

REPRESENTATIVE FOR PETITIONER:
Todd Heath, Integrity Tax Consulting

REPRESENTATIVE FOR RESPONDENT:
Terri Boone, Huntington County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Roger Speicher	)	Petition No.:	35-005-06-1-4-00266
)		
Petitioner,	)	Parcel No.:	350509200780008005
)		
v.	)	County:	Huntington
)		
Huntington County Assessor,	)	Township:	Huntington
)		
Respondent.	)	Assessment Year:	2006

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

May 18, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. In this assessment appeal, the parties offered competing appraisals with significantly different valuation opinions. The Board is persuaded by the Petitioner’s appraisal, which unlike the appraisal relied upon by the Respondent, estimates the subject property’s market value-in-use as of the valuation date that applies to the assessment year in

question and relies on sales of properties used for the same commercial purpose as the subject property.

Procedural History

2. On April 23, 2008, the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Petitioner’s request to lower the subject property’s assessment. On June 5, 2008, the Petitioner filed a Form 131 petition asking the Board to review the PTABOA’s determination. The Board has jurisdiction over the Petitioner’s appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On February 24, 2010, the Board’s designated administrative law judge, Jennifer Bippus (“ALJ”), held a hearing on the Petitioner’s appeal. Neither the Board nor the ALJ inspected the subject property.

4. The following people were sworn in as witnesses:

For the Petitioner:

Todd Heath, Integrity Tax Consulting
Roger Speicher, Petitioner
John Thistlethwaite, John M. Thistlethwaite Interests, LLC
Alex Genova, Broker/CPA, CB Richard Ellis

For the Assessor:

Terri Boone, Huntington County Assessor
Julie Newsome, Huntington County Deputy Assessor
Richard Schultz, Accurate Assessments

5. The Petitioner offered the following exhibits:

Petitioner Exhibit 1: Appraisal report for the subject property prepared by John M. Thistlethwaite,
Petitioner Exhibit 2: October 29, 2008, letter from Todd Heath to Julie Newsome with 2007 profit & loss statement,
Petitioner Exhibit 3: December 11, 2008, letter from Heath to Newsome with 2005 profit & loss statement and Unaudited Statement of Income by Department – Income Tax Basis December 31, 2006,

- Petitioner Exhibit 4: January 22, 2009, letter from Terri Boone to the Indiana Board of Tax Review,
- Petitioner Exhibit 5: March 19, 2009, letter from Heath to Newsome with 2003 federal tax return,
- Petitioner Exhibit 6: March 25, 2009, fax from Newsome to Heath,
- Petitioner Exhibit 7: March 27, 2009, letter from Heath to Newsome with Unaudited Statement of Income by Department – Income Tax Basis December 31, 2006 and 2007 profit & loss statement for The Landmark Conference & Reception Centre,
- Petitioner Exhibit 8: September 10, 2009, fax to Julie (Newsome) from Todd (Heath) with sheet for Comparable No. 4344,
- Petitioner Exhibit 9: October 7, 2009, letter from Heath to Newsome,
- Petitioner Exhibit 10: Series of e-mails (3 pages) between Alex Genova and Todd Heath,
- Petitioner Exhibit 11: October 30, 2009, letter from Heath to Newsome,
- Petitioner Exhibit 12: November 16, 2009, e-mail from Genova to Heath.

6. The Assessor offered the following exhibits:

- Respondent Exhibit 1: Aerial photograph of the subject property,
- Respondent Exhibit 2: Copies of property record cards,
- Respondent Exhibit 3: Appraisal report for the subject property prepared by David R. Metz and John H. Whittenberger,
- Respondent Exhibit 4: Copy of Assignment of Real Estate Mortgage,
- Respondent Exhibit 5: Copy of sale listing for the subject property,
- Respondent Exhibit 6: Copies of property record cards and sales disclosures for three comparable properties,
- Respondent Exhibit 7: Copy of 50 IAC 21-3-3

7. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: January 11, 2010, hearing notice,
- Board Exhibit C: Copy of February 5, 2010, letter from Todd Heath to Terri Boone listing the Petitioner’s potential witnesses and exhibits,
- Board Exhibit D: Fax from Renee Heath to Jennifer Bippus enclosing letter signed by Terri Boone to acknowledge receiving appraisal,
- Board Exhibit E: Hearing sign-in sheet.

8. The subject property contains a reception hall located at 2824 Theater Drive, Huntington.

9. The PTABOA determined the following values for the subject property:

Land: \$143,500 Improvements: \$1,150,600 Total: \$1,294,100.

10. On his Form 131 petition, the Petitioner requested values of \$143,500 for the land and \$600,000 for the improvements for a total assessment of \$743,500. At the hearing, however, the Petitioner requested a total assessment of \$610,000.

Administrative Review and the Parties' Burdens

11. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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").
13. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Findings of Fact

A. The Subject Property

14. The subject property, which is located in an office park in Huntington, Indiana, contains a 13,432-square-foot building on 2.56 acres of land. *Thistlethwaite testimony; Pet'r Ex.1.* The Petitioner built the subject building in 1999 to use as a reception hall. *Heath testimony; Thistlethwaite testimony.* It has a lobby, two offices, an institutional kitchen, large rooms for banquets, and small meeting rooms. *Thistlethwaite testimony; see also Pet'r Ex. 1 at 16-17.*

15. By 2005, the reception hall was no longer profitable. *Genova testimony; see also, Pet'r Ex. 1 at 3; Pet'r Exs. 2-3, 7.* As early as July 2009, the Petitioner listed the subject property for sale with CB Richard Ellis. *See Resp't Ex. 5.* The asking price was \$1.2 million. *Id.* The property was also listed with www.Loopnet.com, a commercial listing site. *Resp't Ex. 1 at 3.* Those efforts to sell the property did not succeed, and in September 2009, the Petitioner's lender forced an auction. *Genova testimony.* Alex Genova, the listing agent from CB Ellis, consulted with the Petitioner and his lender about setting a reserve price for that auction. They settled on \$700,000, although they did not share that price with the public. *Id.*
16. Nobody bid on the property at the auction. *Genova testimony.* After the auction, Huntington Community Schools offered to buy the subject property and a small adjacent office building that the Petitioner also owned for a total of \$400,000. The lender, however, rejected that offer. *Id.* Two months after the auction, Pathfinder Services, a not-for-profit organization, bought the subject property for \$700,000. *Id.; Heath testimony.* Pathfinder planned to spend between \$300,000 and \$500,000 to convert the building into a technical center. *Genova testimony.*

B. Appraisals

1. Metz and Whittenberger appraisal

17. Before the auction, the Petitioner's lender hired two certified appraisers, David R. Metz and John H. Whittenberger, to appraise the subject property. Metz and Whittenberger prepared a summary appraisal report, which was provided to potential bidders at the auction. *Resp't Ex. 3; Genova testimony.* Metz and Whittenberger certified that they performed their appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Resp't Ex. 3 at 5.*
18. Metz and Whittenberger estimated the subject property's market value at \$1,050,000 as of September 15, 2009. *Resp't Ex. 3 at cover letter.* They arrived at that value using two generally accepted valuation methods—the cost and sales-comparison approaches. For

their sales-comparison analysis, Metz and Whittenberger relied on what they considered to be seven comparable properties from Huntington that sold between July 2004 and June 2008. *Id. at Addendum*. The properties had various uses, such as restaurants, offices, hotels, and general retail, but none were used as banquet or reception halls. *See id.* Metz and Whittenberger adjusted their comparable properties' sale prices to account for various ways in which those properties differed from the subject property, including the size and age of the respective buildings. *Id.* The adjusted sale prices ranged from \$57.24 to \$390.41 per square foot of building area. *Id.* Metz and Whittenberger then took a weighted average of the adjusted sale prices to arrive at a price of \$82.23 per square foot or \$1,100,000 (rounded) for the subject property. *Id.* They reached a similar estimate—\$1,120,000—using the cost approach. *Id. at 16*. Metz and Whittenberger reconciled the two estimates to \$1,100,000 for the property as if unencumbered, but subtracted \$51,622.09 for unpaid taxes to reach a net reconciled valuation opinion of \$1,050,000 (rounded). *Id.*

2. Thistlethwaite appraisal

19. After unsuccessfully trying to settle the Petitioner's appeal, the Petitioner's certified tax representative hired John M. Thistlethwaite, a certified general appraiser, to appraise the subject property. *Heath testimony; Pet'r Exs. 1-3, 5, 7*. Like Metz and Whittenberger, Thistlethwaite certified that he developed his valuation opinion and prepared his appraisal report in conformity with USPAP. *Pet'r Ex. 1 at 3*. Thistlethwaite estimated the subject property's market value-in-use at \$610,000 as of January 1, 2005. *Pet'r Ex. 1 at 2*.
20. Thistlethwaite considered the subject building to be a "special-use" building. *Thistlethwaite testimony*. Although the property is located in a professional office park and is surrounded by offices and restaurants, Thistlethwaite described the property as a mass-assembly facility or catering hall. *Id.* And Thistlethwaite found that the Huntington market had illustrated insufficient demand for a food-service use to justify the building's initial cost. *Pet'r Ex. 1 at 6*. He also pointed to the fact that the Petitioner had

not been able to operate the property at a profit. While that could have been attributable to incompetent management, Thistlethwaite did not believe that to be the case, pointing to the Petitioner's success in operating a similar facility in Fort Wayne. *Thistlethwaite testimony*.

21. Although Thistlethwaite normally would not analyze a property's highest-and-best use for a market-value-in-use appraisal, he believed that continued operation of the subject property as a banquet or reception hall was infeasible. *Thistlethwaite testimony; Pet'r Ex. 1 at 38*. He therefore analyzed the property's highest and best use, which he concluded was as professional office space. *Id.*

22. Nonetheless, Thistlethwaite primarily used sales of other banquet halls in his sales-comparison analysis. *Thistlethwaite testimony; see also, Pet'r Ex. 1 at 42-53*. Only one of the four comparable properties was from Huntington—the other three were from Auburn, Waterloo, and Fort Wayne. *Id.* The buildings on Thistlethwaite's four primary comparable properties ranged from 3,925 square feet to 12,194 square feet. *Pet'r Ex. 1 at 52*. Thistlethwaite also included information for three nearby Huntington properties. Those sales all happened after the March 1, 2005, assessment date, and only one involved a reception hall. *See Pet'r Ex. 1 at 51-53*. Because they were later sales, he did not directly include them in his analysis. *See id. at 43; Thistlethwaite testimony*.

23. Thistlethwaite considered adjusting the sale prices of his four primary comparables to account for various ways in which those properties differed from the subject property. *Pet'r Ex. 1 at 52; Thistlethwaite testimony*. He adjusted the sale price for the property containing the 3,925-square-foot building to account for the significant size difference between it and the subject building, but he did not make size-related adjustments to the other properties' sale prices. *Id.* When asked why, Thistlethwaite explained that, for an income-producing building, he is less concerned about the building's size than its economy of scale for producing a product. He therefore did not believe that buildings up to 1000 square feet larger or 5000 square feet smaller than the subject building would necessarily merit an adjustment. *Thistlethwaite testimony*.

24. Thistlethwaite also acknowledged that his report explicitly reflected only one adjustment for location, which he made to the Huntington property's sale price. But he explained that he adjusted the Fort Wayne property's sale price because of market conditions, which he testified could "either be a location adjustment or not." *Thistlethwaite testimony*
25. The adjusted sale prices for Thistlethwaite's four primary comparable properties ranged from \$47.86 to \$54.54 per square foot of building space. *Pet'r Ex. 1 at 52.* Thistlethwaite "placed emphasis" on \$48 per square foot to arrive at an estimate of \$645,000 (rounded) for the subject property. *Id. at 53.*
26. Turning to the income approach, Thistlethwaite estimated the subject property's net operating income using rent of \$8 per square foot, which he derived from three comparable properties located in North Manchester, New Haven and Kendallville, Indiana. *Thistlethwaite testimony; Pet'r Ex. 1 at 58.* Using a band of investment technique, Thistlethwaite then determined a capitalization rate of 10.553%. *Pet'r Ex. 1 at 55-56.* He explained that the rate he chose was higher than the rates for typical commercial properties, but he believed that it was acceptable when compared to a Realtyrates.com market survey for Midwestern cities, especially considering that risk influences and a typical lack of measurements in small counties contribute to a 1%-2% increase over major markets. *Id. at 56.* When Thistlethwaite applied his chosen capitalization rate to the subject property's estimated net operating income, he arrived at a value of \$584,000. *Id.*
27. Thistlethwaite did not believe that the cost approach applied to valuing the subject property. *Thistlethwaite testimony; Pet'r Ex. 1 at 41.* In his view, reproduction costs far exceeded the property's economic utility, which would have required applying an extensive amount of depreciation. *Id.* In reconciling his conclusions under the other two

approaches, Thistlethwaite reportedly gave the greatest weight to the sales-comparison approach and settled on a value of \$610,000.¹ *Id. at 59.*

C. Other property sales

28. The Respondent offered property record cards and sales disclosure forms for three other Huntington properties that sold between April 29, 2005, and May 18, 2006. *Resp't Ex. 6.* Those properties sold for prices ranging from \$90 to \$155 per square foot of building area. *Id.* One property was within “blocks” of the subject property and another was within a mile. *Newsome testimony.* They contained buildings that were between 2000 and 5000 square feet and that were built between 2001 and 2004. *Resp't Ex. 6.* The property record cards described two of the buildings as “gen[eral] off[ice]” and the third as “dining.” *Id.*

Discussion

29. 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). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id. at 3, 13-15.* Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
30. A property’s assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *See MANUAL at 5; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *reh’g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax

¹ Thistlethwaite’s reconciled opinion was actually closer to his income-approach estimate than to his sales-comparison approach estimate.

value. *Id.* A market-value-in-use appraisal prepared according to USPAP often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual constructions costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

31. Whatever method a taxpayer uses to rebut an assessment's presumed accuracy, the taxpayer must explain how his evidence relates to the property's market value-in-use as of the relevant valuation date. *See 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). Otherwise, that evidence lacks probative value. *Id.* For March 1, 2006, assessments, the relevant valuation date was January 1, 2005. 50 IAC 21-3-3.
32. Here, the Petitioner offered Thistlethwaite's appraisal report in which he estimated the subject property's market value-in-use at \$610,000 as of January 1, 2005. *Pet'r Ex. 1; Heath and Thistlethwaite testimony.* Thistlethwaite prepared his appraisal in accordance with USPAP, and he valued the property as of the appropriate valuation date. And he used two generally accepted appraisal methods—the sales-comparison and income approaches—to arrive at his valuation opinion. *Id.* Thus, based on Thistlethwaite's appraisal, the Petitioner made a prima facie case that the subject property should be assessed for \$610,000. *See Meridian Towers*, 805 N.E.2d at 479.
33. The burden therefore shifted to the Respondent to rebut or impeach Thistlethwaite's appraisal. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
34. The Respondent's representative, Richard Schultz, attempted to impeach Thistlethwaite's valuation opinion by asking Thistlethwaite why he did not adjust the sale prices for three of his comparable properties to account for their comparatively smaller buildings. In the

same vein, he asked Thistlethwaite why he did not make location adjustments for the three properties located outside Huntington.

35. Concerning his decision not to adjust for size-related differences, Thistlethwaite, persuasively explained that he was more concerned with economies of scale, and that differences of a few thousand square feet would not necessarily affect the properties' relative values. Indeed, the buildings for which Thistlethwaite did not make size-related adjustments were all relatively close in size to the subject building—the subject building has 13,432 square feet while the three unadjusted comparable buildings had 9,283, 9,055, and 12,194 square feet respectively. Also, Thistlethwaite's chosen unit of comparison—price per square foot of building area—necessarily accounted for differences in building sizes
36. Thistlethwaite was less persuasive in explaining his failure to adjust for differences in the properties' relative locations. In fact, he did not really attempt to explain that decision; instead, he simply said that his “market conditions” adjustment for the Fort Wayne property could have been for location. *Thistlethwaite testimony*. On the other hand, the Respondent offered nothing to show what, if any, relevant differences existed between the Huntington market and the markets in which the comparable properties were located. Thus, while Thistlethwaite's failure to either adjust the comparable properties' sale prices to account for location-based differences or to explain why he chose not to adjust those sale prices detracts somewhat from his opinion's reliability, it does not do so significantly.
37. The Respondent, however, did not merely try to impeach Thistlethwaite's valuation opinion—she also offered what she viewed as market-based evidence to support the subject property's assessment. First, the Respondent offered Metz and Whittenberger's appraisal, in which those two appraisers valued the subject property at \$1,050,000 as of September 25, 2009. Of course, that appraisal's effective date was more than four years after the January 1, 2005, valuation date applicable to the March 1, 2006, assessment at issue in this appeal. Thus, for the Board to assign Metz and Whittenberger's appraisal any probative weight, the Respondent or her witnesses needed to explain how Metz and

Whittenberger's valuation opinion related to the subject property's value as of January 1, 2005. See *Long, supra*, 821 N.E.2d at 471; see also, *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005)(explaining that evidentiary standards that apply to a taxpayer in making its prima face case apply equally to assessing officials trying to rebut a taxpayer's case).

38. Shultz attempted to do so by asserting "Anybody that's in the real estate market knows what's happened to residential homes and commercial and industrial properties based on economic conditions in this country right now; they've been declining over the years." *Shultz testimony*. Shultz's testimony, however, was entirely conclusory. He did not explain what, if any, information underlay his assertion. Metz and Whittenberger's appraisal therefore lacked probative value.
39. Even if the Respondent had offered evidence to relate Metz and Whittenberger's appraisal to the relevant valuation date, the subject property sold for \$700,000 just two months after the auction for which Metz and Whittenberger prepared that appraisal. True, the Petitioner's broker, Alex Genova, testified that the Petitioner's lender had forced the auction. But the property had been marketed for sale for at least two months before the auction and the Petitioner and his lender continued to receive offers after it. Thus, while some questions exist about the seller's motivation and about whether the property was marketed in a commercially reasonable manner, the \$700,000 sale price tends to impeach the reliability of Metz and Whittenberger's valuation opinion. The Board is more persuaded by Thistlethwaite's appraisal, which (1) estimated the subject property's value as of the relevant valuation date using sales that occurred within less than 1 ½ years of that valuation date, and (2) relied on sales of other banquet or reception halls instead of general office buildings.
40. Aside from Metz and Whittenberger's appraisal, the Respondent's witness, Julie Newsome, pointed to the sale prices for three other Huntington properties. Newsome, however, made no effort to compare those properties to the subject property other than to say that they were all located near the subject property and had buildings that were about as old as the subject building. That falls well short of the type of comparison required to

estimate a property's value using the sales-comparison approach. *See Long*, 821 N.E.2d at 470 (finding that taxpayers' comparative-sales evidence lacked probative value where taxpayers failed to explain how properties compared to their property or how relevant differences affected the properties' market values-in-use).

41. Finally, Shultz pointed to what he characterized as the Petitioner's offer to settle the appeal for \$830,000. Indiana law encourages parties to engage in settlement negotiations in several ways. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005). For example, it prohibits parties from using statements made in settlement negotiations to prove liability for, or invalidity of, a claim or its amount. *Id.*; *see also* Ind. Evidence Rule 408 (making such evidence inadmissible). Indeed, the Indiana Tax Court has refused to afford even consummated settlement agreements any precedential effect in property tax appeals, because to do so "would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom." *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax. Ct. 2001). In keeping with that policy, the Board places no weight on any settlement offer made by the Petitioner.

Summary of Final Determination

42. The Petitioner proved by a preponderance of evidence that the subject property's assessment was wrong and that its market value-in-use as of the relevant valuation date was \$610,000. The Board therefore finds for the Petitioner and orders that the subject property's March 1, 2006, assessment be reduced to \$610,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>.