

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

**Petition No.:** 91-010-06-1-5-00145  
**Petitioner:** Stebbins Enterprises, Inc.  
**Respondent:** White County Assessor  
**Parcel No.:** 007-95500-00  
**Assessment Year:** 2006

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the White County Property Tax Assessment Board of Appeals (the PTABOA) by written document on December 29, 2006.
2. The PTABOA issued a notice of its decision on June 19, 2008.
3. The Petitioner filed a Form 131 petition with the Board on July 31, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 27, 2009.
5. The Board held an administrative hearing on June 2, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: George L. Stebbins, President, Stebbins Enterprises, Inc.
  - b. For Respondent: Scott Potts, County Representative

**Respondent's Motion to Submit Additional Evidence**

7. On June 8, 2009, the White County Assessor filed a Post Hearing Motion to Submit Additional Evidence (Motion) with an attached copy of a Sales Disclosure Form for the subject property. In its Motion to the Board, the White County Assessor argues that the

property under appeal had sold on March 17, 2009. The Assessor's Motion claimed that the county was not aware of the sale at the time of the hearing on June 2, 2009. Therefore the Respondent requested that the Board allow it to submit the post-hearing evidence and requested that the Board consider the sale in its determination in this appeal.

8. On June 19, 2009, the Board issued an Order on the Respondent's Motion to Submit Additional Evidence. In its Order, the Board required the Respondent to submit proof of service on the Petitioner pursuant to 52 IAC 2-3-4 (a) on or before June 30, 2009. In addition, the Board granted the Petitioner, Stebbins Enterprises, Inc. (Stebbins Enterprises) until July 30, 2009, to respond to the Respondent's additional evidence.
9. On July 20, 2009, Stebbins Enterprises filed with the Board its response to the Respondent's Motion to submit additional evidence. In the Petitioner's response, Mr. Stebbins argued that the sale was for a personal residence and not as a rental property and therefore was not a comparable use to the Petitioner's use of the property. Further, the Petitioner argues, the sales disclosure form was stamped March 17, 2009, and was therefore filed prior to the hearing. Finally, the year being appealed was 2006 but the sale did not occur until 2009. Thus, the Petitioner argues, the Respondent's additional evidence should not be considered.
10. The Board having considered the Respondent's Motion to Submit Additional Evidence and the Petitioner's Response to Requesting that the Board Deny the Respondent's Motion, hereby grants the Respondent's Motion and will consider the additional evidence. The Board will address in these findings the Respondent's additional evidence and Petitioner's response to the evidence and then determine the relevance and weight to be assigned to the evidence.

### **Facts**

11. The property consists of a 528 square foot single family residence and a 560 square foot single family residence on a single 50' x 286' waterfront lot located at 4900 North Boxman Place, Monticello, Liberty Township, in White County.
12. The ALJ did not conduct an on-site inspection of the property under appeal.
13. For 2006, the PTABOA determined the assessed value to be \$103,200 for the land and \$46,500 for the improvements, for a total assessed value of \$149,700.
14. The Petitioner requested an assessed value of \$51,356 for the land and \$34,188 for the improvements, for a total assessed value of \$85,544.

## Issue

15. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
- a. The Petitioner contends that the property under appeal is assessed in excess of its market value-in-use. *Stebbins testimony*. According to the Petitioner, the property is worth no more than \$108,000. *Stebbins testimony*. In support of this position, the Petitioner submitted an appraisal, an income approach to value and homeowner's insurance information. *Petitioner Exhibits 1, 3, 4 and 9*.
  - b. The Petitioner first submitted an appraisal report prepared by Janeth Pearson. *Petitioner Exhibit 4*. Ms. Pearson is an Indiana Certified Residential Appraiser and Broker. *Id.* In her appraisal report, Ms. Pearson estimated the property's value to be \$108,000 as of June 28, 2004. *Id.*
  - c. The Petitioner also contends the property under appeal is over-valued based upon an income approach valuation. *Stebbins testimony*. According to the Petitioner's representative, he used a potential income of \$10,800 for 2005 and deducted the actual expenses \$3,101 leaving a net income of \$7,699.<sup>1</sup> *Stebbins testimony; Petitioner Exhibits 3 and 9*. Mr. Stebbins' calculation then shows the net operating income divided by a capitalization rate of 9 percent which estimates a value of \$85,544 which he rounded to \$85,500. *Petitioner Exhibit 3*.
  - d. The Petitioner also presented its fire insurance policy declarations as evidence the property is a rental. *Petitioner Exhibit 1; Stebbins testimony*. According to the insurance declaration, the homes and other structures were insured for an estimated \$48,400, as of December 24, 2008, with additional coverage for loss of rents and landlord liability. *Petitioner Exhibit 1; Stebbins testimony*. Thus, the Petitioner argues, the property under appeal must be valued based on its current use rather than "best use" or market value. *Stebbins testimony*.
  - e. Finally, in response to the Respondent's request to submit additional evidence, the Petitioner argues that the sales disclosure was stamped March 17, 2009, and the hearing was conducted on June 2, 2009. *Stebbins Post-Hearing Response*. Therefore, the information was available to the Respondent approximately 77 days before the Board hearing. *Id.* In addition, the sale of the property under appeal occurred in 2009, which is three years after the assessment year at issue of March 1, 2006. *Id.* Finally, the market value-in-use of the property changed from rental property to single family occupancy. *Id.* Thus, the Petitioner contends the Respondent's additional evidence should not be considered relevant in establishing the market value-in-use of the property for the March 1, 2006 assessment year. *Id.*

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<sup>1</sup> At the hearing Mr. Stebbins testified that Mr. Brian Thomas of Ad Valorem Solutions put together the income approach calculation using 2005 and 2006 data of potential and actual income on the property under appeal. *Stebbins testimony*.

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

- a. The Respondent argues the Petitioner's appraisals suffer from major flaws and therefore should be given little weight. *Potts testimony*. According to Mr. Potts, the primary value of a waterfront property stems from its location and the part of the property that actually fronts the water. *Id.* The Respondent contends the appraiser compared the Petitioner's property that is located on a "very valuable" part of the lake to properties that are in a less desirable location on the main lake and obstructed by a bridge. *Id.*
- b. First, the Respondent argues that the appraiser did not sufficiently adjust the sales prices of her comparable properties to reflect the fact that the subject property's location on the lake significantly impacts its value. *Potts testimony*. To illustrate his point, Mr. Potts submitted sale and assessment information for three comparable properties located on the same portion of the lake as the Petitioner's property. *Id.* Mr. Potts testified that all of his comparable properties are located within a ½ mile of the Petitioner's property; they all have small cottages on the lots; and they all sold in the relevant time period for the March 1, 2006, assessment. *Respondent Exhibits A-D; Potts testimony*. The first property is located at 4940 North Boxman Place and sold for \$183,500 on September 2, 2005. *Respondent Exhibit A*. The second property is located at 4197 East Penrod Drive and sold for \$218,500 on May 31, 2006. *Respondent Exhibit B*. And the third property is located at 4359 East Penrod Drive and sold for \$205,000 on September 9, 2004. *Respondent Exhibit C*. According to Mr. Potts, the appraiser's properties sold for \$95,000 to \$124,500, while the Respondent's comparable properties sold for \$183,500 to \$218,500. *Potts testimony; Petitioner Exhibit 4; Respondent Exhibits A-C*. Thus, the Respondent concludes, adjustments for topography and location are necessary when appraising property located on the lake. *Potts testimony*.
- c. The Respondent further argues that the three sales used in the Petitioner's appraisal sold in 2003. *Potts testimony*. According to Mr. Potts, the relevant valuation date for the March 1, 2006, assessment date is January 1, 2005. *Potts testimony*. Further, the Respondent argues, the appraiser did not make any time adjustments to the 2003 comparable sales in her sales comparison approach. *Potts testimony*. To give an example as to why time adjustments are necessary, Mr. Potts testified that a property located at 4197 East Penrod Drive sold on August 31, 2001, for \$149,000 and sold again on May 31, 2006, for \$218,500. *Respondent Exhibit B*. Thus, Mr. Potts concluded, the property experienced nearly a 10% per year increase in property value. *Respondent Exhibit B; Potts testimony*.

- d. Finally, the Respondent argued that the Petitioner's income approach valuation should be given no weight because the Petitioner presented no supporting documentation to show how the capitalization rate was calculated. *Potts testimony*. The capitalization rate also failed to address the effect outside influences such as a lakefront would have on the property's recapture rate. *Potts testimony*. Further, the Petitioner failed to establish that its income approach calculation was prepared in accordance with standard appraisal practices. *Potts testimony*.
- e. Subsequent to the hearing, the Respondent argued in a Post-Hearing Motion that the property's assessment is correct based on the sale of the subject property. *Respondent Post-Hearing Motion*. In support of this contention, the Respondent submitted a sales disclosure form dated March 19, 2009 attached to its Motion. *Id.* According to the Respondent, the sales disclosure form shows the Petitioner sold its property for \$197,000 on March 17, 2009. *Id.*

### **Record**

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:<sup>2</sup>

Petitioner Exhibit 1 – Copy of Property Insurance for 4900 Boxman, Monticello issued by Jim Kitchell Agency, dated March 26, 2009,

Petitioner Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Petitioner Exhibit 3 – Petitioner's actual and potential income and expense statement for 2005 and 2006,

Petitioner Exhibit 4 – Summary Appraisal Report, prepared by Janeth Pearson, dated June 29, 2004,

Petitioner Exhibit 5 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130,

Petitioner Exhibit 6 – Letter to the White County Assessor from Mr. Stebbins, dated October 15, 2007,

Petitioner Exhibit 7 – PTABOA request for additional evidence dated October 16, 2007,

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<sup>2</sup> Mr. Stebbins objected to Respondent Exhibit C because he believes the evidence being submitted is not comparable or relevant to the property under appeal. *Stebbins testimony*. The Petitioner's objection goes to the weight and not the admissibility of the Respondent's evidence. Thus, the Petitioner's objection is overruled.

Petitioner Exhibit 8 – Notification of Final Assessment Determination – Form 115, dated June 19, 2008,  
Petitioner Exhibit 9 – Petitioner’s 2005 and 2006 income and expense statement submitted to the PTABOA, dated October 16, 2007,

Respondent Exhibit A – Property record card for 4940 North Boxman Place, Monticello,  
Respondent Exhibit B – Property record card for 4197 East Penrod Drive, Monticello,  
Respondent Exhibit C – Property record card for 4359 East Penrod Drive, Monticello,  
Respondent Exhibit D – Plat map of the area,  
Respondent Exhibit E – Notice of Appearance of Consultant on Behalf of Assessor dated June 1, 2009, and Verification by the Department of Local Government Finance of Certification of Professional Appraisers, pursuant to 50 IAC 15-4-1,

Board Exhibit A – Form 131 petition with attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

### **Analysis**

18. The most applicable governing cases are:

- a. 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 Township 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).
- b. 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 Township 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”).
- c. 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.

19. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
  - a. The Real Property Assessment Manual defines “true tax value” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
  - b. A property’s market value-in-use as determined using the Guidelines is presumed to be accurate. *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.*; *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that assumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
  - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his 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, 2006, assessment, that valuation date is January 1, 2005. 50 IAC 21-3-3.
  - d. Here, the Petitioner presented an appraisal prepared by Janeth Pearson that estimated the value of the property to be \$108,000 as of June 28, 2004. *Petitioner Exhibit 4; Stebbins testimony*. The appraiser is an Indiana Certified Appraiser that prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices. (USPAP). *Id.* While generally the 2006 assessment is to reflect the value of the property as of January 1, 2005, pursuant to 50 IAC 21-3-3(a), local assessing officials “shall use sales of properties occurring between January 1, 2004, and December 31, 2005, assessment date.” Thus, an appraisal valuing the property as of June 28, 2004, must also have some probative value.

- e. The Petitioner also sought to value its property based on the income approach. “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property...than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” MANUAL at 14. The income approach, thus, focuses on the intrinsic value of the property, not upon the Petitioner’s operation of the property because property-specific rents or expenses may reflect elements other than the value of the property “such as quality of management, skill of the work force, competition and the like.” *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992).
- f. Here, the Petitioner offered two income approach calculations. The first calculation used the property’s actual income and expenses and the second calculation used the property’s potential income and actual expenses. *Petitioner Exhibits 3 and 9*. Considering both calculations, the Petitioner argues, the market value-in-use of the subject property would be approximately \$85,000. *Petitioner Exhibit 3; Stebbins testimony*. The Petitioner provided no evidence to demonstrate whether the income or expenses were typical for comparable properties in the market. Thus, any low rental income or high expenses levels may be attributed to the Petitioner’s management of the property as opposed to the market value. *See Thorntown Telephone Company*, 588 N.E.2d at 619. *See also, Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998). (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property).
- g. More importantly, the Petitioner failed to support his capitalization rate. A capitalization rate “generally reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters.” *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). The Respondent correctly notes that selecting the correct capitalization rate is critical to use the income approach. Here, the Petitioner failed to show its capitalization rate was representative of the market. Nor did the Petitioner show that its income approach methodology conformed to USPAP or any other generally accepted standards. Consequently, the Petitioner’s income approach calculation lacks relevance or probative value in this case.<sup>3</sup>

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<sup>3</sup> To the extent the Petitioner sought to raise an issue that the value of the property is overstated based on 2008 homeowner’s insurance policy declaration, we find that the Petitioner failed to adequately present such a case. The insurance document, dated December 24, 2008, is substantially removed from the statutory valuation date of January 1, 2005. More, importantly, while the insurance declaration estimates replacement coverage of the improvements, it does not explain how the estimates were calculated. *Petitioner Exhibit 1*. The insurance policy declaration therefore amounts to little more than a conclusory statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in the assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).



- h. The Petitioner raised a prima facie case that its property's market value-in-use is \$108,000 based on its appraised value. The Petitioner failed to raise a prima facie case for any lower value.
- i. 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). Here, in support of the assessment, the Respondent presented property record cards and testimony regarding the topography and location of the subject property and comparable properties. *Respondent Exhibits A-D; Potts testimony*. The Respondent's comparable properties sold during the relevant time period for \$183,500 to \$218,500. *Id.* While the Respondent identified the differences in the characteristics of those properties – like cottage size or location of the property relative to the lake body – the Respondent failed to explain how the differences between the properties affect their relative market values-in-use. Conclusory statements that a property is “more valuable” or “less desirable” than another property do not constitute probative evidence. *See Long*, 821 N.E.2d at 470. Thus, while the Respondent's comparable sales may cast some doubt on the Petitioner's appraisal, his evidence was not sufficient to rebut the Petitioner's prima facie case.
- j. To the extent Mr. Potts contends that the Petitioner's appraiser chose poor comparables or made inadequate adjustments to her comparable sales, the Board similarly finds these arguments unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal will be deemed reasonable.
- k. Finally, the Respondent submitted a sales disclosure form that shows the property under appeal sold for \$197,000 on March 17, 2009. *Respondent Post-Hearing Motion*. The sale of the subject property, however, is more than four years removed from the January 1, 2005, valuation date. The Respondent did not offer any explanation or evidence that valued the property as of the statutory valuation date as required by *Long*. Nor did the Respondent offer an explanation or evidence of how the March 17, 2009, sale of the property under appeal related to the January 1, 2005, valuation date. Thus, the Board finds the Respondent failed to rebut the Petitioner's prima facie case.

### **Conclusion**

20. The Petitioner raised a prima facie case that its property was over-valued. The Respondent failed to rebut or impeach the Petitioner's evidence. Thus, the Board finds in favor of the Petitioner and holds that the market value-in-use of the subject property is \$108,000 for the March 1, 2006, assessment year.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed.

ISSUED: \_\_\_\_\_

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.