

REPRESENTATIVE FOR PETITIONER:

Paul M. Jones, Attorney

REPRESENTATIVE FOR RESPONDENT:

Brenda Brittain, Morgan County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Indiana Business Bank,	)	Petition No.: 55-021-09-1-4-00002
	)	
	)	
Petitioner,	)	
	)	
	)	Parcel No.: 55-13-03-380-003.000-021
v.	)	
	)	
	)	
Morgan County Assessor,	)	County: Morgan
	)	
	)	
Respondent.	)	Assessment Year: 2009

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

**November 21, 2011**

**FINAL DETERMINATION**

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

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property is over-stated for the 2009 assessment year.

### **PROCEDURAL HISTORY**

2. The Petitioner initiated its assessment appeal with the Morgan County Property Tax Assessment Board of Appeals (the PTABOA) on April 14, 2010. The PTABOA issued its assessment determination on November 9, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on November 16, 2010, petitioning the Board to conduct an administrative review of its property's 2009 assessment.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing on August 23, 2011, in Martinsville, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Carla D. Bishop, Meritax Property Tax Consultants, Inc.

For the Respondent:

Brenda Brittain, Morgan County Assessor,  
Reva Brummett, PTABOA member.

6. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Petitioner’s “Summary of Issues,”
  - Petitioner Exhibit 2 – Subject property’s Form 131,
  - Petitioner Exhibit 3 – Property record card for the subject property,
  - Petitioner Exhibit 4 – Appraisal Report for the subject property,
  - Petitioner Exhibit 5 – 2010 lease of the property,
  - Petitioner Exhibit 6 – Real Property Ad Valorem Report.
  
7. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – Copy of the Petitioner’s request for an informal hearing,
  - Respondent Exhibit 2 – Form 115 dated November 9, 2010,
  - Respondent Exhibit 3 – Letter from Carla Bishop, dated October 26, 2010,
  - Respondent Exhibit 4 – Copy of the Petitioner’s Appraisal Report,
  - Respondent Exhibit 5 – Copy of the property’s lease,
  - Respondent Exhibit 6 – Property record card for March 1, 2009,
  - Respondent Exhibit 7 – Form 115 for the Petitioner’s 2008 appeal, dated November 5, 2009.
  
8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
  - Board Exhibit A – Form 131 Petition,
  - Board Exhibit B – Notice of Hearing dated July 1, 2011,
  - Board Exhibit C – Hearing sign-in sheet.
  
9. The subject property is a convenience store and gas station located at 229 Grand Valley Boulevard, Martinsville, in Morgan County.
  
10. The ALJ did not conduct an on-site inspection of the subject property.
  
11. For 2009, the PTABOA determined the assessed value of the subject property to be \$396,600 for the land and \$330,800 for improvements, for a total assessed value of \$727,400.
  
12. For 2009, the Petitioner contends the total assessed value of its property should be \$500,000.

## JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana 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

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
15. 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”).
16. 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

17. The Petitioner contends that the assessed value of its property was over-stated for the March 1, 2009, assessment year. The Petitioner presented the following evidence in support of its contention:
- A. The Petitioner's witness testified that the subject property is a convenience store and gas station that has suffered a reduction in value over the past few years. *Bishop testimony*. According to Ms. Bishop, the property is located on the highway but it was built behind a fast food restaurant, which affects its visibility. *Id.* Further, she argues, competition from Walmart has affected the property as well. *Id.* Thus, while the property sold in July 2005 for \$725,000 after a foreclosure and was re-sold in January 2007 for \$855,000, it was lost in foreclosure again less than two years later. *Petitioner Exhibit 4, p.15*. As of the date of the appraisal, Ms. Bishop testified, the property had been offered for sale for \$775,000 for approximately a year. *Id.*
- B. The Petitioner's counsel argues that the Petitioner's property is over-valued for the 2009 assessment year based on the property's appraised value. *Jones argument*. In support of this contention, Mr. Jones presented an appraisal prepared by Stephen Traynor and Joseph Traynor, estimating the value of the Petitioner's property to be \$542,000 as of March 31, 2009. *Petitioner Exhibit 4*. The Petitioner's witness testified that the appraisal was prepared for the Petitioner after it acquired the property as a result of the property's 2009 foreclosure. *Bishop testimony*. According to Ms. Bishop, the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). *Id.; Petitioner Exhibit 6, p. 54*.
- C. Ms. Bishop testified that, in their appraisal report, the appraisers reviewed all three methods of valuation. *Bishop testimony; Petitioner Exhibit 6*. However, Ms. Bishop contends the appraisers did not develop the cost approach because it would not provide an accurate estimate of the subject property's value due to the age and condition of the improvements. *Bishop testimony; Petitioner Exhibit 6, p. 39*. In

addition, Ms. Bishop testified, the appraisers did not develop the income approach because at the time of the appraisal the property was vacant and was not generating income. *Id.*

- D. For the sales comparison approach, Ms. Bishop testified that the Petitioner's appraisers used the sale prices of four comparable properties. *Bishop testimony; Petitioner Exhibit 6, pp. 43-50.* According to Ms. Bishop, the appraisers made adjustments to the sale prices of each property and included a narrative explaining their reasons for the adjustments. *Bishop testimony; Petitioner Exhibit 6, pp.47-49.* After adjusting the sales, the appraisers estimated the property's value to be \$160 per square foot, or \$542,000 as of March 31, 2009. *Petitioner Exhibit 6, p. 50.* Although the subject property sold in January of 2007, Ms. Bishop contends, the appraisers did not include the sale in their analysis because the property went into foreclosure less than two years after the purchase. *Bishop testimony.* According to Ms. Bishop, there was a question as to whether the buyer was a knowledgeable buyer and therefore whether the sale was an arms' length transaction. *Id.*
- E. To trend the property's appraised value to the January 1, 2007, valuation date, Ms. Bishop testified that she looked at the Consumer Price Index (CPI) Detailed Report and determined that the March 2009 inflation factor was 212.709 and the January 2008 inflation factor was 211.080. *Bishop testimony; Petitioner Exhibit 6.* Ms. Bishop then calculated the adjustment to be -.77%, or she contends, -\$41,734.<sup>1</sup> *Id.* Applying that adjustment to the appraised value of \$542,000, Ms. Bishop contends the value of the subject property as of January 1, 2008, was \$500,000. *Id.* The Petitioner's counsel argues that the use of the CPI factor to trend a property's value is supported by the Board's determination in *All Coast Logistics and Manufacturing, Inc. v. Wayne Township Assessor*, Petition No. 89-030-02-1-3-00006, *et.al.* *Jones argument.*

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<sup>1</sup> The Board notes that, while the change in the CPI is less than 1% (.77) between January 1, 2008, and March 1, 2009, Ms. Bishop reduces the appraised value by over 23%.

F. Ms. Bishop further argues that the property's April 29, 2010, lease supports the property's appraised value. *Bishop argument; Petitioner Exhibit 1*. According to Ms. Bishop, the lease agreement included an option to purchase the property for \$542,000, and the property was expected to close in August of 2011 for \$500,000. *Bishop testimony; Petitioner Exhibit 5*. Ms. Bishop argues that, even though the lease and the sale occurred well after the valuation date, they support the Petitioner's argument that the value of the property was no more than \$542,000 for the 2009 assessment year. *Bishop argument*. Ms. Bishop admitted, however, that the property was never offered for sale for \$542,000. *Id.*

### RESPONDENT'S CONTENTIONS

18. The Respondent contends that the assessed value of the Petitioner's property is correct for the March 1, 2009, assessment year. The Respondent presented the following evidence in support of its contentions:

A. The Respondent contends that the Petitioner's property is correctly assessed at \$727,400 for 2009. *Brittain argument*. According to Ms. Brittain, the subject property sold for \$855,000 on January 6, 2007, which was within the proper time frame for the 2009 assessment. *Id.* As a result of an appeal of the property's 2008 assessment, Ms. Brittain testified, the PTABOA calculated the value of the property by averaging the subject property's purchase price of \$252 per square foot and the sale prices of the Petitioner's four comparable properties, resulting in a value of \$215 per square foot, or \$729,000. *Id.* The PTABOA then applied a negative 30% for vacancy, which lowered the assessment to \$727,400.<sup>2</sup> *Id.* The Respondent's witness testified that the property's 2008 assessed value carried forward to 2009. *Brummett testimony*.

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<sup>2</sup> The Board notes that the convenience store is reported to be 3,386 square feet, which if multiplied by \$215, results in a value of \$727,990 and that a 30% influence factor applied to the Respondent's reported \$729,000 value results in a value of \$510,300 rather than \$727,400. Thus, the evidence is unclear how the Respondent calculated the values that she testified to.

- B. Further, the Respondent's witness argues that the sale of the property in 2007 was a valid sale. *Brummett testimony*. According to Ms. Brummett, regardless of how long an owner is able to keep a property after its purchase, the sale was still an arms' length transaction. *Id.* "It was what that willing buyer was willing to pay and we can make no more assumptions than the appraiser did that the buyer and seller were both knowledgeable and equally motivated." *Id.* Further, Ms. Brummett argues, the fact that the property was listed for \$775,000 at the time of the assessment rebuts the Petitioner's contentions. *Id.*
- C. Finally, the Respondent contends that the Petitioner's appraisal should be given little weight. *Brittain argument*. Ms. Brittain argues that the appraisers used four sales that occurred between August 2004 and March 2007, but failed to include the sale of the subject property in their sales comparable analysis. *Id.*

#### ANALYSIS

19. The 2002 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). 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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).
20. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

21. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3.
22. Here, the Petitioner's counsel argues that the Petitioner's property was over-assessed in 2009 based on its appraised value. *Jones argument*. In support of his contention, Mr. Jones submitted an appraisal prepared by Stephen Traynor and Joseph Traynor that estimated the value of the Petitioner's property to be \$542,000 as of March 31, 2009. *Petitioner Exhibit 4*. Both appraisers are Indiana certified appraisers who attested that they prepared the Petitioner's appraisal in accordance with USPAP and FIRREA. *Id.* The Petitioner's witness trended the appraised value to the January 1, 2008, valuation date using the CPI, which she contends lowered the 2009 value of the property to \$500,000 for the January 1, 2008, valuation date. While Ms. Bishop's calculation was incorrect by an order of magnitude, the Board finds that the underlying evidence – the CPI for March of 2009 and the CPI for January of 2008 – provides some evidence to relate the property's March 31, 2009, appraised value to the January 1, 2008, valuation date.
23. The Board therefore finds that the Petitioner raised a prima facie case that its property was over-assessed for the 2009 tax year at issue. 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).

24. Here, the Respondent presented evidence that the property sold for \$855,000 on January 6, 2007, which is within the relevant time frame for the 2009 assessment.<sup>3</sup> *Brummett argument*. According to the Respondent's witness, the sale was an arms' length transaction. *Id.* Further, Ms. Brummett argues, the fact that the property was listed for \$775,000 at the time of the assessment rebuts the Petitioner's contention that the property's value was \$500,000 in 2009. *Id.* The January 6, 2007, sale of the property is sufficiently timely to rebut the Petitioner's appraised value. Further, the fact that the Petitioner listed the property for sale for \$775,000 during the relevant time period suggests that the Petitioner itself believed the property had a value in excess of its appraised value. Thus, the Board finds that the Respondent rebutted the Petitioner's prima facie case.
25. The price paid for a property and an appraisal are both acceptable approaches to determining a property's market value-in-use. Further, both the appraisal's trended valuation date and the purchase of the property occurred sufficiently timely to be probative evidence of the property's value for the March 1, 2009, assessment. The Board must, therefore, weigh the evidence presented by both parties and determine the most persuasive evidence of the property's value.
26. Here, the appraisers chose not to consider the 2007 sale of the subject property in their comparative sales analysis. The appraisal stated that the current owner believed that the previous owner had failed because of "inexperienced management, [the] lack of a national brand, and competition from Walmart." *Petitioner Exhibit 4 at 48*. However,

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<sup>3</sup> The property also sold in 2008 for \$600,000 at a sheriff's sale. However, the appraisers specifically identified that transaction as an exchange that did not satisfy the requirements of an arms' length transaction. *Petitioner Exhibit 4 at 15*.

the Petitioner's "evidence" regarding the former owner's knowledge or expertise which was based on statements of the *current* owner is speculative at best. Further, such testimony is hearsay on hearsay and entitled to little or no weight.<sup>4</sup> *See* 52 IAC 2-7-3. 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). In addition, the appraisers chose properties that sold for prices ranging from \$185 to \$270 per square foot. *Petitioner Exhibit 4 at 48-50*. Yet in their final analysis, the appraisers valued the subject property at just \$160 per square foot, relying on adjustments of up to 40%. Such large adjustments calls into question the "comparability" of the sales that the appraisers relied upon to perform their sales comparable analysis.

27. The Petitioner also failed to adequately support the appraisers' decision to ignore both the income approach and the cost approach in their analysis. According to Ms. Bishop, the appraisers chose not to perform a cost approach analysis because of the "age and condition of the improvements." *Bishop testimony; Petitioner Exhibit 4 at 39*. However, the Petitioner presented no evidence of the condition of the improvements. Neither the appraisers, nor Ms. Bishop, identified any deferred maintenance or other condition issue with the building. They merely argued that the property had sat vacant for a short period of time. *See Damon v. State Board of Tax Commissioners*, 738 N.E.2d 1102 (Ind. Tax 2000) (unsupported allegation that the vacancy of the property prior to its purchase indicates obsolescence does not constitute a prima facie case that the property suffered a loss). Further, the building was constructed in 2002 and therefore was only six or seven years old on the assessment date.

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<sup>4</sup> Similarly, Ms. Bishop testified that the buyer must not have been knowledgeable because the property fell into foreclosure in less than two years. However, there are many reasons a business may fail in a relatively short period of time that have little to do with a party's knowledge of the market or management expertise. The Petitioner failed to present evidence that the property's January 6, 2007, purchase was anything other than a market transaction and the Board declines to make the inference the Petitioner urges the Board to make.

28. Similarly, the appraisers chose not to perform an income analysis because the property was “currently vacant and [was] generating no income.” *Petitioner Exhibit 4 at 39*. However, 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 considers the property as an investment and therefore values the property based on the rent it will produce for its owner. *Id.* Thus, the fact that the property was not generating revenue at the time of the appraisal would not prevent the appraisers from valuing the property based on the rental rates of comparable properties.
29. In addition, in trending the property’s appraised value, Ms. Bishop appears to argue that property values increased between 2008 and 2009 because she lowered the \$542,000 appraised value of the property to \$500,000 for the January 1, 2008, valuation date. Contrary to her assertion, however, the Petitioner’s appraisers reduced the comparable sale prices of properties that sold between 2004 and 2007 to value the property for 2009 because market conditions had been declining since 2006. *Petitioner Exhibit 4, pp. 20, 21, and 47*. Moreover, as noted above, Ms. Bishop’s trending analysis was incorrectly calculated by an order of magnitude. Even if the Board determined that the CPI was the best evidence of the change in the real estate market in this case, the CPI increased by less than 1% between January of 2008 and March of 2009, or .77% to be exact. Ms. Bishop, however, deducted almost a quarter of the property’s appraised value in her “trending analysis.” This further reduces the credibility of the Petitioner’s evidence.<sup>5</sup>
30. An appraisal represents an estimate of a property’s value based on the opinion of an appraiser. In contrast, the purchase of a property is not an estimate, but rather is direct evidence of how a buyer and seller valued the utility of the property. The property’s \$855,000 purchase price in January of 2007 is a strong indication that the Petitioner’s

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<sup>5</sup> The Petitioner also offered a lease agreement with an option to purchase the property for \$542,000 and Ms. Bishop testified that the subject property would be sold at the end of August for \$500,000. However, both the lease and sale are too far removed from the valuation date to be probative evidence of the value of the property for the March 1, 2009, assessment.

requested assessment of \$500,000 would be too low. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). The Board notes that the property's 2007 purchase price is approximately 15% higher than the property's 2009 assessed value and finds that the lower assessment adequately accounts for any reduction in value the property may have suffered related to the declining real estate market or related to its brief vacancy as of the date of the assessment. The Board therefore holds that the weight of the evidence supports the property's 2009 assessed value.

### CONCLUSION

31. The Petitioner raised a prima facie case that its property was over-valued for the March 1, 2009, assessment. The Respondent rebutted the Petitioner's evidence. The Board finds in favor of the Respondent.

### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property for the March 1, 2009, assessment date should not be changed.

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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

### 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>.