

PETITIONER'S REPRESENTATIVE:
Richard L. Archer, Paradigm Tax Group

RESPONDENT'S REPRESENTATIVE:
Marilyn Meighen, Meighen & Associates PC

INDIANA BOARD OF TAX REVIEW

Swift Transportation Company,	)	Petition Nos.:	51-003-08-1-4-00004
Inc.,	)		51-003-08-1-4-00005
)		
Petitioner,	)	Parcel Nos.:	51-06-15-300-025.000-003
	)		51-06-15-300-030.000-003
v.)		
)		
Martin County Assessor,	)	County:	Martin
)		
Respondent.	)	Assessment Year:	2008

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

April 7, 2011

FINAL DETERMINATION

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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed values of the Petitioner's properties are overstated for the 2008 tax year.

PROCEDURAL HISTORY

2. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner's representative, Richard L. Archer, filed a letter with the Martin County Assessor seeking review of the Petitioner's properties' 2008 assessments on August 11, 2009. The Martin County Property Tax Assessment Board of Appeals (the PTABOA) issued notices of its decisions on May 21, 2010. The Petitioner's representative subsequently filed Form 131 Petitions with the Board on June 7, 2010, requesting that the Board conduct a review of the PTABOA's 2008 determinations.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on the Petitioner's 2008 petitions on January 27, 2011, in Shoals, Indiana.¹
4. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
Richard L. Archer, Paradigm Tax Group,

For the Respondent:
Carolyn S. McGuire, Martin County Assessor,
Kirk Reller, Martin County's assessment contractor,
5. The Petitioner presented the following evidence:
Petitioner Exhibit 1 – Property record cards for the Petitioner's parcels,

¹ The hearing had previously been scheduled twice but was postponed at the request of both parties.

- Petitioner Exhibit 2 – Copies of letters dated August 11, 2009, from Mr. Archer to the Martin County Assessor, requesting review of the properties' 2008 assessments,
- Petitioner Exhibit 3 – Copies of the Form 115 notices of the PTABOA decision in the Petitioner's county-level appeals of the parcels,
- Petitioner Exhibit 4 – Copies of the Form 131 appeals for the subject parcels,
- Petitioner Exhibit 5 – Settlement statement dated July 6, 2009, from Chicago Title, and copies of the Petitioner's 2008-pay-2009 tax bills for the properties,
- Petitioner Exhibit 6 – Copy of an aerial photograph of the Petitioner's properties and the Petitioner's comparable sales; spread sheet showing data on the subject properties and the comparable properties; and data sheets on the comparable properties,
- Petitioner Exhibit 7 – Copy of the Petitioner's Power of Attorney,
- Petitioner Exhibit 8 – Copies of two aerial views of the Petitioner's parcels,
- Petitioner Exhibit 9 – Copy of an electronic mail message dated December 8, 2010, from Gary Weinberger to Dale Armstrong; copy of an electronic mail message dated November 5, 2008, from Wayne U to Gary Weinberger; and a copy of the purchase agreement, Addendum One to Purchase Agreement, and the Representations and Warranties of Seller Addendum.

6. The Respondent presented the following evidence:

- Respondent Exhibit A – Spreadsheet of data for the Petitioner's parcels and the Respondent's six comparable sales,
- Respondent Exhibit B – Property record card for 1104 Fifth Street in Bedford, Indiana,
- Respondent Exhibit C – Property record card for 48 S. Buffaloville Road in Santa Claus, Indiana,
- Respondent Exhibit D – Property record card for 21217 N. U.S. Highway 231 in Dale, Indiana,
- Respondent Exhibit E – Property record card for 837 N. U.S. Highway 161 in Rockport, Indiana,
- Respondent Exhibit F – Property record card for 363 TV Tower Road in Mitchell, Indiana.

7. The following items, in addition to the digital recording of the hearing labeled Swift Transportation, are officially recognized as part of the record of proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 131 petitions with attachments,
- Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

8. The properties under appeal include a 1.31 acre parcel of land and an adjoining four acre parcel with multiple improvements on Indiana State Route 650 in Shoals, Halbert Township, Martin County, Indiana.
9. The ALJ did not conduct an on-site inspection of the properties.
10. The PTABOA determined the 2008 assessed value of the properties to be \$4,100 for the land on the 1.310 acre parcel, and \$17,900 for the land and \$1,066,500 for the improvements, for a total assessed value of \$1,084,400 for the four acre parcel.
11. The Petitioner requested a total assessed value for 2008 of \$200,000 for both parcels.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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).

14. 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. Wash. 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”).
15. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER’S CONTENTIONS

16. The Petitioner contends that the 2008 assessed values of its properties are over-stated based on the properties’ July 2, 2009, sale price of \$200,000.² *Archer argument*. In support of this contention, the Petitioner’s representative presented a copy of the settlement statement from the sale of the subject properties, a copy of the purchase agreement, and two addendums to the agreement. *Archer testimony; Petitioner Exhibits 5 and 9*. Mr. Archer argues that the improvements on the properties total 19,872 square feet, which calculates to a sale price of \$10.06 per square foot; whereas the property is assessed for \$54.78 per square foot. *Archer testimony; Petitioner Exhibit 6*. Mr. Archer admitted that the purchase agreement and addendums contemplate the Petitioner will claim a “charitable contribution” based on the difference between the properties’ sale price and appraised value. *Archer testimony*. Mr. Archer testified, however, that Gary Weinberger, Vice President for Facilities for Swift, stated that no appraisal had been done on the property. *Id.* Further, although there was a previous offer to buy the properties for \$800,000, Mr. Weinberger stated that the purchase did not materialize for lack of

² While the July 6, 2009, “Master Settlement Statement” reports a settlement date of July 2, 2009, the Purchase Agreement and Addendums were signed in March of 2009. The Purchase Agreement was accepted on April 2, 2009. The parties refer to the purchase as an April of 2009 sale. The Board, however, will refer to it as a July 2, 2009, sale based on the settlement date. Whether the sale occurred in April or July of 2009, however, does not change the Board’s analysis.

financing. *Id.* According to Mr. Archer, to his knowledge, no charitable contribution was taken by the Petitioner based on its sale of the properties.³ *Id.*

17. The Petitioner further contends that the properties are over-valued based on the sales of three commercial properties in southwest Indiana. *Archer argument.* In support of this contention, the Petitioner's representative presented an aerial map identifying the location of the subject properties and the comparable properties and a spread sheet showing the date of the sales, the sales prices, the size of the improvements, and the purchase price per square foot for each comparable sale. *Petitioner Exhibit 6.* According to Mr. Archer, the property at 226 West Quarry Road in Orleans, which included 17,849 square feet in improvements, sold for \$147,000 in July 2008, or \$8.25 per square foot. *Archer testimony; Id.* Similarly, a property on West State Route 56 in French Lick, which included 85,300 square feet of improvements, sold in October of 2008 for \$378,265, or \$4.43 per square foot. *Id.* In addition, the property at 5100 S. Meridian Road in Mitchell, which included 77,500 square feet of improvements sold in December of 2007 for \$440,000, or \$5.68 per square foot. *Id.* Mr. Archer testified that he found the data for the first two sales on the web site of the Indiana Department of Local Government Finance (DLGF), and the third sale on a web site called CoStar Group, which is a commercial real estate information company. *Id.*
18. In addition, the Petitioner's representative argues that the size of the improvements on the Petitioner's properties was over-stated by the county, contributing to the over-assessment. *Archer argument.* According to Mr. Archer, the properties only have 19,872 square feet of commercial space, which is the total he used in his calculation of "per-square-foot" values for the properties. *Archer testimony; Petitioner Exhibit 6.* In support of this contention, Mr. Archer presented the property record cards of the subject parcels which show a total of 25,716 square feet in multiple structures on the property. *Archer*

³ Regardless, Mr. Archer argued, if the properties had been appraised for a million dollars and the Petitioners could take an \$800,000 benefit for the contribution by selling it for \$200,000, that \$800,000 should not be added to the value of the building. *Archer testimony.*

testimony; Petitioner Exhibit 1. Mr. Archer further contends the value of the subject properties is negatively impacted by their location two miles east of Shoals on State Route 650. *Archer testimony.*

19. In response to questioning, Mr. Archer admitted that the Respondent's documents show that on April 16, 2009, the property was leased to another party and that the agreement required a \$1 million replacement insurance policy to be in place prior to the lease. *Archer testimony.* Mr. Archer argued, however, that just because a lease requires a million-dollar replacement insurance policy does not mean the property is worth a million dollars. *Id.*

20. Finally, in his rebuttal argument, Mr. Archer contends that none of the Respondent's comparable property sales support a \$50 per-square-foot value. *Archer argument.* Further, Mr. Archer contends, the sale of the property at 21217 N. U.S. 231 in Dale in August 2005 falls outside the acceptable time range for sales. *Id.* In addition, Mr. Archer argues, four of the properties used by the Respondent have buildings that are much smaller than the Petitioner's improvements and are not comparable. *Id.* According to Mr. Archer, only the property at 48 South Buffaloville Road in Santa Claus, which has 42,360 square feet of commercial space, is comparable to size of the improvements on the Petitioner's properties. *Id.* Mr. Archer argues that the 48 South Buffaloville Road property sold for \$28.33 per square foot. *Id.* If that value was applied to the subject properties, Mr. Archer argues, the properties would be assessed for \$535,000 together instead of the \$1,088,500 that the properties were assessed for 2008.⁴ *Id.*

RESPONDENT'S CONTENTIONS

21. The Respondent contends that the Board should give no weight to the Petitioner's sale of its properties. *Meighen argument.* According to Ms. Meighen, the Petitioner's sale of

⁴ The Board notes that the Respondent's representative applied the \$28.33 per square foot to Mr. Archer's 19,872 figure rather than to the assessor's 25,716 sq. ft. of building area.

the properties in July of 2009 for \$200,000 plus a charitable contribution tax benefit is not probative evidence of the properties' value because the sale is not a valid sale. *Id.*

22. The Respondent further argues that the Petitioner's three comparable sales should likewise be given no weight by the Board. *Meighen argument; Petitioner Exhibit 6.* According to Ms. Meighen, the sale of 226 West Quarry Road in Orleans was a land only sale of a parcel split from a larger parcel. *Id.* In support of this argument, the Respondent's witness, Kirk Reller, testified that a 78 acre site which was used as a quarry in the 1940s, was divided into two parcels: one 15 acre parcel with the improvements which was purchased by Bryan Jones and operates as Jones Auto Salvage Yard; and a 63.3 acre parcel which was purchased on July 8, 2008, for \$147,300 by Rogers Group. *Reller testimony.* There are no improvements on the 63.3 acre parcel. *Id.* Thus, Ms. Meighen argues, Mr. Archer's calculation that the sale price equaled \$8.25 per square foot of building area is invalid.⁵ *Id.*
23. Similarly, Ms. Meighen argues that the sale of State Route 56 West in French Lick for \$378,265 is an invalid sale. *Meighen argument.* Mr. Reller testified that the November 25, 2008, transaction was a transfer of a one-half interest in the property from French Lick-West Baden Development to Brian Slinkard and Raymond Moore, who, according to Mr. Reller, are business partners who own the development company which transferred the half interest. *Reller testimony.*
24. The Respondent's representative also contends that the property located at 5100 S. Meridian in Mitchell, which sold for \$440,000 in December of 2007, is not comparable to the subject property because the improvements on the property are identified as 77,500 square feet; whereas the Petitioner's properties have only 25,716 square feet of improvements. *Meighen argument; Petitioner Exhibit 6.* Further, Mr. Reller testified, the Mitchell property has not been used since February of 2003 and, therefore, the improvements had been vacant and deteriorating for four years and ten months until the

⁵ Ms. Meighen showed the property record card to Mr. Archer during the hearing and questioned him about its contents, but did not present the document to the Board as an exhibit.

December 2007 sale. *Reller testimony*. According to Mr. Reller, the building was in poor condition at the time of the sale and the buyer indicated they would spend \$876,000 to remodel the property. *Id.*

25. The Respondent also contends the Petitioner's representative's claim that the subject property is in a remote location is incorrect. *Meighen argument*. According to Mr. Reller, the properties are located at U.S. 50 and State Route 650, which is in an area between U.S. Gypsum and National Gypsum operations. *Reller testimony*. Before it closed, Mr. Reller testified, the Petitioner's property was one of at least four trucking companies within two miles. *Id.*

26. The Respondent contends that the Petitioner's properties are properly assessed based on the sale of comparable properties in the area. *Meighen argument; Respondent Exhibits A through F*. According to the Respondent's witness, the first property, located at 1104 Fifth Street in Bedford, included 6,810 square feet of improvements. *Reller testimony; Respondent Exhibits A and B*. It sold in June of 2007 for \$340,000, which equals \$49.93 per square foot. *Id.* Mr. Reller testified that the second property, located at 48 South Buffaloville Road in Santa Claus, included 42,360 square feet of improvements. *Reller testimony; Respondent Exhibit C*. It sold in December of 2007 for \$1,200,000, which equals \$28.33 per square foot. *Id.* The third property is located at 21217 North U.S. Highway 231 in Dale. *Reller testimony; Respondent Exhibit D*. It sold in August of 2005 for \$720,000, and included 17,400 square feet of improvements, which calculates to \$41.38 per square foot. *Id.* The fourth property is located at 837 U.S. Highway 161 in Rockport. *Reller testimony; Respondent Exhibit E*. It sold in March of 2007 for \$185,000, and included 4,000 square feet of improvements, which calculates to \$46.25 per square foot. *Id.* The fifth property, located at 2325 Mitchell Road in Bedford, included 1,461 square feet of improvements. *Reller testimony*. It sold in January of 2008 for \$67,500, which equals \$46.20 per square foot. *Id.* The sixth property is located at 363 TV Tower Road in Mitchell. *Reller testimony; Respondent Exhibit F*. It sold in May of 2006 for \$149,000. *Id.* The sale included 7,680 square feet of improvements, which calculates to \$19.40 per square foot. *Id.*

27. Mr. Reller testified that the comparable properties were all truck facilities with the same use as the subject properties. *Reller testimony*. Even though the sizes of the buildings varied widely, Mr. Reller argued, most of the improvements were of lower quality than the Petitioner's improvements. *Id.* Further, Mr. Reller admitted that one of his comparable sales in August of 2005 fell six months prior to the relevant time frame, and another sale in January of 2008 was one month beyond it. *Id.* However, he argues, the DLGF allows assessors to go beyond that time frame by as much as five years to get sufficient data if it is documented and appropriately time adjusted. *Id.*
28. Finally Ms. Meighen argues that Paradigm Tax Group is being paid on a contingent fee basis. *Meighen argument*. According to Ms. Meighen, although the Petitioner's representative is not prohibited from testifying, the Indiana Tax Court in *Wirth v State Bd. of Tax Comm'rs*, 613 N.E.2d 874 (Ind. Tax Ct. 1993) said a contingent fee arrangement raises the specter of an auctioning of the truth and casts a pall over the entire case. *Meighen argument; also citing Lakeville Associates, Ltd. v. St. Joseph County Assessor*, Petition No. 72-028-06-1-4-12144, (issued February 15, 2010); and *River Glen Country Club, LLC v. Hamilton County Assessor*, Petition No. 29-006-07-1-4-00058, (issued July 13, 2010).

ANALYSIS

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 (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has 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 use a

mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).

30. 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer 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 practices. MANUAL at 5.
31. Regardless of the method used to rebut an assessment's presumption of accuracy, a party to an appeal must explain how his or her 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, that valuation date was January 1, 2007. 50 IAC 21-3-3.
32. The Petitioner's representative first argues that the Petitioner's properties are over-valued based on their \$200,000 sale price in July of 2009. *Archer argument*. In support of this contention, Mr. Archer presented a copy of the purchase agreement and two addendums to the agreement. *Petitioner Exhibit 9*. The sale of the subject property is often the best evidence of the property's value. *See Hubler Realty, Inc. v. Hendricks Cty Ass'r*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). Here, however, the sale was more than two years after the January 1, 2007, valuation date for the March 1, 2008, assessment. Because the Petitioner's representative failed to show how the properties' July 2, 2009, purchase price related to the properties'

January 1, 2007, values, the Petitioner failed to raise a prima facie case that its properties were over-valued based on their sale price.

33. Moreover, the Petitioner's representative failed to show that the properties' \$200,000 sale price reflected the properties' market value-in-use. While the sale of a property may be a good indicator of its actual market value, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. "Fair market value' is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). Here, the Petitioner's Addendum One to its purchase agreement indicates that "It is the intent of the parties to cause the Owner to donate and the Buyers to accept the real property described in the purchase agreement as a Charitable Contribution as defined in the Internal Revenue Service (IRS), USA for the value difference between the Appraised Value and the Purchase Price. All documents...are intended to reflect the efforts of both parties to complete this transaction as a 'Combined Charitable Contribution' and Cash transaction. Seller would therefore receive benefits of a cash sale as well as the tax benefits of a Charitable Contribution..." *Id.* While Mr. Archer testified that no such tax benefit was taken and that no appraisal of the property was performed, the documents make clear that the Petitioner believed at the time of the properties' sale, the properties were worth more than \$200,000 and it intended to claim that additional value as a charitable contribution. Thus, even if the sale was timely or related to the relevant valuation date, the properties' purchase price is not probative of the properties' values because it only represented the "cash portion" of the sale and did not include the value of the property above that cash sale that the Petitioner had the option to claim as a charitable contribution.
34. The Petitioner's representative also contends the properties are over-valued based on the market values of other comparable properties. *Archer testimony*. In support of this contention, Mr. Archer presented a spreadsheet showing the sales of three commercial

properties he identified as comparable to the Petitioner's properties. *Archer argument; Petitioner Exhibit 6*. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, Mr. Archer made little attempt to show how the properties were comparable and he presented no evidence to value the differences between the properties. Mr. Archer merely presented sales and assessment information for the three properties he claimed were comparable to the Petitioner's properties and compared the properties based on their purported sale price per square foot. Thus, Mr. Archer's comparable sales evidence fails to raise a prima facie case the Petitioner's properties were over-valued for the March 1, 2008, assessment year.

35. Moreover, the Respondent's evidence shows that the Petitioner's representative was mistaken in his presentation of "comparable sales." Mr. Archer's first property was a land only sale, split from a larger parcel. Therefore Mr. Archer's "price per square foot of improvement" analysis was in error because there were no improvements on the property. The second sale cited by Mr. Archer was a transfer of only a one-half interest in the property between related parties. Therefore the sale was not an "arms' length transaction" as that phrase is commonly used. Finally, while the third transaction may have been a market sale, the building on the property was substantially larger than the buildings on the Petitioner's properties. Mr. Archer made no attempt to adjust for this difference in the properties.
36. Even if one comparable sale was sufficient to show that the Petitioner's properties were over-valued, the Board notes that Mr. Archer's company is being paid on a contingency fee basis. *Archer testimony*. Thus, while contingently paid expert witnesses are not

absolutely prohibited from testifying in Indiana, Mr. Archer's estimate of value is not as persuasive as a similar analysis made by a non-contingently paid licensed appraiser.⁶

37. Finally, Mr. Archer contends that the assessor's calculation of 25,716 square feet of improvements was incorrect. *Archer testimony*. According to Mr. Archer, the properties only have 19,872 square feet of improvements, because, he argues, "we are not counting the 50' x 50' barn." *Id.* Mr. Archer did not explain where the additional discrepancy in area lies. Because the 50' x 50' barn indisputably exists on the property and because Mr. Archer made no attempt to explain why his calculation of 19,872 square feet of building area was correct, the Board finds that the Assessor did not err in assessing the improvements' area. In addition, to the extent Mr. Archer can be seen as arguing that the location of the appealed parcels has a negative impact on the properties' value, the Board finds that he failed to present any market value evidence to support his contentions. Statements that are unsupported by probative evidence are conclusory and of no 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).
38. Where the taxpayer fails to provide probative evidence that its assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Industries v. Department of Local Government Finance*, 799 N.E.2d 1215-1222 (Ind. Tax Ct. 2003).

⁶ See *Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 877 (Ind. Tax Ct. 1993); see also Ind. Professional Conduct Rule 3.4(b) (The common law rule in most jurisdictions is that . . . it is improper to pay an expert witness a contingent fee.). Some states have even held certain contracts for paying expert witnesses contingent fees void as against public policy. *Wirth*, 613 N.E.2d at 876 (citing, e.g. *Dupree v. Malpractice Research, Inc.* 179 Mich. App. 254, 445 N.W.2d 498 (1989)). As the Indiana Tax Court explained, the rationale underlying that strong judicial disfavor goes to the heart of the judicial process. A contingent witness fee raises the specter of an auctioning of the truth and casts a pall over the entire fact finding process. *Id.* at 876-77. While the potential for abuse is less in a bench trial than in a jury trial (*Wirth*, 613 N.E.2d at 877), it is still significant.

SUMMARY OF FINAL DETERMINATION

39. The Petitioner failed to raise a prima facie case that the 2008 assessed values of its properties are overstated. The Board finds in favor of the Respondent and holds that the assessed value of Parcel No. 51-06-15-300-030.000-003 is \$4,100 and the assessed value of Parcel No. 51-06-15-300-025.000-003 is \$17,900 for the land and \$1,066,500 for the improvements.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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>.