

REPRESENTATIVES FOR PETITIONER:
Bradley D. Hasler, Bingham McHale LLP
Edwin K. DeWald, DeWald Property Tax Services

REPRESENTATIVE FOR RESPONDENT:
Lisa Garoffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Indy Lodging d/b/a Days Inn,	)	Petition No:	06-015-06-1-4-00679
)		
Petitioner,	)	Parcel No:	015-3306-001
)		
v.)		
	)	County:	Boone
Boone County Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of
Boone Property Tax Assessment Board of Appeals

March 1, 2010

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 issue presented for consideration by the Board is whether the assessed value of the subject property is overstated.

PROCEDURAL HISTORY

2. Pursuant to Indiana Code § 6-1.1-15-1, Edwin K. DeWald, DeWald Property Tax Services, on behalf of Indy Lodging d/b/a Days Inn (Indy Lodging) filed a Form 131 Petition for Review of Assessment on June 17, 2008, petitioning the Board to conduct an administrative review of the above petition. The Boone County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on June 12, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on December 3, 2009, in Lebanon, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Edwin K. DeWald, DeWald Property Tax Services
Phillip D. Johns, The Value Company, Inc.

For the Respondent:

Lisa C. Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA Member
Dan Spiker, Government Utilities Technology Service

5. The Petitioner presented the following exhibit:

Petitioner Exhibit 1 – Summary appraisal report prepared by Phillip D. Johns, The Value Company, Inc., dated July 7, 2009.

6. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Property record card for Parcel No. 015-33060-01, located at 1280 West State Road 32, Lebanon,
- Respondent Exhibit 2 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130, dated December 17, 2007,
- Respondent Exhibit 3 – Correspondence between Lisa Garoffolo, Gordon Husk and Cliff Hardy, dated February 5 and 6, 2008,
- Respondent Exhibit 4 – Boone County Assessor’s recommendation to the PTABOA,
- Respondent Exhibit 5 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114,
- Respondent Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated June 12, 2008,
- Respondent Exhibit 7 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated June 16, 2008,
- Respondent Exhibit 8 – Indiana Board of Tax Review Notice of Hearing on Petition, dated March 4, 2009,
- Respondent Exhibit 9 – Respondent’s analysis of the Petitioner’s appraisal,
- Respondent Exhibit 10 – Exterior photograph of the Petitioner’s “comparable” property located at 2304 East Main Street, Richmond,
- Respondent Exhibit 11 – Correspondence between Dan Spiker and Dave Fradenburg, dated December 2, 2009,
- Respondent Exhibit 12 – Respondent’s Income Works Evaluation Reports for Parcel No. 015-33060-01, dated January 1, 2007,
- Respondent Exhibit 13 – 2001 – 2007 occupancy rates for Fort Wayne and Indianapolis prepared by Smith Travel Research from the Indiana.typepad.com website, and the Weekly U.S. Lodging Performance for the week ending September 20, 2008, from www.hotelnewsresource.com,
- Respondent Exhibit 14 – Aerial photographs for 59 Rampart Street, Shelbyville; 345 Windsor Avenue, Elkhart; 351 Plaza Drive, Columbia City; 2160 North Oak, Plymouth; and 2304 East Main Street, Richmond,
- Respondent Exhibit 15 – Sales Disclosure Form, dated July 21, 2006, and property record card for Parcel No. 015-22170-01, located at 210 North Sam Ralston Road, Lebanon.

7. The Petitioner's counsel objected to the admission of Respondent's exhibits 9 through 15 because the Respondent failed to timely provide copies of its exhibits pursuant to the Board's exchange of evidence requirements. *Hasler argument*. In plenary appeals such as this one, parties must exchange a list of witnesses and exhibits at least fifteen business days prior to the hearing date. 52 IAC 2-7-1. They must also exchange summaries of witness testimony and copies of documentary evidence at least five business days prior to the hearing. *Id.* In addition to the procedural rule, this exchange requirement was specified in the hearing notice sent to the parties by the Board. The purpose of this requirement is to allow both parties to be informed, to avoid surprises, and to ensure a more organized, efficient and fair consideration of the issues. The Respondent acknowledged that she failed to provide a revised witness list, summaries or copies of her evidence to the Petitioner prior to the hearing. *Garoffolo testimony*. The Board, therefore, sustains the Petitioner's objection and will not consider the Respondent's Exhibits 9 through 15 in making its determination.
8. Mr. Hasler also objected to Respondent's Exhibit 4, citing Rule 408 of the Indiana Rules of Evidence. *Hasler argument*. Ms. Garoffolo testified that Exhibit 4 was prepared prior to the PTABOA hearing as a means of determining whether potential settlement discussions were warranted with the Petitioner. *Garoffolo testimony*. Indiana Rules of Evidence, Rule 408, states "Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offer or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount." Here Exhibit 4 is the Respondent's assessment of the Petitioner's claim. There is no evidence of a settlement offer being made to the Petitioner or negotiations occurring between the Petitioner and the Respondent. Thus, the Petitioner's objection is over-ruled.
9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated October 15, 2009,
Board Exhibit C – Hearing sign-in sheet.

10. The subject property is a 14,976 square foot motel on 2.11 acres located at 1280 West State Road 32, Lebanon, Center Township in Boone County.
11. The ALJ did not conduct an on-site inspection of the property.
12. For 2006, the PTABOA determined the assessed value of the subject property to be \$224,600 for the land and \$725,400 for the improvements, for a total assessed value of \$950,000.
13. At the hearing, the Petitioner requested a total assessed value of \$429,400 for the March 1, 2006, assessment year.

JURISDICTIONAL FRAMEWORK

14. 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 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

15. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478

(Ind. Tax Ct. 2003); *see also*, *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

16. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
17. 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.

PARTIES’ CONTENTIONS

18. The Petitioner contends the property under appeal is assessed for more than its market value-in-use based on its appraised value. *Hasler argument*. In support of its position, the Petitioner submitted an appraisal report prepared by Phillip D. Johns of The Value Company, Inc. *Petitioner Exhibit 1*. Mr. Johns testified that he is a general real estate appraiser who has worked in the real estate business since 1992. *Johns testimony*. According to Mr. Johns, he appraised the subject property in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Petitioner Exhibit 1; Johns testimony*. In his appraisal report, Mr. Johns estimated the property’s value to be \$429,400 as of January 1, 2005. *Petitioner Exhibit 1; Johns testimony*.
19. Mr. Johns testified that he calculated the value of the motel using both the income approach and the sales comparison approach to value. *Petitioner Exhibit 1; Johns testimony*. According to Mr. Johns, the property is a two acre parcel, with a 14,976 square foot, two-story motel with fifty rooms built in 1986. *Petitioner Exhibit 1; Johns testimony*. The motel has a small office, a reservation desk, laundry room and very small

dining area used to serve a continental breakfast. *Id.* Further, Mr. Johns testified that the property under appeal is in below average condition based on a comparison of the property to four other motels in the area. *Id.*

20. First, Mr. Johns developed the income capitalization approach to estimate the value of the Petitioner's property. *Petitioner Exhibit 1; Johns testimony.* According to Mr. Johns, he used data from the subject property and comparable properties to determine a forecasted income of \$219,000 and a 65% expense ratio. *Id.* This resulted in a net operating income of \$76,650 to which Mr. Johns applied an overall rate of 12.75%. *Id.* Under this approach, Mr. Johns determined the value of the property to be \$600,000. *Id.*
21. Next, Mr. Johns testified that he appraised the property using the sales comparison approach. *Petitioner Exhibit 1; Johns testimony.* According to Mr. Johns, he used the data from fifteen sales to determine that the revenue per available room (REVPAR) ranged from \$10.30 to \$49.66 for comparable properties. *Id.* Based on the property's relatively poor condition and lack of amenities, Mr. Johns determined the subject property's REVPAR would be at the bottom of the range. *Id.* Thus, he estimated the REVPAR for the Petitioner's property to be \$12.00, resulting in an effective gross income (EGI) of \$219,000. *Id.* The appraiser also determined the effective gross income multiplier (EGIM) was 2.75 for those fifteen comparable sales. *Id.* Thus, Mr. Johns concluded, the property's value was its EGI of \$219,000 multiplied by the EGIM of 2.75, or \$602,250. *Id.*
22. Based on his income capitalization approach and sales comparison approach values, Mr. Johns estimated the true tax value of the subject property to be \$600,000 as of the March 1, 2006, assessment date. *Petitioner Exhibit 1; Johns testimony.* Mr. Johns testified, however, that that value included business personal property and he deducted \$115,000 for furniture, fixtures and equipment, resulting in a value of \$485,000. *Id.* Finally, Mr. Johns applied a trending factor using Marshall Valuation Services to determine the value

of the property as of the proper valuation date. *Id.* Thus, Mr. Johns concluded, the market value-in-use of the subject property as of January 1, 2005, was \$429,400. *Id.*

23. In response to the Respondent's questions, Mr. Johns testified that he did not consider the subject property's March 2003, purchase price to establish the market value-in-use of the property for the March 1, 2006, assessment, because he was unable to obtain information on the income and expenses of the property at the time of the sale. *Johns testimony.* According to Mr. Johns there could have been many reasons for the owners to have paid \$862,500 for the property and for him to comment on those reasons would only be speculation. *Id.*
24. The Respondent contends the property under appeal should be assessed at \$1,646,221.¹ *Garoffolo testimony.* The Respondent's witness, Mr. Spiker, testified that he prepared an income approach valuation for the Petitioner's property using data from the Petitioner's appraisal. *Spiker testimony.* According to Mr. Spiker, the Petitioner's appraisal shows the motel's average daily room rate was \$62, which results in a yearly potential gross income of \$1,131,500 for the motel's fifty rooms. *Petitioner Exhibit 1 at 17; Respondent Exhibit 9; Spiker testimony.* Mr. Spiker then applied an occupancy rate of 47% from the Income Works Evaluation Report prepared by Boone County and determined the effective gross income of the Petitioner's property to be \$599,695. *Respondent Exhibits 9 and 12; Spiker testimony.* The Respondent's witness testified that he applied the Petitioner's 65% expense ratio, which resulted in a net operating income of \$209,893. *Id.* Finally, applying the 12.75% capitalization rate developed by the Petitioner's appraiser, Mr. Spiker estimated the value of the subject property to be \$1,646,221.² *Id.*

¹ The Respondent's witness, however, testified the property under appeal should be sustained at its current assessed value of \$950,000 as of March 1, 2006. *Spiker testimony.*

² The Respondent also submitted three Income Works Evaluation Reports showing the income approach using two different capitalization rates, 11.75% and 10.75% and three different occupancy rates, 41%, 47% and 56%. *Respondent Exhibit 12.* The three calculations estimated the value of the property to range from \$517,407 to \$1,731,458 as of January 1, 2007. *Id.*

25. The Respondent further contends that the Petitioner's assessment is understated based on the sale of two nearby hotel properties. *Respondent Exhibit 9; Spiker testimony.* According to Mr. Spiker, the Comfort Inn, which is slightly superior to the Petitioner's property, sold for \$2,325,000 on July 21, 2006. *Id.* In addition, the Lee's Inn, which is similar to the subject property in both size and amenities, sold for \$1,230,000 on August 30, 2005. *Id.* The Respondent argues that this shows the property under appeal is assessed at below market value for the area. *Spiker testimony.*
26. Finally, the Respondent argues, the Petitioner's appraisal suffers from major flaws and should be given little weight. *Spiker and Lewis testimony.* The Respondent's witness argues that while the appraisal lists fifteen comparable properties, the appraiser appears to give weight to only the property located in Richmond that sold for \$425,000. *Respondent Exhibits 10 and 11; Spiker testimony.* According to Mr. Spiker, however, the Richmond property is inferior to the subject property in both amenities and location. *Id.* Instead, Mr. Spiker argues, the appraiser should have given the greatest weight to the five comparable properties located in Shelbyville, Lafayette, Elkhart, Columbia City, and Plymouth, which ranged in room count from 52 to 62 and sold from \$1,653,500 to \$2,550,000. *Respondent Exhibit 9; Spiker testimony.* In addition, Mr. Spiker argues, the appraiser failed to adequately support his decision to use a REVPAR of \$12.00 when the average REVPAR in the Petitioner's appraisal was \$28.43. *Id.*

ANALYSIS

27. 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). Appraisers traditionally have used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the

cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

28. 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 Ct. 2006). A taxpayer may rebut that assumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. See *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
29. 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, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
30. Here, the Petitioner presented an appraisal dated July 7, 2009, that estimated the value of its property to be \$429,400 as of January 1, 2005. *Petitioner Exhibit 1*. The appraiser is an Indiana Certified General Real Estate Appraiser who testified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices. Further, the appraisal conforms to the correct valuation date and otherwise provides probative evidence of the estimated value of the property. An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. See *Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that its property is over-assessed.

31. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Here, the Respondent failed to properly exchange summaries of witness testimony for Mr. Spiker and Ms. Lewis and copies of documentary evidence at least five business days prior to the hearing as required by 52 IAC 2-7-1. Thus, the Respondent's evidence cannot be considered.
32. Even if the Board could consider the Respondent's evidence, however, the Respondent failed to rebut or impeach the Petitioner's case. The Respondent first submitted an income analysis based on information used in the Petitioner's appraisal, as well as information from the county, which estimated the property's market value to be approximately \$1,646,221. *Respondent Exhibit 9; Spiker testimony*. Mr. Spiker's income analysis, however, used the April 2009 average daily room rate to determine the subject property's potential gross income and an occupancy rate that was developed with an effective date of January 1, 2007. *Petitioner Exhibit 1 at 17; Respondent Exhibit 12*. The Respondent provided no evidence to demonstrate that the potential gross income and occupancy rate were typical of or relevant to the market as of January 1, 2005.
33. Similarly, the Respondent presented three income calculations using a direct capitalization method showing the subject property's value ranging from \$517,407 to \$1,731,458 as of January 1, 2007. The Respondent, however, again failed to explain how its income calculations are relevant to the property's value as of January 1, 2005. *See Long*, 812 N.E.2d at 466, 469-71. In addition, the Respondent failed to show that its income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice or any other generally accepted standards. Consequently, the Respondent's income approach calculations lack probative value in this case. *See Inland*

Steel co. v. State Board of Tax Commissioners, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

34. The Respondent also presented evidence of two “comparable sales” in support of its assessment. *Respondent Exhibits 9 and 15; Spiker testimony*. The Respondent, however, failed to make a meaningful comparison between the subject property and the comparable properties. In fact, the Respondent’s entire analysis of the properties focused on the properties’ sales prices and room counts. The Respondent failed to address any differences in properties’ amenities and location. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence. *See Long*, 821 N.E.2d at 470. Thus, the Respondent’s evidence is not probative of the market value-in-use of the property under appeal.

35. Finally, to the extent the Respondent contends the Petitioner’s appraiser failed to adequately address the location, sales prices and REVPAR of his comparables and that he appeared to give the greatest weight to an inferior comparable property located in Richmond, the Board finds these arguments unpersuasive. It is well within an appraiser’s expertise to choose the sales he or she deems most comparable to the subject property and to evaluate and interpret the data to value the differences between the subject property and the comparables. Absent evidence to the contrary, the comparable properties chosen by the appraiser, the weight given or the adjustments made by the appraiser in a USPAP –compliant appraisal are deemed reasonable.

SUMMARY OF FINAL DETERMINATION

36. The Petitioner raised a prima facie case that the subject property is over-valued. The Respondent failed to rebut or impeach the Petitioner's evidence. Thus, the Board finds in favor of the Petitioner and holds the market value-in-use of the property is \$429,400 for the March 1, 2006, assessment date.

The Final Determination of the above captioned matter is issued this 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>.