

REPRESENTATIVE FOR PETITIONER: Carla Bishop, Tax Representative

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Shelbyville MHPI, LLC	)	Petitions No.:	73-002-06-1-4-81302
	)		73-002-06-1-4-81301
	)		73-002-06-1-4-81303
Petitioner,	)		73-002-06-1-4-81304
)		
v.	)	Parcels:	73-11-06-300-008.000-002
	)		73-11-06-300-096.000-002
Shelby County Assessor,	)		73-10-01-400-014.000-002
	)		73-10-01-400-013.000-002
Respondent.)		
	)	Shelby County	
	)	Addison Township	
	)	2006 Assessment	

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

January 5, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

The Petitioner bought a mobile home park for approximately \$4.2 million in December 2004, but now contends that it paid more than the property was really worth. The 2006 assessed value for the property is roughly what the Petitioner paid. Does that assessment accurately reflect the market value-in-use of the subject property as of the proper valuation date, which is January 1, 2005?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a mobile home park consisting of four separate parcels of land located at 911 Hale Road in Shelbyville. In referring to the subject property, some of the evidence used the name Westar Mobile Home Community and some of it used the name Westar Manufactured Home Community. It is not clear which name is correct, but in this determination we will simply refer to the park as Westar.
2. The Petitioner initiated an assessment appeal with the Shelby County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130. The PTABOA mailed its decision on October 8, 2008. The Petitioners then filed a Form 131 with the Board.
3. The PTABOA's assessed values for the individual parcels were:

<u>Parcel 73-11-06-300-008.000-002</u>	Total \$4,022,700
<u>Parcel 73-10-01-400-013.000-002</u>	Total \$174,900
<u>Parcel 73-10-01-400-014.000-002</u>	Total \$41,400
<u>Parcel 73-11-06-300-096.000-002</u>	Total \$24,800
4. For all four parcels the PTABOA's assessed value determination was \$4,263,800. The Petitioner, however, contends that their total assessed value should be only \$2,900,000.
5. Administrative Law Judge Kay Schwade held a hearing for these petitions on October 27, 2009. There was no on-site inspection of the subject properties by the Administrative Law Judge or the Board.
6. The following persons were sworn as witnesses and testified at the hearing:
 - For the Petitioner – Carla Bishop and Richard Correll,

 - For the Respondent – Bradley A. Berkemeier and Jeff Wuensch.

7. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Summary of Issues,
 - Petitioner Exhibit 2 – Appraisal prepared by Richard Correll,
 - Petitioner Exhibit 3 – Form 131 petitions.

8. The Respondent presented the following exhibits:
 - Respondent Exhibit A – Property record cards for all the parcels under appeal,
 - Respondent Exhibit B – Sales disclosure forms dated December 17, 2004,
 - Respondent Exhibit C – Income analysis spreadsheet with income information,
 - Respondent Exhibit D – Appraisal prepared by Crown Appraisal Group.

9. The following additional items are recognized as part of the record:
 - Board Exhibit A – Form 131 petitions,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Hearing Sign-In Sheet.

SUMMARY OF THE PETITIONERS' CASE

10. The assessed valuation of \$4.2 million for the subject property is too high. Although that amount is what the Petitioner paid for Westar in December 2004, Richard Correll's testimony and appraisal establish that it overpaid for this investment.¹ The Correll Appraisal complies with USPAP. The evidence supports the requested value of \$2.9 million. *Bishop testimony; Correll testimony; Pet'r Ex. 2 at 17.*

11. In 2009 Mr. Correll and his firm were hired to appraise the subject property, Westar. The engagement letter with the Correll Appraisal is dated March 25, 2009. The Correll Appraisal states that the property was inspected on August 20, 2009. The date of the report is September 15, 2009. The Correll Appraisal states that it relied on the sales

¹ According to Ms. Bishop, the Petitioner relied on the Crown Appraisal (Resp't Ex. D) in determining its \$4.2 million purchase price for Westar, but that appraisal is "suspect" because in applying the income approach to value it used a figure for property taxes that was too low (it used \$20,725 when the actual property tax for 2004 pay 2005 was \$33,158). And for subsequent years the property taxes were even more.

comparison approach and the income approach, but not the cost approach. The income approach was considered to be the most relevant indicator of value. The Correll Appraisal retrospectively concludes that as of January 1, 2005, the market value of Westar was \$2,900,000. *Correll testimony; Pet'r Ex. 2.*

12. The Correll Appraisal, page 14, contains the following section:

Sale History of the Subject Property

In accordance with the Standards of Professional Appraisal Practice and of the Appraisal Institute, for a property such as the subject, the appraiser must consider and analyze any sales of the property that have occurred within the past three years.

We understand that the property was purchased by the current owners in December of 2004 for \$4,200,000 and has been held by the current owners since that time.

In addition, the cover letter for the Correll Appraisal acknowledges the property was purchased in December of 2004 for \$4,200,000. Subsequently, however, it appears that the Petitioner overpaid. *Correll testimony, Pet'r Ex. 2.*

13. In reaching that conclusion, Mr. Correll primarily relied on the income approach. The income approach to valuation is the “approach that is most relied upon by investors in income producing property.” *Pet'r Ex. 2 at 29.* “Income-producing real estate is typically developed, owned, and operated with the objective of creating value by renting space to users who will pay rental rates high enough to cover the operating expenses, fixed costs, and a profit on, as well as a return of, the original investment. Therefore, the value of income-producing real estate is estimated based upon the amount of net income the property will generate and the rate of return on alternative investments.” *Pet'r Ex. 2 at 41.*
14. The Petitioner is an operator of manufactured home communities and an experienced real estate investor. It purchased Westar under the assumption property tax liabilities would remain level and allow it to achieve a target yield. (The 2004 pay 2005 taxes for Westar were approximately \$33,158.) But the 196% property tax increase with the 2006

property tax bill lowered the yield and lowered the value of Westar—the \$65,000 increase in property tax means roughly \$1 million loss in value. *Correll testimony.*

15. When the Petitioner bought it, the subject property had a stable history of operations with reliable income and expenses. *Correll testimony; Pet'r Ex. 2 at 44.* Westar has a very stable history, even though the history of manufactured housing has been declining rapidly over the years. Page 26 of the Correll Appraisal discusses the steep decline in this industry—from 1999 to 2008 the number of new manufactured homes dropped almost 85%. But as of January 1, 2005, the manufactured housing market still was relatively healthy. The retrospective appraisal tried to look at this healthy time, but it also had the advantage of knowing what happened since then. “From 2000 to 2006 we had pretty good upward market.” The peak of the market was in 2006, but since then a lot of bad things have been happening in the market. *Correll testimony.*

16. According to the Correll Appraisal, pages 43-48, the following steps summarize the income valuation process using a direct capitalization analysis:
 - Project potential gross income from the property based on market rental rates, prevailing and anticipated market conditions, and competent management.
 - Estimate vacancy and collection loss allowances.
 - Estimate expected operating expenses.
 - Calculate net operating income.
 - Estimate a capitalization rate.
 - Capitalize the net operating income to get a value estimate (divide net operating income by the capitalization rate).

17. The Correll Appraisal projected that the net operating income for the subject property would be about \$313,000 (excluding real estate tax expense). It also states that the actual net operating income for 2005 (excluding real estate taxes) was \$297,233. *Pet'r Ex. 2 at 46.*

18. The indicated capitalization rates developed from property sales and listings are in a range from 8.52% to 10%. The capitalization rate range for mobile home parks found in the Realty Rates Investor Survey for the fourth quarter of 2004 is 7.53% to 14.08% with an average of 8.84%. Based on this information, the Correll Appraisal uses a capitalization rate of 8.5% and an effective tax rate of 2.37% to arrive at a loaded capitalization rate of 10.87%. *Correll testimony; Pet'r Ex. 2.*
19. Admittedly, even a 1% difference in capitalization rates can have an impact on value, but the appraiser's job is to choose the appropriate rate. *Correll testimony.*
20. Using a loaded capitalization rate of 10.37% and a net operating income of \$313,000, the income approach indicates a value of \$2,879,845. *Correll testimony; Pet'r Ex. 2 at 48.*
21. Although the Correll Appraisal considered the income approach to be most relevant, the sales comparison approach also supports the same valuation. *Pet'r Ex. 2 at 49.*
22. The Correll Appraisal considered three other sales of mobile home parks in Indiana for the sales comparison approach. Those sales took place in January 2005, February 2006, and February 2007. Sale 1 indicates it was renting at levels below the market, but the purchaser intended to increase rents resulting in an increased yield. Sale 3 was underperforming with only 63% occupancy when purchased, but the purchaser planned to correct deficiencies to increase occupancy. *Correll testimony; Pet'r Ex. 2 at 30-42.*
23. Adjustments account for differences in time of sale, age, condition, quality, size, location, and occupancy levels (but not for property taxes). After adjustments those sale prices range from approximately \$13,282 to \$15,183 per pad. Westar has 205 pads. Therefore, the value range as indicated by those sales was between \$2,722,863 and \$3,112,435. The Correll Appraisal determined that these comparable sales indicated a value of \$2.9 million for Westar. *Correll testimony; Pet'r Ex. 2 at 41-42.*

24. In final resolution of the income approach and the sales comparison approach, the valuation of the subject property was \$2.9 million as of January 1, 2005. *Correll testimony; Pet'r Ex. 2.*

SUMMARY OF THE RESPONDENT'S CASE

25. In Shelby County, the 2006 assessments were “thrown out” by the Department of Local Government Finance (DLGF) largely due to what the DLGF believed to be an underassessment of commercial and residential properties. Nexus Group was hired to perform the retrending ordered in Shelby County by the DLGF. *Wuensch testimony; Berkemeier testimony.*
26. As part of the retrending, or annual adjustment, Nexus Group analyzed the sales data and the assessment data from the county by township and neighborhood. This analysis relied on sales data from 2004 and 2005 as dictated by the rule on annual adjustments. The sales data included the sale of the subject property as well as other manufactured home park sales. Not knowing what the 2006 property taxes would be does not invalidate the sales data. *Wuensch testimony; Berkemeier testimony.*
27. In other counties, manufactured home parks have been identified as a problem area. In Shelby County, a review of manufactured home parks showed that some were under assessed, some were “okay”, and some were over assessed. *Berkemeier testimony.*
28. As part of developing the trending factor for manufactured home parks in Shelby County, the manufactured home parks were stratified and put into categories of average, above average or below average. The stratification was based on age, number of pads, rent, etc. The trending factor for each category was developed based on the sales data in each category. The factor potentially would be different for each category. Not all the manufactured home parks experienced an increased assessment. *Wuensch testimony.*
29. Based on the retrending, the DLGF approved the 2006 assessments when it approved the Shelby County sales/assessment ratio study. An assessed value of \$2.9 million for the

subject property would distort those statistics. In the absence of valuing the subject property relatively close to its purchase price, the statistical measures would indicate a need to retrend commercial property again. *Wuensch testimony; Berkemeier testimony.*

30. The sales disclosure forms for the subject property document the sale of four separate parcels in December 2004. Two parcels—the parcel containing the pads and a vacant parcel—sold for \$4.2 million. The other two vacant parcels sold for \$66,400. The total purchase price was \$4,266,400 for all four parcels that constitute the Westar property. The time of the Petitioner’s purchase of Westar was close to the assessment valuation date of January 1, 2005. *Berkemeier testimony; Resp’t Ex. B*
31. The Crown Appraisal estimates a value as of November 4, 2004, which again was close to the required valuation date for a 2006 assessment, January 1, 2005. The Crown Appraisal was not used to determine the assessment for the subject property, but it supports the \$4.2 million valuation, even though it did not consider two of the four Westar parcels. *Berkemeier testimony; Resp’t. Ex. D.*
32. The Crown Appraisal placed primary emphasis on the income capitalization approach. The development of the income capitalization approach is covered in the Crown Appraisal at pages 23-30.² Basically the steps for this appraisal’s income approach are as follows:
 - Estimate effective gross revenue based on market rents less an allowance for vacancy, plus other income.
 - Estimate expenses inherent in operation of the property.
 - Deduct operating expenses from effective gross revenue to determine net operating income.
 - Select a capitalization rate.
 - Capitalize the net operating income to get a value estimate (divide net operating income by the capitalization rate).

² Prior to developing its income capitalization approach, the Crown Appraisal explains that the two most common methods for the income capitalization approach are direct capitalization and yield capitalization. Direct capitalization capitalizes a single year’s income by a market derived capitalization rate. That is the method the Crown Appraisal used. *Resp’t Ex. D at 22.*

33. The Crown Appraisal projected that the net operating income for the subject property would be \$294,339 (including real estate tax expense). *Resp't Ex. D at 26.*
34. In determining an appropriate capitalization rate, the Crown Appraisal emphasized data from comparable sales, investor surveys³, and analysis of financing techniques. *Resp't Ex. D at 26.* The Crown Appraisal's Income Capitalization concluded with the following:

In summarizing, the following highlights the attributes of the subject, the subject's location, and current investor parameters:

- The subject is a well-located property in good physical and functional condition.
- The subject is 94.5% occupied. Occupancy is expected to remain high, given the management, historical occupancy levels, and the good condition of the property.
- The overall rate range from the comparable sales is 7.00%–9.09%.
- The *Korpacz* survey indicates an overall rate range of 5.00%–9.25%, and an average rate of 7.05% for institutional grade properties. The overall rate range indicated by the survey for non-institutional grade properties is 5.25%–11.00%, with an average of 8.15%.
- The debt coverage technique develops an overall rate range of 7.2%–7.8%. The band of investment technique develops an overall rate of 7.0%.

Most of the market-based indicators suggest that a rate toward the middle of the range is most appropriate. *** In the final analysis, an overall rate of 7.00% is selected as being appropriate to accurately reflect the risk characteristics arising from the income stream. The rate selected falls within the ranges indicated by investor surveys, comparable sales, and through the quantitative overall rate derivation techniques (band of investment and debt coverage ratio).

Resp't Ex. D at 29-30.

35. Using the pro forma net operating income of \$294,339 and the 7% capitalization rate, the income approach in the Crown Appraisal concludes the value of Westar as of November 4, 2004, was \$4,204,846. *Resp't Ex. D at 30.*

³ Specifically, the Crown Appraisal refers to the *Korpacz Real Estate Investor Survey*, published by Peter Korpacz and Associates, Inc.

36. Alternatively, based on the subject property's actual income (from the Petitioner's income tax return) and using a 7% cap rate, the indicated value would be \$4,818,000 as of January 1, 2005. If the "loaded" 8.5% cap rate from the Correll appraisal were used, the indicated value would be \$4,216,000. *Berkemeier testimony; Resp't Ex. C.*
37. The income approach was the primary basis for its conclusion about value, but the Crown Appraisal also used the sales comparison approach. *Resp't Ex. D at 35.*
38. The Crown Appraisal considered five other sales of similar sized mobile home communities: Apple Valley in Fort Wayne, Blue Ridge in Churubusco, Oak Ridge in Elkhart, Hoosier Estates in Lebanon, and Anoka Acres in Logansport. Those sales took place in October 2002, May 2003, August 2003, and October 2003 (2 sales). The chart on page 32 and the discussion on page 33 compare those properties and sales to Westar in many ways. *Resp't Ex. D at 31-34.*
39. At a price of \$4,200,000 and 199 rental sites, the price per site for Westar was \$21,106. The adjusted value per site at Apple Valley was \$18,703. The adjusted value per site at Blue Ridge was \$19,848. The adjusted value per site at Oak Ridge was \$25,125. The adjusted value per site at Hoosier Estates was \$24,717. The adjusted value per site at Anoka Acres was \$19,512. *Resp't Ex. D at 32-33.*
40. The range of adjusted site values in those comparable sales indicates that the value for Westar would be somewhere between \$3,700,000 and \$5,000,000. Based on the average, the value indicated would be \$4,400,000. Based on the median, the value indicated would be \$3,700,000. The Crown Appraisal concluded that the sales comparison approach indicated a value of \$4,200,000. *Resp't Ex. D at 34.*
41. The reconciliation and final value estimate in the Crown Appraisal concluded that as of November 4, 2004, the value of Westar was \$4,200,000. *Resp't Ex. D at 35-36.*

42. Any investor has to assume the risk that property taxes go up for a variety of reasons. For example, in Indiana if a community decides to build a new school, the tax rates may have to increase substantially to pay for it. Or the taxes may go up because previously a property was under assessed. The risk of increased property taxes is built into the overall risk and discount rate. *Wuensch testimony.*
43. An increase in property tax will affect a property's value at some point. That fact was considered when establishing the 2007 assessed value. At the time of purchase in December 2004, however, the tax increase associated with the 2006 assessment had not yet occurred. The market value-in-use to the Petitioner was the \$4.2 million purchase price. *Wuensch testimony.*
44. The sale price of the subject property is the best indicator of value as of January 1, 2005. *Meighen argument.*

ADMINISTRATIVE REVIEW AND BURDEN

45. 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).
46. 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 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”).
47. 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.

ANALYSIS

48. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner of a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. Other evidence relevant to market value-in-use can rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
49. In this case the Petitioner and the Respondent presented conflicting evidence about Westar’s actual market value-in-use.⁴ The outcome depends on which evidence is most persuasive about that value *as of January 1, 2005*.⁵
50. An arm’s-length purchase on the open market is often the best evidence of a property’s value. In fact, an assessment estimates how a willing buyer and a willing seller would resolve their negotiations for the purchase of the property as of the valuation date. MANUAL at 4.

⁴ Value-in-use is “[t]he value of property for a specified use. *** The value a specific property has for a specific use. Synonymous with Use Value and Market Value-in-Use.” MANUAL at 12. In this case, all the evidence, arguments, and analysis relate to the use and value of the subject property as a mobile home park.

⁵ A 2006 assessment must reflect value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

51. The fact that the Petitioner bought Westar for approximately \$4.2 million in December 2004 is undisputed. There is no indication that the transaction involves anything other than a typically motivated, knowledgeable buyer and seller who were acting in their own best interests. Furthermore, the time of that transaction relates very closely to the required valuation date for a 2006 assessment. Thus, on at least a surface level the actual purchase price of \$4,266,400 appears to be substantial, probative evidence that supports the current assessments. But the Petitioner contends that it overpaid when it bought Westar. Consequently, our analysis cannot stop there.
52. In addition to the purchase price of the subject property, appraisals can be used to prove what a better valuation might be. MANUAL at 5. The Tax Court has stated a market value in use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) can be the most effective method to rebut the assumption that an assessment is correct. *See French Lick Twp. Assessor v. Kimball International*, 865 N.E.2d 732, 736 n.4 (Ind. Tax Ct. 2007); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). In this case there are two such appraisals that reach substantially different conclusions about the value of Westar: the Crown Appraisal estimates \$4,200,000 and the Correll Appraisal estimates \$2,900,000.
53. The Crown Appraisal Report is dated November 12, 2004, with a valuation date of November 4, 2004. The Transmittal Letter to GE Commercial Finance indicates the Crown Appraisal was in conjunction with financing—apparently when the Petitioner was in the process of buying Westar. (The Sales Disclosure Forms indicate that the Petitioner bought Westar on December 17, 2004.) Among other things, the certification says the analyses, opinions, and conclusions in the Crown Appraisal conform to USPAP requirements. The Crown Appraisal states that the income capitalization approach, the sales comparison approach, and the cost approach to value were all considered, but the cost approach was not utilized because of the age and depreciation of the improvements.

Furthermore, it states that the income capitalization approach is most appropriate for the subject property. The Petitioner challenged how property taxes were handled and how the capitalization rate was determined in the Crown Appraisal.⁶ The Petitioner argued that consequently its conclusion about value was suspect; however, merely raising a few suspicions does not conclusively prove that the Crown Appraisal's estimate of value is wrong. In the real world, evidence commonly has some flaws. Even if it is not perfect, the Crown Appraisal stands as relevant, probative evidence of what Westar was worth when the Petitioner bought it.

54. Nevertheless, if the Correll Appraisal and Mr. Correll's testimony were stronger, more convincing evidence of Westar's value-in-use as of January 1, 2005, the Petitioner would be entitled to a greatly reduced assessment. But we cannot reach that conclusion. While the Correll Appraisal and Mr. Correll's testimony provide some relevant, probative evidence, ultimately that evidence is less convincing than the actual purchase price and the Crown Appraisal.
55. The Correll Appraisal is certified as conforming to USPAP requirements. In general methodology it also reached the conclusion that the income approach to value is the most reliable approach for the subject property, but the comparable sales approach provides some support. Again, the cost approach was found to be not applicable. Both the Crown Appraisal and the Correll Appraisal generally have the hallmarks one would expect with a professional, certified fee appraisal. Both primarily rely on the income approach to value Westar.
56. While the two appraisals are roughly equivalent in many respects, the work was performed at very different times. The Crown Appraisal, the purchase date and the valuation date are all close in time (November 2004, December 2004, and January 1, 2005). In contrast, the Correll Appraisal was done in September 2009. The Transmittal

⁶ More specifically, the Petitioner showed that the pro forma operating statement on page 26 listed the expense for real estate taxes as \$20,725 when the actual expense was \$33,158. There also was evidence that the more acceptable way to deal with real estate taxes would have been not including the item as an expense, but rather, "loading" the tax rate into the capitalization rate. These differences may account for some of the discrepancy between the value estimates of the Crown Appraisal and the Correll Appraisal, but if so, it is not clear how much.

Letter for the Correll Appraisal is addressed to Ms. Bishop, who is the Petitioner's tax representative. It seems fair to conclude that this appraisal was prepared specifically to support this tax appeal. The date on the letter as well as the submission date on the appraisal is September 15, 2009, but the estimate of value is retrospective to January 1, 2005. Therefore, it appears to satisfy the required valuation date for a 2006 assessment with a retroactive value estimate, even though the work was done more than 4½ years after the valuation date.

57. During that interval, according to Mr. Correll lots of bad things happened that probably have some ultimate effect on the value of the subject property. Mr. Correll admitted, however, that as of January 1, 2005, the manufactured housing market still was relatively healthy. He also admitted that the retrospective appraisal "had the advantage" of knowing what happened since then. The Petitioner focused on the fact that the 2006 property taxes for Westar increased by \$65,000 and the increased taxes lowered the value of Westar. There very well may be other factors that contribute to a situation where by as of 2009 a property is not worth as much as what someone paid for it in 2004. Subsequent assessments probably should consider those factors as they arise. Such considerations, however, are not relevant to valuations based on a time when they have yet to occur—specifically the valuation of the subject property as of January 1, 2005.
58. The Petitioner attempted to focus on what was anticipated when it bought Westar, but failed to present any probative evidence in that regard. There is no indication that Mr. Correll was involved with the matter until 2009. The evidence simply does not give any factual basis for his or Ms. Bishop's conclusory statements about subsequent unanticipated tax increases or maintaining a target yield from the investment in Westar. Such unsupported conclusory statements are not probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119, (Ind. Tax Ct. 1998).
59. It is difficult or impossible to meaningfully analyze evidence that was not presented. We will not attempt to do so, but simply observe that if the Petitioner failed to anticipate an increased property tax bill, such an expectation was probably not realistic.

60. Similarly, the evidence does not support any meaningful analysis of the anticipated yield when the Petitioner bought Westar. Even if the Petitioner was unable to maintain the yield anticipated when it bought Westar, that fact does not prove the assessed value of the property must be lowered to a point where the Petitioner will get the anticipated yield. Because the Correll Appraisal and Mr. Correll's testimony both reflect consideration of subsequent developments, the opinion that Westar's value was only \$2.9 million as of January 1, 2005, is less credible than the evidence that *at that time* the value was \$4.2 million.

61. The weight of the evidence supports the current assessment.

SUMMARY OF FINAL DETERMINATION

62. The most persuasive evidence establishes that the market value-in-use of Westar was \$4,200,000 as of January 1, 2005. The Board will not order any assessment change.

Commissioner, 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>>