

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

Petition Nos.: 36-009-08-1-4-00032
36-009-09-1-4-00032A
36-009-10-1-4-00032B
Petitioner: Shreejimaharaj Corporation¹
Respondent: Jackson County Assessor
Parcel No.: 36-66-15-400-003.001-009
Assessment Years: 2008, 2009 and 2010

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 its 2008, 2009 and 2010 assessment appeals with the Jackson County Property Tax Assessment Board of Appeals (PTABOA) by filing its Form 130 Petition for Review of Assessment by Local Assessing Official, on December 4, 2009. On June 15, 2011, the Jackson County PTABOA issued its determination lowering the value of the Petitioner's property, but not to the level requested by the Petitioner.²
2. The Petitioner filed its Form 131, Petitions for Review of Assessment, with the Board on July 21, 2011. The Petitioner elected to have its appeals heard pursuant to the Board's small claims procedures.
3. The Board issued a notice of hearing to the parties dated September 20, 2012.
4. The Board held an administrative hearing on December 17, 2012, before the duly appointed Administrative Law Judge (the ALJ) Tom Martindale.
5. The following persons were present and sworn in at hearing:

¹ The Petitioner's corporation is spelled in two different manners throughout the evidence presented by the Petitioner: ShreeJhreejimaharaj Corporation and Shreejimaharaj Corporation. The Board will defer to the Shreejimaharaj spelling which was used on the Petitioner's Form 131 Petitions.

² The only Form 130 presented to the Board by the Petitioner was for the March 1, 2008, assessment. The Jackson County PTABOA did not issue a separate Form 115 for the 2008 and 2009 assessment years; the assessment determinations for both years were included on the Form 115 for the March 1, 2008, assessment year. For the 2010 assessment year, the Jackson County PTABOA issued a separate Form 115 dated December 5, 2011, indicating the same amount that was originally listed on the Form 115 for the 2008 assessment year.

For Petitioner: Dirk Abe Rivera, Petitioner’s representative,
Tara Shaver, Petitioner’s representative,

For Respondent: Beverly A. Gaiter, Jackson County Assessor.

Facts

6. The subject property is a Super 8 Motel located at 401 Outlet Boulevard, in Seymour, Indiana.
7. The ALJ did not conduct an on-site inspection of the property under appeal.
8. For 2008, 2009 and 2010 the subject property’s land was assessed for \$660,000 and the improvements were assessed at \$1,209,200, totaling \$1,869,200.
9. The Petitioner did not request a specific value on its Petitions, but at hearing, the Petitioner’s representative argued that the subject property should be assessed at \$461,000 for 2008; \$474,300 for 2009; and \$495,400 for 2010.

Parties’ Contentions

10. Summary of the Petitioner’s contentions:
 - a. The Petitioner’s representative, Mr. Rivera, contends that the subject property was over-assessed for the 2008, 2009 and 2010 assessment years based on its appraised value. *Rivera argument*. In support of this contention, Mr. Rivera presented an appraisal report prepared by Advanced Appraisal Consultants that was completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.*; *Petitioner Exhibit 4*. Mr. Rivera pointed out that, according to this appraisal, the subject property is “a limited market property” and there is “not much else that you can do with the property.” *Id. Id.* Further, Mr. Rivera testified that the employment of the appraiser was not conditioned upon the appraiser producing a specific value or a value within a given range, thus providing an unbiased valuation. *Id.*
 - b. Mr. Rivera testified that the Petitioner’s appraiser used both the sales comparison approach and the income capitalization approach to value the subject property. *Rivera testimony; Petitioner Exhibit 4*. Using the income capitalization approach, the appraiser estimated the value of the property to be \$600,000. *Id.* However, because the appraisal was of a “going concern,” the appraiser removed the personal property and the business value components of the property’s income value resulting in an estimated value of \$498,000 for the property as of May 31, 2010.³ *Id.*

³ The Petitioner’s appraisal indicated a value of \$30,000 for the business component and \$72,000 for the personal property component.

- c. Mr. Rivera argued that the property's income value was supported by the value obtained from the sales comparison approach. *Rivera testimony; Petitioner Exhibit 4.* According to Mr. Rivera, the appraiser used similar hotel sales and hotel revenues to determine a market value for the subject property; thus, effectively making it a valid market value-in-use appraisal. *Id.* While the sales comparison approach is "considered inappropriate" in valuing a hotel, Mr. Rivera testified, the analysis did "indicate a range of values that can be used to test the reasonableness of the value indicated by the income capitalization approach." *Id.* According to the sales comparison approach, the value of the subject property ranged from \$528,000 to \$624,000, which Mr. Rivera argues supports the property's income value of \$600,000. *Id.*
- d. Mr. Rivera testified that he was able to take the appraised value of the subject property and trend it back to the relevant valuation dates for the 2008, 2009 and 2010 assessments. *Rivera testimony; Petitioner Exhibits 4 and 5.* Using the Consumer Price Index, Mr. Rivera estimated the value of the subject property to be \$461,000 as of January 1, 2007, for the March 1, 2008, assessment date; \$474,300 as of January 1, 2008, for the March 1, 2009, assessment; and \$495,400 as of March 1, 2010, for the 2010 assessment. *Petitioner Exhibit 5.*
- e. Finally, Mr. Rivera contends that the subject property was over-assessed for the 2008, 2009 and 2010 assessment years based on a three year income analysis that he performed. *Rivera testimony; Petitioner Exhibit 1.* Mr. Rivera testified that he examined the income from the subject property for 2007, 2008 and 2009, and "capped it out using the 2010 realtorates.com cap rate information." *Id.; Petitioner Exhibits 2 and 3.* According to Mr. Rivera, the subject property has been in a "downward spiral" and that 2007 was its best year. *Id.* Thus, Mr. Rivera argued, based on his income analysis, the subject property would only be able to support a value of approximately \$581,000. *Id.*

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

- a. The Respondent's representative, Ms. Gaiter, contends that the subject property is assessed correctly. *Gaiter argument.* According to Ms. Gaiter, the trending numbers indicate the value of the subject property falls within the range of comparable properties in Jackson County. *Id.*
- b. Further, Ms. Gaiter argues that the appraisal submitted by the Petitioner's representative should be given little weight. *Gaiter argument.* Ms. Gaiter argues that the purpose of the appraisal was to obtain a loan. *Id.* Under USPAP guidelines, Ms. Gaiter argues, it is a requirement to follow the purpose of an appraisal. *Id.* In addition, Ms. Gaiter argues that some of the comparable properties used in the Petitioner's appraisal were bankruptcy properties. *Id.* The use of these properties, she contends, would not yield a reliable value. *Id.*

Record

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

- a. Petitioner's Form 131 petitions,
- b. A digital recording of the hearing labeled ShreeJhreejimaharaj Corp.,
- c. Exhibits:

Petitioner Exhibit 1 – Three year average income analysis of the subject property's 2007, 2008 and 2009 operations,

Petitioner Exhibit 2 – Tax return form 1120S income information for 2007, 2008 and 2009,

Petitioner Exhibit 3 – RealtyRates.com investor survey cap rate data for the second quarter of 2010,

Petitioner Exhibit 4 – Appraisal of the subject property as of May 31, 2010, prepared by Advanced Appraisal Consultants,

Petitioner Exhibit 5 – Calculation trending the appraised value of the subject property to the March 1, 2010, January 1, 2008, and January 1, 2007, valuation dates,

The Respondent did not present any exhibits.

Board Exhibit A – Form 131 petitions,

Board Exhibit B – Notice of hearing dated September 20, 2012,

Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). However, under Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here, because the property's assessed value did not increase by more than 5% over each of its previous year's assessment, the Petitioner retains the burden of proof in its 2008, 2009 and 2010 appeals.

Analysis

14. The Petitioner raised a prima facie case that its property was over-valued for the 2008, 2009 and 2010 assessment years. The Board reached this conclusion for the following reasons:
- a. Indiana assesses real property based on its true tax value, 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. See *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 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.
 - b. Regardless of the method used to value a property for appeal purposes, 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. Dep’t 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, 2008, assessment date, the valuation date was January 1, 2007, and for the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3 (2009). But, for the March 1, 2010, assessment date, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Here, the Petitioner offered an appraisal signed by Ray A. Johnson and William Daddono, of Advanced Appraisal Consultants, that estimated the value of the Petitioner’s real property as a going concern to be \$498,000 as of May 31, 2010. *Petitioner exhibit 4*. Mr. Johnson and Mr. Daddono are both certified appraisers who attested that they prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* While the appraisal values the property as of May 31, 2010, the Petitioner’s representative presented a calculation based on the consumer price index estimating the value of the subject property to be \$461,000 as of January 1, 2007, for the March 1, 2008, assessment date; \$474,300 as of January 1, 2008, for the March 1, 2009, assessment; and \$495,400 as of March 1, 2010, for the 2010 assessment.. *Petitioner Exhibit 5*. 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 incorrect. See *Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that the property was over-valued for the 2008, 2009 and 2010 assessment years.
 - d. 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 Ct. 2005).
- e. Although she did little to develop her arguments, the Respondent attempted to impeach the appraisal presented by the Petitioner in two ways. First, she argues that because the appraisal was prepared for the purpose of obtaining a loan and not for the purpose of an assessment, the values contained in the appraisal should not apply. *Gaiter argument*. While an appraiser in such circumstances conceivably might be more concerned with determining whether the property being appraised is worth at least the amount of the proposed loan than with determining the precise market value of the property, the Respondent did not present any evidence that the appraisers were so motivated in this case. To the contrary, the appraisers certified that the appraisal was prepared in conformity with USPAP. *Petitioner Exhibit 4*. Consequently, the fact that the appraisers prepared the appraisal for loan purposes does not detract from the credibility or reliability of their opinion of value. Secondly, the Respondent argues that some of the comparable properties used in the Petitioner's appraisal were bankruptcy properties. *Gaiter argument*. But the Respondent failed to point to any specific comparable sale that she contends was a bankruptcy sale. 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).
- f. Similarly, the Respondent offered the conclusory testimony that according to her trending numbers, the value for the subject property falls within the range of comparable properties in Jackson County. *Gaiter testimony*. However, she failed to present any substantial evidence or explanation for how she came to this conclusion. Such conclusory statements are not probative evidence and do not help to prove what the properties. 2008, 2009 or 2010 assessment should be. *Whitley Products*, 704 N.E.2d at 1119. Ultimately, the Respondent failed to present any valuation evidence of its own. The Board therefore finds that the Respondent failed to rebut or impeach the Petitioner's evidence.

Conclusion

15. The Petitioner raised a prima facie case that its property was over-valued for the 2008, 2009 and 2010 assessment years. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the assessed value of the Petitioner's property is \$461,000 for the March 1, 2008, assessment date; \$474,300 for the March 1, 2009, assessment date; and \$495,400 for the March 1, 2010, assessment date.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board finds in favor of the Petitioner and determines that the assessed value of the Petitioner's property should be lowered to \$461,000 for the March 1, 2008, assessment date; \$474,300 for the March 1, 2009, assessment date; and \$495,400 for the March 1, 2010, assessment date.

ISSUED: March 1, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.