

REPRESENTATIVE FOR PETITIONERS: Stanley A. Richards

REPRESENTATIVE FOR RESPONDENT: Frank S. Kelly

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Jesse Ballew and	)	Petition No. 10-004-07-1-4-10001
Stanley A. Richards,	)	
Petitioners,	)	Parcel No. 018-54-0100
	)	
v.	)	
	)	Clark County
Clark County Assessor,	)	
Respondent.	)	2007 Assessment

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

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**May 1, 2012**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

The subject property is a building that formerly was part of a military facility. The building and other property that is not part of this case was sold in 2006. Did the Petitioners prove the 2007 assessment of \$1,285,600 should be lowered to \$500,000?

## HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is located at 11452 U.S. Highway 62 East in Charlestown.
2. An assessment appeal for 2007 was initiated with the Clark County Assessor by written document on December 29, 2008.<sup>1</sup>
3. On August 11, 2009, the Property Tax Assessment Board of Appeals (PTABOA) mailed a Form 115 Notification of Final Assessment Determination stating that the assessed value is \$1,285,600. This valuation is entirely for improvements and has \$0 for land.<sup>2</sup>
4. On September 25, 2009, a Form 131 Petition was filed seeking the Board's review. It claimed the assessed value should be \$500,000. The Form 131 states that the owner of the property is Jesse Ballew. The Form 131 is not signed by Jesse Ballew, but it is signed by Stanley A. Richards, Executive Vice President and a "duly authorized employee or corporate officer of the taxpayer." Presumably his status refers to Jesse Ballew Enterprises, even though those documents do not identify Jesse Ballew Enterprises as the owner or the Petitioner in this case.<sup>3</sup> Both parties made an ambiguous record with this conflicting information. At best the status of Mr. Richards is questionable, but nobody raised the point. While this situation is troubling, the Board's final determination does not depend on sorting all that out.
5. Administrative Law Judge Rick Barter held the Board's administrative hearing on February 16, 2012. He did not conduct an on-site inspection of the property.
6. Stanley A. Richards and Frank S. Kelly were sworn as witnesses.

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<sup>1</sup> This document states that the owners of the property are Jesse & Virginia/J.V.B. Investments, LP.

<sup>2</sup> The Form 115 states that the owner of the property is River Ridge Commerce Center.

<sup>3</sup> The Sales Disclosure Form, however, does list "Jesse Ballew Jesse Ballew Enterprises" as the buyer and appears to be signed by Jesse Ballew.

7. The Petitioners presented the following exhibits:
  - Petitioner Exhibit 1 – Appeal notice dated December 29, 2008, and undated letter to assessor,
  - Petitioner Exhibit 2 – Income and expense data,
  - Petitioner Exhibit 3 – Gross rental income data,
  - Petitioner Exhibit 4 – Partial expense report,
  - Petitioner Exhibit 5 – Contract labor report,
  - Petitioner Exhibit 6 – Summary of valuation calculations,
  - Petitioner Exhibit 7 – Form 115 notification,
  - Petitioner Exhibit 8 – Form 131 Petition and letter,
  
8. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – Form 131 Petition,
  - Respondent Exhibit 2 – Property Record Card (PRC),
  - Respondent Exhibit 3 – Sales Disclosure Form for the subject property,
  - Respondent Exhibit 4 – Photograph of the subject property,
  
9. The following additional items are part of the record:
  - Board Exhibit A – Form 131 Petition with attachments,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing sign-in sheet.

#### **SUMMARY OF THE PETITIONERS' CASE**

10. The subject property was originally part of an Army base. Jesse Ballew Enterprises (JBE) began leasing this building in 2005. On September 6, 2006, JBE exercised an option to purchase for \$1,290,000. This price included the building identified as the subject property as well as 25 acres of land that is not part of the subject property. There are five other buildings that need to be torn down. *Richards testimony.*
  
11. At \$25,000 per acre, \$625,000 of the purchase price was for land that is not part of the disputed assessment. *Richards testimony; Petitioner Exhibit 6.*
  
12. Furthermore, demolition costs for what was purchased and needs to be torn down would be \$100,000. *Richards testimony; Petitioner Exhibit 6.*

13. At the time of purchase JBE was advised the building contained asbestos and cost of required remediation would be more than \$900,000—something the Army agreed to pay. But the Army still has not paid for the asbestos remediation. (JBE still is working with the Army Corps of Engineers regarding the cleanup and expenses.) If JBE had known it would have to pay for the asbestos remediation the purchase price would have been about \$390,000. *Richards testimony; Petitioner Exhibit 6.*

14. Based on the sale price and subtracting the price of the land as well as the required asbestos remediation, the subject property has a negative value, as shown in the following calculation:

Sale Price	\$1,290,000.00
Land Value	-\$ 625,000.00
Environmental Cleanup	<u>-\$900,000.00</u>
Total	-\$235,000.00

*Richards testimony; Petitioner Exhibit 6.*

15. The subject property had a 79-percent vacancy rate and a net loss of \$37,474.07 in 2007. The Petitioners have submitted actual data from the subject property to support those numbers such as an income and expense statement, a list of gross rental income, an expense report, and a contract labor record. The “income approach” is expressed in the following calculation:

Gross Income	\$136,012.53
Expenses	<u>\$173,486.60</u>
Total	-\$37,474.07

*Richards testimony; Petitioner Exhibits 2 through 6.*

16. Taxpayers have the right to select the approach to value for their property. In spite of these calculations showing negative value, the Petitioners agree the subject property has some value. In this case, \$500,000 would be a fair. *Richards testimony.*

## SUMMARY OF THE RESPONDENT'S CASE

17. The Petitioners and JBE are sophisticated, experienced real estate investors. They knew the advantages and challenges of this property. They knew about the asbestos problems, but wanted to buy this property anyway. *Kelly testimony.*
  
18. The Petitioners have the burden to prove the assessment is wrong and what it should be. They failed to do so. The assessment of \$1,285,600 is very near to the \$1,290,000 the Petitioners paid for the property. *Kelly testimony; Respondent Exhibit 3.*
  
19. The Petitioners incorrectly claim they have the right to select the appropriate valuation method. The value methods presented by Mr. Richards, however, are not supported by substantial, probative evidence and do not satisfy generally accepted appraisal principles. He did not develop an income approach to value based on capitalization rates, did not establish average vacancy rates, and presented no sales comparisons of similar properties to develop the sales comparison approach. *Kelly testimony; Respondent Exhibits 1 through 4.*

## ADMINISTRATIVE REVIEW AND BURDEN

20. 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).
  
21. In making its prima facie case, the Petitioners 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 party’s duty to walk the Indiana Board...through every element of the analysis”).

22. Once the Petitioners establish a prima facie case, the burden shifts to the Respondent to rebut the Petitioners' evidence. *See American United Life ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The Respondent must offer evidence that impeaches or rebuts the Petitioners' case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

#### ANALYSIS

23. Real property is assessed based on its "true tax value," which means "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." Ind. Code §6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2).
24. The cost approach, sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A party in an appeal before the Board is permitted to offer evidence relevant to the market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.<sup>4</sup>

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<sup>4</sup> The Petitioners cited no authority and presented no substantial argument for their claim that taxpayers have the right to select the approach to value for their property. Their mistaken position appears to come from a misunderstanding of the permission to offer other types of valuation evidence to rebut the cost approach used by assessors. Many other kinds of evidence can be submitted and considered if the information is compiled in accordance with generally accepted appraisal principles. A taxpayer certainly has the right to select the evidence that he or she submits for any given case, but a taxpayer does not have the right to select the approach that ultimately determines the final assessment valuation.

25. The Petitioners' case nominally relies on the type of analysis done in most appraisals (income approach, cost approach, market approach), but they did not present an appraisal. More importantly, they did not establish that any of their methodology conforms to generally accepted appraisal principles. After considering everything that was presented in this case, it is clear that what the Petitioners mean by using those terms for their calculations is inconsistent with how appraisers use the terms.
26. Therefore, the amounts suggested by the Petitioners' "cost approach," "income approach," "market approach," and "other" calculations do not help to prove anything relevant to this case.
27. Often the purchase price for a property can be some of the best evidence of its market value-in-use. The Petitioners' version of the cost approach in this case, however, does not help to make a case for several reasons. It is not really a cost approach. Mr. Richards testified that \$625,000 of the total purchase price was for 25 acres of land that is not included in the assessment of the subject property. The Sales Disclosure Form appears to generally support the fact that the purchase price was \$1,290,000 and it included 24.35 acres of land. The PRC shows that the assessment of the subject property includes no land. Accordingly, reducing the total purchase to account for the land conceptually makes sense. But the amount—\$625,000—is problematic because the record contains no substantial evidence to support Mr. Richards' conclusory calculation based on \$25,000 per acre. Mr. Richards' cost calculation also subtracted another \$100,000 for the demolition of five structures on the property, but his statements about that part of the calculation were entirely unsupported conclusions. He offered no authority or substantial argument to support how subtracting demolition costs conforms to generally accepted appraisal principles. Furthermore, his anticipated \$100,000 figure is merely a bald conclusion. Ultimately, the unsubstantiated conclusions at the heart of the Petitioners' version of the cost approach leave the calculation with no probative value. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct.

2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

28. The Petitioners presented some factual evidence about the 2007 income and expenses related to the subject property. The Respondent did not dispute the accuracy of that information and for purposes of this analysis the Board will regard that income and expense data as accurate. Nevertheless, the Petitioners' version of the income approach to value has serious problems and no probative value. There was a 79 percent vacancy rate. That number may be high, but from the record it is impossible to draw any legitimate conclusion about what it really means. For 2007 they had \$136,013 gross operating income and \$173,487 of expenses—a loss of \$37,474. The Petitioners made no attempt to relate their own numbers to industry standards or establish what might reasonably be expected over a longer period of time. Most importantly, their income approach includes absolutely nothing about determining an appropriate capitalization rate and applying it to determine a value, which is an integral part of any generally accepted income approach to value. The Petitioners' version of the income approach is not credible or relevant.
29. The market approach also frequently is called the sales comparison approach. It can be accomplished by comparing a subject property to other properties that have been sold in the same market. *See, e.g., State Bd. of Tax Comm'rs v. Garcia*, 766 N.E.2d 341, 343 n.3 (Ind. 2002). Similarities and differences such as date of sale, location of property, physical characteristics, and conditions of the sale must be noted in detail. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005) (explaining that in offering comparables one must establish the characteristics of the subject property, establish how those characteristics compare to the purportedly comparable properties, and establish how any differences affect the relative values). In this case the Petitioners offered no other sales to compare. As a market approach they simply relied on their own purchase price of \$1,290,000 and subtracted the purported \$900,000 cost to remediate asbestos, reaching a value of \$390,000. For the reasons explained earlier, this single



reference point does nothing to help prove the actual market value-in-use of the subject property. Furthermore, the Petitioners' calculation assumes that the cost of the asbestos remediation relates to reducing value on a one for one basis, but provides no support for that assumption. Such a conclusion is not probative evidence. *See Lake Co. Assessor v. U.S. Steel Corp.*, 901 N.E.2d 85, 94-95 (Ind. Tax Ct. 2009) (holding that failure to link the cost of remediating environmental contamination with an actual reduction in property value equivalent to what was spent on remediation left the remediation cost with no probative value for purposes of determining assessed valuation). The Petitioners' purported market approach does nothing to support their claim.

30. The approach that the Petitioners identified as "other" is nothing more than subtracting the purported land value and environmental clean-up costs from their purchase price. Again, they failed to establish that this approach is in accordance with generally accepted appraisal principles. Furthermore, the record contains no substantial basis for attributing \$625,000 to land value and it contains no substantial basis for attributing \$900,000 remediation cost to a \$900,000 reduction in the value of the subject property. The kind of unsupported conclusory statements that the Petitioners relied on are not probative evidence and do not help to prove that the existing assessment must be changed. *See Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d 1119.
31. In summation, none of the Petitioners' various valuation approaches are probative evidence. They do not prove the existing assessment is wrong or prove the lower value that was requested.
32. Consequently, the Petitioners failed to make a prima facie case that the assessment must be changed and the Respondent's duty to support the assessment with substantial evidence was not triggered. *See Lacy Diversified*, 799 N.E.2d at 1221-1222.

#### **SUMMARY OF FINAL DETERMINATION**

33. The Board finds in favor of the Respondent. The assessment will not be changed.

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

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Commissioner, 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>.