

REPRESENTATIVE FOR PETITIONERS:

Richard DeLaney, Bendall, DeLaney, Hartburg, McNeely & Roth LLP

REPRESENTATIVE FOR RESPONDENT:

Joan Stoffel, Huntington Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

James R. & Carol A. Sprinkle,	)	Petition No.:	35-014-03-1-4-00035
	)	Parcel:	014-01023-01
Petitioners,)		
)		
v.)		
	)	County:	Huntington
Huntington Township Assessor,	)	Township:	Huntington
	)	Assessment Year:	2003
Respondent.)		

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

February 20, 2007

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The parties presented the following issue for the Board's consideration:
Whether the subject property's assessed value exceeds its market value-in-use.

PROCEDURAL HISTORY

2. The Petitioners, James R. & Carol A. Sprinkle (the Petitioners), initiated an assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 7, 2004. On June 3, 2005, the PTABOA issued its Form 115 Notification of Final Assessment Determination (Form 115). On June 20, 2005, pursuant to Ind. Code § 6-1.1-15-3, the Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition) petitioning the Board to conduct an administrative review of the subject property's assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Dalene McMillen, conducted a hearing on November 15, 2006, in Huntington, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

James R. Sprinkle, Owner¹

For the Respondent:

Joan Stoffel, Huntington Township Assessor,

¹ Richard DeLaney appeared as counsel for the Petitioners but did not present testimony.

Julie D. Newsome, Huntington Township Deputy Assessor

5. The Petitioners presented the following exhibits:

- Petitioners Exhibit A – Petition to the PTABOA for Review of Assessment – Form 130,
- Petitioners Exhibit B – Notification of Final Assessment Determination – Form 115,
- Petitioners Exhibit C – Petition to the Board for Review of Assessment – Form 131,
- Petitioners Exhibit D – Power of Attorney from James R. & Carol A. Sprinkle to Richard DeLaney, dated June 17, 2005,
- Petitioners Exhibit E – Subject property record card (PRC), aerial map and property tax report,
- Petitioners Exhibit F – 2003 pay 2004 Real Property Tax Statement on the subject property,
- Petitioners Exhibit G – Settlement statement between Susan Richey and James R. and Carol A. Sprinkle, dated August 29, 2003,
- Petitioners Exhibit H – Appraisal report prepared by AAA Realty Service, Inc., dated August 21, 2003,
- Petitioner Exhibit I – Letter from Richard DeLaney to Terri L. Boone, Huntington County Assessor, dated April 29, 2005,
- Petitioners Exhibit J – 2004 Income and Expense Statement for the subject property,
- Petitioners Exhibit K – Aerial map, property tax report and PRC for 1215 Etna Avenue, Huntington, Indiana.

6. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Petition to the Board for Review of Assessment – Form 131,
- Respondent Exhibit 2 – Subject PRC,
- Respondent Exhibit 3 – Notification of Final Assessment Determination – Form 115,
- Respondent Exhibit 4 – Petition to the PTABOA for Review of Assessment – Form 130,
- Respondent Exhibit 5 – PTABOA’s request for addition information from Petitioners, letter from Richard DeLaney to Terri Boone, Huntington County Assessor, 2004 Income and Expense Statement for the subject property, Establishing the Capitalization Rate from *The Appraisal of Real Estate*,

Tenth Edition, aerial map, property tax report and PRC for 1215 Etna Avenue, Huntington, Indiana, aerial map, property tax report and PRC for 70 Home Street, Huntington, Indiana,

Respondent Exhibit 6 – PRCs for the following comparable properties: Opal Development, Inc.; City Investment, LLC; S & B Real Estate, LLC; and Huntington County Farm Bureau

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing, dated October 10, 2006,

Board Exhibit C – Hearing sign-in sheet.

8. The subject property consists of two commercial office buildings situated on a one-acre parcel of land located at 2040 and 2060 Riverfork Drive, Huntington, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2003, the PTABOA determined the assessed values of the property to be \$41,200 for the land and \$327,500 for the improvements, for a total assessed value of \$368,700.
11. For 2003, the Petitioners contend the assessed values of the property should be \$10,000 for the land and \$192,500 for the improvements, for a total assessed value of \$202,500.

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 Indiana board under

any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. 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 PETITIONERS' 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. 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”).
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 evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Whether the subject property’s assessed value exceeds its market value-in-use.

Parties’ Contentions

16. The Petitioners contend that the Respondent assessed the subject property in excess of its market value of \$202,500. *J. Sprinkle testimony; DeLaney argument.*

17. The Respondent contends that the Petitioners did not adequately support their claim for a reduction in assessment. *Newsome testimony; Stoffel testimony.*

18. The Petitioners presented the following evidence and argument in support of their claim:
 - A. The Petitioners bought the subject property in an arm's-length transaction from an unrelated party for \$202,500 on August 29, 2003. *J. Sprinkle testimony; Pet'rs Ex. G.* The sellers had listed the property for sale with a real estate agent, and the Petitioners learned of its availability through a newspaper advertisement. *J. Sprinkle testimony.*

 - B. The Petitioners submitted a limited appraisal prepared by Albert Pfister, AAA Realty Service, Inc., pursuant to which Mr. Pfister estimated the subject property's market value to be \$206,500 as of August 21, 2003. *J. Sprinkle testimony; Pet'rs Ex. H.* Mr. Pfister certified that he prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). *Pet'rs Ex. H at Addendum 7.*

 - C. Mr. Pfister used the income and sales comparison approaches to value in performing his appraisal. *Pet'rs Ex. H at 20-34.* Mr. Pfister did not use the cost approach to value, which he found to be the least applicable approach. *Pet'rs Ex. H at 20.* Mr. Pfister indicated that his decision not to use the cost approach was an allowable departure in a limited report pursuant to USPAP Rule 1-4. *Id.*

 - D. Mr. Pfister used the actual rental income from the subject property to determine the property's potential gross income. *Pet'rs Ex. H at 22.* The Petitioners leased the subject property to a single tenant – the Farm Services Agency (FSA). *Id at 22, Addendum 5.* The lease covered the period from February 1, 1999, to January 31, 2004, and provided for rent of ten dollars (\$10) per square foot. *Id.* Mr. Pfister further indicated that he reviewed office lease information from his files and

- determined that the FSA lease fairly reflected market rent given the subject property's condition. *Id.*
- E. Mr. Pfister reduced the subject property's potential gross income by ten percent (10%) to reflect vacancy and collection losses. *Id.* He based his reduction on the fact that the lease contained an escape clause allowing the FSA to terminate the lease as long as the FSA provided the lessor with one hundred and twenty (120) days advance notice. *Id.* Mr. Pfister then subtracted estimated operating expenses including taxes, general maintenance, replacement reserves, and management fees to arrive at the subject property's net operating income. *Id. at 23.*
- F. Mr. Pfister relied upon the band of investment technique in determining an appropriate capitalization rate to apply to the subject property's net operating income. *Pet'rs Ex. H at 26.* In doing so, Mr. Pfister determined that a typical investor could obtain a loan at the rate of seven percent (7%) for a term of fifteen (15) years and that such investor would expect a return on equity of twelve percent (12%). *Id.* Mr. Pfister arrived at an overall capitalization rate of eleven percent (11%). *Id.* Mr. Pfister applied his capitalization rate to the subject property's net operating income and arrived at an estimated market value of \$206,600. *Id. at 26.*
- G. In his sales comparison analysis, Mr. Pfister examined the sales of three (3) properties that he determined were comparable to the subject property. *Pet'rs Ex. H at 27-32.* The first two properties (Sale #1 and Sale #2) sold in 1999, while the third property (Sale #3) sold on May 16, 2002. *Id. at 30-31.* Mr. Pfister compared those properties to the subject property in terms of the size, age and condition of the buildings, the lot size, and access to utilities, among other factors. *Id. at 31.* Mr. Pfister adjusted the sale price of the first comparable property to reflect differences between that property and the subject property in terms of the age and condition of the buildings situated on

- those properties. *Id.* Mr. Pfister did not adjust the sale prices of the other two properties. *Id.*
- H. The comparable properties sold for prices ranging from \$29.61 per square foot of building area to \$50.35 per square foot of building area. *Id.* Mr. Pfister found that the “conservative value” (\$29.61 per square foot of building area) reflected by Sale #3 was the best indication of the subject property’s value given the below average condition of the subject property. *Id. at 32.* Mr. Pfister therefore applied that rate to the subject property’s 6,960 square feet of building area to arrive at an estimated value for the subject property of \$206,000. *Id.*
- I. In reconciling to a value of \$206,500, Mr. Pfister gave the greatest weight to his conclusions under the income approach to value. *Pet’rs Ex. H at 33.* Mr. Pfister assigned only “moderate” weight to his conclusions under the sales comparison approach due to “Limited Sales Comparison Information.” *Id.*
- J. The Petitioners contend that Mr. Pfister’s appraisal is related to the subject property’s value as of January 1, 1999, because Mr. Pfister relied upon lease information dating back several years when he performed his analysis under the income approach. *Delaney argument.* According to the Petitioners, Mr. Pfister’s reliance on that lease information demonstrates that market values in the area had not changed dramatically between January 1, 1999, and the date of Mr. Pfister’s appraisal. *Id.*
- K. The Petitioners also contend that the subject property is over-assessed when compared to another property they own that is located two miles from the subject property at 1215 Etna Avenue. *J. Sprinkle testimony.* In support of that contention, the Petitioners submitted a property record card (PRC) for the Etna Avenue property indicating that the Petitioners bought the property for \$110,000 in 2002 and that the property is currently assessed for \$108,800. *J. Sprinkle testimony; Pet’rs Ex. K.*

- L. Finally, the Petitioners contend that the Board should assign little weight to the assessment information for the four (4) purportedly comparable properties identified by the Respondent. *J. Sprinkle testimony; DeLaney argument; Resp't Ex. 6.* Although the properties identified by the Respondent are used as general offices, they have more appeal for prospective tenants than does the subject property because they are located in areas with higher growth and traffic. *Id.* In addition, the Petitioners contend that the Respondent failed to provide any income or expense information for the purportedly comparable properties. *Id.*
19. The Respondent presented the following evidence and argument in support of the assessment:
- A. The Respondent submitted assessment information for four (4) properties that it contends are comparable to the subject property. *Newsome testimony; Resp't Ex. 6.* The Respondent acknowledges that each of the properties in question has one building located on it while the subject property has two buildings. *Id.* Nonetheless, the Respondent contends that the buildings on the comparable properties are similar to the subject buildings in terms of construction type, use, age and size. *Id.*
- B. Under cross-examination by the Petitioners' counsel, Ms. Newsome admitted that other than the property located on Maple Drive, none of the purportedly comparable properties identified by the Respondent are located in close proximity to the subject property. *Newsome testimony.* Ms. Newsome also acknowledged that the Respondent's purportedly comparable properties are located in retail areas with high growth and heavy consumer traffic and that the Respondent does not have rental income information for those properties. *Id.*

- C. The Respondent further notes that the settlement statement and appraisal submitted by the Petitioners are dated August 21, 2003, and August 29, 2003, respectively. Thus, the Respondent contends that those items fail to establish the subject property's value as of the January 1, 1999, valuation date. *Newsome testimony; Pet'rs Exs. G-H.*
- D. The Respondent questions the validity of the sale price as evidence of the subject property's market value because the Petitioners submitted only the settlement statement showing the disbursement of the sale proceeds and did not submit the underlying purchase agreement between the Petitioners and the seller. *Newsome argument.*
- E. The Respondent questions the accuracy of Mr. Pfister's appraisal in light of the fact that he deducted ten percent (10%) from the potential gross income of the subject property to account for vacancy and collection losses despite the fact that the subject building was one hundred percent (100%) occupied. *Newsome argument; Pet'rs Ex. H at 22.* In addition, the Respondent contends that the record does not contain any information to document the operating expenses that Mr. Pfister deducted from the potential gross income of the subject property. *Id.* The Respondent further points to what it terms as a lack of documentation to support Mr. Pfister's decisions regarding whether to adjust the sale prices he relied upon in estimating the subject property's value under the sales comparison approach. *Id.*

Discussion

20. The 2002 REAL PROPERTY ASSESSMENT MANUAL (the Manual) defines the "true tax value" of real property 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, for the property." MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, 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. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the Guidelines), to assess real property.

21. A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, is presumed to be accurate. *See* 2002 REAL PROPERTY ASSESSMENT 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 2006). A taxpayer, however, may rebut that presumption with evidence relevant to the market value-in-use of the subject property. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5; *see also, Kooshtard Properties VI*, 836 N.E.2d at 505, 506, n. 1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).”).
22. Indiana's assessment regulations further provide that for the 2002 general reassessment, a property's assessment is to reflect its market value-in-use as of January 1, 1999. *See* MANUAL at 4, 8. That valuation date also applies to assessments from subsequent years through and including 2005. *See* MANUAL at 2 (“This assessment manual contains the rules for assessing real property located in Indiana for the March 1, 2002, through March 1, 2005, assessment dates”).² Consequently, in an appeal of a 2003, 2004 or 2005

² Beginning with the March 1, 2006, assessment date, assessing officials are required to adjust assessments of real property annually to account for changes in value since the last general reassessment. Ind. Code § 6-1.1-4-4.5; Ind. Admin. Code tit. 50, r. 21-1-1 through r. 21-12-1. The valuation date for such adjustments will be January 1 of the year preceding the assessment date. Ind. Admin. Code tit. 50, r. 21-3-3(b).

assessment, a party relying on evidence regarding the market value-in-use of a property as of a date substantially removed from the relevant valuation date must explain how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal for the 2002 assessment of that property); *see also, O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006) (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without *some explanation* as to how these values relate to the January 1, 1999 value.”) (emphasis in original).

Petitioners' prima facie case

23. The Petitioners rely on three main items of evidence to support their claim that the Respondent assessed the subject property in excess of its market value-in-use: (1) assessment information concerning a purportedly comparable property owned by the Petitioners located at 1175 Etna Avenue; (2) Mr. Pfister's appraisal estimating the market value-in-use of the subject property at \$206,500 as of August 21, 2003; and (3) the \$202,500 sale price for the subject property on August 29, 2003. The Board addresses each of those items in turn.
24. The Etna Avenue property sold for \$110,000 in 2002 and is assessed for \$108,800. *Sprinkle testimony; Pet'rs Ex. K.* The Petitioners contend that the Etna Avenue property is comparable to the subject property and that the assessment and sale price of that property therefore demonstrate that the subject property is over-assessed. In making such a claim, the Petitioners presumably rely on the sales comparison approach to value.
25. The sales comparison approach to value is based on the assumption that potential buyers will pay no more for a subject property than it would cost them to purchase an equally

desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of those items and uses the contributory values to adjust the sale prices of comparable properties. *Id.*

26. Thus, in order to use the sales comparison approach as evidence in a property assessment appeal, the proponent of such evidence 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 two properties. *Long* 821 N.E.2d at 470. Instead, the proponent must identify the relevant characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any relevant differences between the properties affect their relative market values-in-use. *Id.*
27. The Petitioners did little to explain how the Etna Avenue property compared to the subject property. The Petitioners did not compare the age, condition, size, or the exterior and interior features of the buildings located on the two properties. At most, Mr. Sprinkle testified that the two properties were located within two (2) miles of each other in areas that were relatively undeveloped for retail uses and that the buildings on both properties were used as offices. *Sprinkle testimony*. That is clearly insufficient to establish comparability under *Long, supra*. Moreover, the Petitioners failed to explain how relevant differences between the two properties affected their relative market values-in-use as required by *Long*.

28. The Petitioners also submitted a limited appraisal report prepared by Mr. Pfister in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Pet'rs Ex. H at 2*. Mr. Pfister estimated the market value of the subject property to be \$206,500 as of August 21, 2003. *Pet'rs Ex. H at 34*. Mr. Pfister relied upon two generally accepted approaches to value in performing his appraisal – the income and sales comparison approaches. *Id. at 22-34*. Leaving aside the question of whether Mr. Pfister's appraisal sufficiently relates to the subject property's value as of January 1, 1999, which the Board discusses below, his appraisal represents precisely the type of evidence generally recognized by the Tax Court and the Manual as relevant to rebut the presumption that the subject property's current assessment is correct.
29. Finally, the Petitioners submitted evidence that they bought the subject property for \$202,500 on August 29, 2003. *J. Sprinkle testimony; Pet'rs Ex. G*. Mr. Sprinkle testified that the Petitioners did not have any relationship with the seller of the property, who had listed the subject property with a realtor prior to the sale, and that the Petitioners paid the seller a negotiated price. *J. Sprinkle testimony*. Once again, subject to Board's discussion below concerning the requirement that evidence must relate to the subject property's value as of January 1, 1999, the Petitioners' evidence concerning the subject property's sale price clearly is relevant to rebut the presumption that subject property's current assessment is correct. Indeed, the sale price of a property, if arrived at pursuant to arm's length negotiations after the property was exposed to the market, is often the most compelling evidence of that property's market value.
30. Given the otherwise probative nature of Mr. Pfister's appraisal and the sale price of the subject property, the Board must determine whether the Petitioners have explained how such evidence relates to the subject property's value as of January 1, 1999. The Board finds that, although the Petitioners did not purport to quantify the subject property's value

as of the relevant valuation date, they presented sufficient information to explain how their evidence from 2003 related to the subject property's value as of January 1, 1999.

31. Mr. Pfister relied upon data from 1999 in performing his analyses under both the income and sales comparison approaches to value. As to the former, Mr. Pfister relied heavily upon the rent from the FSA lease in determining the net operating income for the subject property. That lease covered the period from February 1, 1999, to January 31, 2004, and provided for rent of ten dollars (\$10) per square foot - the precise figure used by Mr. Pfister in calculating the subject property's potential gross income. *See Pet'rs Ex. H at 22, Addendum 5.*³ Similarly, two of the three sales identified in Mr. Pfister's sales comparison analysis occurred in 1999, and Mr. Pfister did not adjust those sale prices to account for time-related differences in value between those sale dates and the appraisal date of August 21, 2003. While Mr. Pfister ultimately relied upon a third sale, which occurred in 2002, his decision not to adjust the 1999 sale prices implicitly reflects his professional opinion that property values remained relatively static during the period in question.⁴ Moreover, it is difficult to imagine more compelling evidence of a property's market value than the sale price that two rational market participants agreed upon after negotiating at arms length. The Board will not simply disregard such evidence absent a compelling reason to do so.

32. On these facts, the Board will not assume that the subject or similar properties depreciated significantly in value between January 1, 1999, and August 2003. The Board certainly will not assume depreciation of forty-five percent (45%) during that period

³ Although the term of the lease commenced on February 1, 1999, the document has a date of March 7, 2002. *Pet'rs Ex. H at Addendum 5.* Nonetheless, it appears that the rental rate of \$10 per square foot applied throughout the stated term of the lease. Moreover, Mr. Pfister's appraisal contains a portion of a prior lease, which also called for rent at the rate of \$10 per square foot. *See id.*

⁴ As the Board discusses elsewhere in its decision, Mr. Pfister did not adjust the sale prices of his comparable properties to reflect several other differences between those properties and the subject property. This detracts somewhat from the strength of any inference to be drawn from his decision not to adjust the sale prices of Sale #2 and Sale #3 to reflect time-related difference in value. Nonetheless, Mr. Pfister's decision not to adjust sale prices for time-related differences in value is at least some indication that values remained relatively static during the period between January 1, 1999, and August 29, 2003.

absent probative evidence to support such a finding.⁵ The Respondent did not submit any evidence to support a finding that commercial property in the subject area had depreciated during the period in question, much less that it had depreciated to the extent necessary to support the Respondent's assessment of the subject property.

33. Based upon the foregoing, the Petitioners established a prima facie case that the current assessment is incorrect and that the correct assessment should be \$202,500 - the amount for which the Petitioners bought the subject property on August 29, 2003.

Respondent's rebuttal

34. The burden therefore shifted to the Respondent to rebut or impeach the Petitioners' evidence concerning the market value-in-use of the subject property. *See Meridian Towers*, 805 N.E.2d at 479.
35. The Respondent first points to assessment information for several properties that it contends are comparable to the subject property. As an initial matter, the Respondent relies upon assessment information concerning its purportedly comparable properties rather than sales data. Even if the Board were to assume that those properties were comparable to the subject property, the assessed values established through a mass appraisal are of limited value in establishing the market value of the subject property. That is particularly true where the Respondent offers such evidence in an effort to rebut the type of market based evidence submitted by the Petitioners.
36. Regardless, the Respondent failed to explain how the properties in question were comparable to the subject property. At most, Ms. Newsome testified that the buildings located on the purportedly comparable properties were similar to the subject buildings in terms of size, age and construction type. This falls well short of the type of analysis

⁵ The Respondent assessed the subject property at \$368,700. The sale price of \$202,500 is fifty-five percent (55%) of that amount.

contemplated by the Tax Court and Manual. *See Long, supra*, 821 N.E.2d at 470-71; MANUAL at 13-14; While the property record cards submitted by the Respondent arguably contain at least some information from which a more detailed comparison could be made, it was the Respondent's duty to explain how the properties were comparable. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers]."); *see also, Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005)(indicating that the requirement that a taxpayer walk the Board through every element of its analysis is equally applicable to assessors attempting to rebut a taxpayer's prima facie case). In addition, the Respondent did not even purport to consider adjustments to the assessed values of its purportedly comparable properties to account for relevant differences between those properties and the subject property.

37. Next, the Respondent questions the accuracy of Mr. Pfister's appraisal on several grounds. First, the Respondent points to the fact that Mr. Pfister used vacancy and collection losses equal to ten percent (10%) of the subject property's potential gross income in applying the income approach to value, despite the fact that the subject property was one hundred percent (100%) occupied. *Newsome argument; Pet'rs Ex. H at 22.*
38. The fact that an appraiser does not use exclusively site-specific information in estimating a property's value under the income approach does not necessarily invalidate his opinion. In fact, the preferable approach would be for an appraiser to examine site-specific information together with information for comparable properties. 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. Such buyers presumably are concerned with the net rent that a property will generate if it

is managed with a reasonable degree of competency. Thus, the income approach focuses on the intrinsic value of a property, not upon an existing owner's operation of the property. Reliance solely upon property-specific rents or expenses can be problematic because that information may reflect elements other than the value of the property such as quality of management. *See Thorntown Telephone Company Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992) (noting that method of quantifying economic and functional obsolescence by comparing quality and efficiency factors for the taxpayer's company with the same factors for a representative group of companies in the same industry may reflect elements other than obsolescence of the property).

39. Here, Mr. Pfister explained his use of a vacancy rate of ten percent (10%) on grounds that the subject property's sole tenant, the FSA, was entitled to terminate its lease upon giving the lessor one-hundred-and-twenty (120) days advance notice. *Pet'rs Ex. H at 22*. While Mr. Pfister did not explain whether he derived his quantification of the potential vacancy loss from market data, he clearly was attempting to account for the lack of certainty that the subject property would continue to be fully occupied in the future. In doing so, Mr. Pfister was acting in conformance with the underlying principles of the income approach to value.

40. The Respondent also attacks Mr. Pfister's analysis under the income approach on grounds that the Petitioners did not provide documents to support the operating expenses used by Mr. Pfister. Indeed, Mr. Pfister simply indicated what he estimated the operating expenses to be, without providing any indication as to the source(s) upon which he based his estimate. *Pet'rs Ex. H at 23*. Nonetheless, Mr. Pfister's estimate was substantially less than the actual expenses incurred by the Petitioners in operating the subject property in 2004. *Compare Pet'rs Ex. H at 23 with Pet'rs Ex. J*. Thus, Mr. Pfister used a conservative estimate, which, if anything, *increased* his overall opinion of value.

41. Moreover, the Respondent did not present any market data of its own to suggest that the vacancy and expense figures used by Mr. Pfister were inappropriate. Thus, while Mr. Pfister's lack of citation to the facts underlying his estimation of vacancy and collection losses and operating expenses detracts somewhat from the probative weight of his opinion of value, it does not deprive his opinion of probative value entirely.
42. The Respondent next points to the fact that Mr. Pfister did not provide any documentation from which one may determine whether he made reasonable adjustments to the sale prices of the comparable properties identified in his sales comparison analysis. *See Newsome argument.* The Respondent raises a valid point, given that Mr. Pfister made only one adjustment to the sale price of a comparable property – his downward adjustment to Sale #1 to account for the difference between the condition of that property and the condition of the subject property. *Pet'rs Ex. H at 31-32.* Mr. Pfister's description of the relevant characteristics of the subject property and those of the comparable properties, however, demonstrate numerous differences. For example, the subject buildings are constructed of wood whereas the buildings on two (2) of the three (3) comparable properties are constructed of masonry. *Id. at 31.* Similarly, the subject buildings contain 6960 square feet while the buildings on the comparable properties contain 1430 square feet, 5000 square feet and 4560 square feet, respectively. *Id.* In the same vein, the subject lot consists of 1.010 acres while two of the three comparable properties consist of approximately .5 and .03 acres.⁶ *Id.* It is apparent that in his professional opinion, Mr. Pfister did not believe any of those differences significantly affected the market values of the respective properties. The absence of any explanation regarding why Mr. Pfister reached that conclusion, however, tends to detract somewhat from the probative weight to be afforded to his sales comparison analysis.
43. Nonetheless, Mr. Pfister relied only moderately on his sales comparison analysis in reaching his overall estimate of the subject property's market value. *Pet'rs Ex. H at 33.*

⁶ Mr. Pfister indicates that the property listed in his appraisal as Sale #1 is 26.5' x 52.5' or 1391.25 square feet. That amounts to .032 acres (1391.25 sq. ft. ÷ 43,560 sq. ft./acre).

Moreover, Mr. Pfister's estimate of value and the sale price from the Petitioners' arm's length purchase of the subject property closely support each other.

44. The Respondent attempts to impeach the reliability of the August 29, 2003, sale price as evidence of the subject property's market value by pointing out that the Petitioners submitted only the closing statement for the sale without providing the underlying purchase agreement between the Petitioners and the seller. Mr. Sprinkle, however, testified that the seller listed the property with a realtor and advertised in the local paper, that the Petitioners were unrelated to the seller, and that the sale was for cash without any side agreements, special conditions, or other consideration. Mr. Sprinkle's testimony in combination with the settlement statement clearly suffices to demonstrate both the amount of the sale price and that the sale price represented the market value of the subject property. The Respondent did not cross-examine Mr. Sprinkle concerning his testimony about the sale, nor did the Respondent introduce any evidence to show that the sale involved additional consideration or conditions.
45. Based on the foregoing, the Petitioners established by a preponderance of the evidence that the assessment under appeal is incorrect and that the subject property should be assessed for no more than \$202,500.

SUMMARY OF FINAL DETERMINATION

46. The Petitioners established a prima facie case that the assessment under appeal is incorrect and that the correct assessment is no more than \$202,500. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.

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

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.