich argument; Petitioner's Exhibit F.* Mr. Muenich argues that values were applied to both commercial and light industrial properties throughout St. John Township regardless of the location. *Id.*
- C. The Petitioner's witness, Thomas Bochnowski testified that in 2006 he assisted the former St. John Township Assessor in the valuation of industrial, commercial and multi-family lands. *Bochnowski testimony; Petitioner's Exhibits H and F.* According to Mr. Bochnowski, properties on the north end of US 41 had the most significant development over the past fifteen years, resulting in "one of the best markets in the state." *Bochnowski testimony.* Mr. Bochnowski argued that the reason behind this increase in value was because "high values have been paid for rejuvenation of some of the buildings." *Id.* But, Mr. Bochnowski testified, land values decrease as properties move south toward the Town of St. John. *Id.*
- D. Mr. Bochnowski testified that he reviewed the appraisal of 9545 North Industrial Drive, prepared in 2009, which Mr. Bochnowski argued was "greatly superior" to the market in 2006. *Bochnowski testimony; Petitioner's Exhibit C.* According to the report, the appraiser used industrial properties from Crown Point which sold for \$2.04 to \$2.72 a square foot. *Id.* Based on the appraisal, Mr. Bochnowski concluded that the subject property's assessed value was on the high side. *Id.*

- E. Further, Mr. Bochnowski testified that he compared the subject property to the property identified as the “southern side of the bowtie.”⁵ *Bochnowski testimony; Petitioner’s Exhibit A*. According to Mr. Bochnowski, the two properties are very comparable because, being on the opposite side of the bridge, the southern property has the same “sort of influences” as the subject property - such as its rise and ingress and egress. *Id.* Additionally, Mr. Bochnowski stated that the property’s highest and best use is also light industrial – like the subject property. *Id.; Petitioner’s Exhibit A and D*. Mr. Bochnowski testified that the southern property sold on July 26, 2005, for \$620,000, which equates to \$3.16 per square foot. *Id.* According to Mr. Bochnowski, no significant changes in market conditions occurred between the July 26, 2005, sale date and the March 1, 2006, assessment date. *Bochnowski testimony*.
- F. Finally, Mr. Bochnowski testified that he was able to review some of his own records and appraisals to find a range of values for comparable properties in the area of the subject property. *Bochnowski testimony*. Mr. Bochnowski contends that industrial properties’ values ranged from \$1.50 to \$3.00 per square foot and commercial properties’ values ranged from \$3.00 to \$8.00 per square foot. *Id.* However, Mr. Bochnowski testified, the highest and best use of the subject property is as a lumber yard, which is classified as light industrial. *Id.* Thus, Mr. Bochnowski concluded, the assessed value of the Petitioner’s land should range from “\$1.50 to \$3.00 a square foot, probably closer to \$2.00 to \$2.50 a square foot” for the March 1, 2006, assessment. *Id.*
- G. However, Mr. Bochnowski cautioned that he did not review the appraisal or any of the sales to offer an opinion of value. *Bochnowski testimony*. According to Mr. Bochnowski, he only analyzed the material in order to develop a recommendation as to the valuation per unit on the various classes of property the subject property may be a part of. *Id.*

⁵ On Petitioner’s Exhibit A, Mr. Muenich presented an aerial map identifying the triangular subject property and a smaller triangular property situated southeast of the subject property that he contends is comparable to the subject property. The two parcels form a lop-sided bowtie on his map. Mr. Muenich and Mr. Bochnowski both referred to this “bowtie” several times in their presentation.

14. The Respondent contends that the 2006 assessed value of the Petitioner's property was correct. The Respondent presented the following evidence in support of the assessment:

- A. The Respondent contends that the Petitioner's property's assessment was fair and consistent with other properties in St. John Township. *Hensley testimony*. According to the Respondent's witness, Doug Hensley, the subject property was assessed using a mass appraisal system, applying a base value to the particular area. *Id.* Mr. Hensley noted that the assessment was not a "per parcel" valuation; the property was assessed with the same land value used in all commercial properties along US 41. *Id.* Further, Mr. Hensley testified, positive influence factors were applied to properties where "things such as a stop light were involved." *Id.* Additionally, Mr. Hensley stated that, when proven, negative influences were given as well. *Id.*
- B. Mr. Hensley also testified that previous assessments had very little differentiation in their commercial valuations; however, the assessment is now broken down into three territories within the Schererville area. *Hensley testimony*. Using this mass appraisal approach, Mr. Hensley testified, the Assessor's office was able to find a mid point for each individual section between the southern end of Schererville and St. John Township. *Id.*
- C. Further the Respondent contends that the Petitioner's property is correctly valued as commercial property. *Hensley testimony*. Mr. Hensley argues that the Petitioner's property is a lumber yard. *Id.* According to Mr. Hensley, the property is zoned as commercial property and the property is commercial in use. *Id.*
- D. Finally, the Respondent argues that the Petitioner's evidence should be given little weight. *Metz argument*. According to Mr. Metz, the appraisal presented by the Petitioner was for a different property than the subject property. *Id.* Additionally, Mr. Metz argued, the Petitioner's witness failed to make any adjustments to the comparable sales to compare the properties to the subject property. *Id.* Further, Mr. Hensley contends that the property identified as the "south bowtie parcel" is not

comparable to the Petitioner's property. *Hensley testimony; Petitioner's Exhibit A.* According to Mr. Hensley, the southern parcel is smaller than the subject property and it is also vacant land. *Id.*

BURDEN OF PROOF

15. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the property's correct assessment should 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.⁶ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

16. In this case, the Petitioner's representative admitted that the Petitioner carried the burden of proof and the Respondent's representative agreed with the Petitioner. After a further review, however, the Board determined that the assessed value of the Petitioner's property as a whole increased by more than 5% from the previous year's assessment.

⁶ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

Thus, under Indiana Code § 6-1.1-15-17.2, the Respondent should have the burden to prove the assessment was correct. But, because the Petitioner was represented by counsel and Mr. Muenich agreed that the Petitioner had the burden at hearing, the burden of proof will remain with the Petitioner and the Petitioner must prove that the property's 2006 assessment was incorrect.

ANALYSIS

17. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice (USPAP) will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party 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 principles. MANUAL at 5.
18. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dept' of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment date, the valuation date was January 1, 2005. 50 IAC 21-3-3.
19. The Petitioner's representative first argues that the subject property was assessed too high based on sales of comparable properties. In making this argument, the Petitioner is essentially relying on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the

total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”) In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.*

20. Here, the Petitioner’s representative argues that the subject property was over-valued based on the sale prices of other properties in the area. However, Mr. Muenich and the Petitioner’s witness, Mr. Bochnowski, made little attempt to compare any of the neighboring properties to the Petitioner’s property. Mr. Bochnowski merely testified, for example, that the most comparable property, which he referred to as the “southern side of the bowtie,” had the same “sort of influences” as the subject property such as the same rise and ingress and egress. And for the other properties, Mr. Muenich failed to present any evidence of the properties’ comparability to the Petitioner’s property. Mr. Muenich only provided the sale date and sale price of the properties in his exhibits. Thus, while Mr. Bochnowski presented some evidence of the comparability of one of the properties, the Petitioner’s evidence falls short of the burden to prove that the subject property’s assessment was incorrect.

21. The Petitioner also offered an appraisal of 9545 North Industrial Drive in an attempt to show that the subject property was over-assessed. Generally the most effective method to establish a property’s value is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here, however, the appraisal that was presented by Mr. Muenich was for a completely different property. While the Petitioner’s witness

purported to use the appraisal to show that the subject property was over-assessed, he did not explain how the subject property was comparable to the appraised property.

Moreover, Mr. Bochnowski failed to make any adjustments to account for the differences between the property that was the subject of the appraisal and the Petitioner's property that is the subject of this appeal. Thus, the Petitioner's evidence again falls short of the burden to prove that the subject property's assessment was incorrect.

22. Finally, the Petitioner's representative argued the subject property's assessment was too high based on its location and use. But the Petitioner presented no evidence to support an argument that that the Petitioner's property should have a different land value than properties to the north except for Mr. Bochnowski's conclusory testimony that land values decrease as properties move south toward St. John. Nor did the Petitioner show that the property was incorrectly assessed as a commercial property. 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. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

23. Even if the Petitioner had shown that different values should have been used for different parts of the town or that the Petitioner's property was assessed improperly as a commercial property, the Petitioner failed to show that its property's assessment did not accurately reflect the property's market value. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to

determining whether the assessed value is *actually correct*”). Thus, the Petitioner failed to raise a prima facie case that its property’s assessed value should be lowered.

24. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

25. The Petitioner failed to raise a prima facie case that its property’s 2006 assessment was incorrect. The Board finds in favor of the Respondent.

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 for the Petitioner’s property should not be changed for the 2006 assessment year.

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>