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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

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|----------------------------|---|-------------------------------------|
| Richard V. and Marjorie B. | ) | Petition No. 55-005-11-1-4-00005    |
| Newcomer,                  | ) |                                     |
|                            | ) |                                     |
|                            | ) | Parcel No. 55-01-36-265-001.000-005 |
| Petitioners,               | ) |                                     |
|                            | ) |                                     |
| v.                         | ) |                                     |
|                            | ) | Morgan County                       |
| Morgan County Assessor,    | ) | Brown Township                      |
|                            | ) | 2011 Assessment                     |
| Respondent.                | ) |                                     |

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

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**May 6, 2013**

**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 2011 assessment for this neighborhood shopping center increased by more than 5% from the prior year. Did the Assessor prove that the 2011 assessed value is correct?

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

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

1. The property is a neighborhood shopping center at 203-235 East High Street in Mooresville.
2. The Petitioners initiated their appeal by filing a Form 130 Petitioning for Review of Assessment.
3. The Property Tax Assessment Board of Appeals (PTABOA) mailed notice of its determination on October 12, 2012.
4. On November 7, 2012, the Petitioners filed a Form 131 Petition seeking the Board's review of the 2011 assessment.
5. Administrative Law Judge Ronald Gudgel held the hearing on April 4, 2013. He did not conduct an on-site inspection of the property.
6. Richard V. Newcomer, County Assessor Brenda Brittain, and PTABOA member Reva Brummett were sworn as witnesses.
7. The Petitioners presented the following exhibit:
  - Petitioners Exhibit 1 – Market evaluation dated November 1, 2012.
8. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – Property record card and photographs of the Petitioners' property,
  - Respondent Exhibit 2 – Map with the location of the Petitioners' property and three other neighborhood shopping centers marked,
  - Respondent Exhibit 3 – Property record card and photograph of a sold neighborhood shopping center,
  - Respondent Exhibit 4 – Property record card and photograph of a sold neighborhood shopping center,

Respondent Exhibit 5 – Property record card and photographs of a sold neighborhood shopping center,  
Respondent Exhibit 6 – Calculation of rental income furnished by the Petitioners to the PTABOA,  
Respondent Exhibit 7 – Active 2012 listing for leasable space in a neighborhood shopping center,  
Respondent Exhibit 8 – Map showing the locations of the listed property and the Petitioners’ property,  
Respondent Exhibit 9 – Property record card and photographs for the listed neighborhood shopping center,  
Respondent Exhibit 10 – Evaluation Report prepared by IncomeWorks.

9. The following additional items are recognized as part of the record:  
Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign in Sheet.
10. The PTABOA determined the 2011 assessed value is \$134,700 for land and \$986,900 for improvements (total \$1,121,600).
11. At the hearing, the Petitioners claimed the total assessed value should be \$850,000.

#### **SUMMARY OF THE PETITIONERS’ CASE**

12. During the past six months, the subject property has been offered on the market for \$850,000. *Newcomer testimony.*
13. The businesses in the shopping center currently are paying \$9 per square foot for rent. These rents have not increased in four or five years. *Newcomer testimony.*
14. Based on the sale of one comparable property, a market evaluation prepared by a local broker in November 2012 valued the property at \$472,487. *Newcomer testimony; Pet’rs Ex. 1.*

## SUMMARY OF THE RESPONDENT'S CASE

15. The Petitioners' property is a neighborhood shopping center that was built in 1990. It has 18,772 square feet. It is used primarily for offices and small retail businesses. *Brittain testimony; Resp't Ex. 1.*
16. County officials identified sales of three other neighborhood shopping centers in the area. *Brittain testimony; Resp't Ex. 2.*
17. One of those sales occurred in February 2010. This 2,125 square foot property is located in Mooresville. It sold for \$250,000. That price is \$117.95 per square foot. *Brittain testimony; Resp't Ex. 3.*
18. The second sale occurred in July 2010. This 7,387 square foot property is located in Mooresville. It sold for \$730,000. That price is \$98.82 per square foot. *Brittain testimony; Resp't Ex. 4.*
19. The third sale occurred in August 2006. Located in Mooresville, this property has 19,473 square feet and is close in size to the Petitioners' property. It sold for \$1,225,000. That price is \$69.33 per square foot. Using that price times the square footage of the Petitioners' property results in a value of \$1,301,500. *Brittain testimony; Resp't Ex. 5.*
20. At the PTABOA hearing, the Petitioners contended the property should be valued based on \$9 per square foot of rental income. *Brittain testimony; Resp't Ex. 6.* Lease information, however, establishes the current rental rate is \$11 per square foot. *Brittain testimony; Resp't Ex. 7, 8, 9.* Additionally, an independent company, IncomeWorks, reviewed sales and lease information to conclude the rent rate should be \$11.63 per square foot. *Brittain testimony; Resp't Ex. 10.*
21. The PTABOA assigned five percent obsolescence to the property for vacancy and loss. *Brittain testimony.*

## **BURDEN OF PROOF**

22. A taxpayer seeking review of an assessing official's determination generally has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

23. The assessment increased from \$836,200 in 2010 to \$1,121,600 in 2011. This increase is more than 5%. There was no claim it was not the same property. Therefore, the Respondent has the burden to prove the assessed value is correct.

## **ANALYSIS**

24. 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). The cost approach, the 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. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.

25. Regardless of the type of evidence, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
26. The Respondent identified sales of three shopping centers with prices of \$117.65, \$98.82, and \$69.33 per square foot and then attempted to use a sales comparison approach to support the assessment. But in order to use comparable sales effectively, the proponent must establish the comparability of the properties being examined. Simple conclusory statements that property is “similar” or “comparable” are not probative evidence. *Long*, 821 N.E.2d at 470. The Respondent needed to establish the characteristics of the Petitioners’ property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the market value-in-use. *Id.* at 471. The Respondent offered no evidence or analysis of the specific features of the purportedly comparable shopping centers. Similarly, the Respondent offered no evidence or analysis about how any differences affected the relative values of the shopping centers. The Respondent failed to provide a meaningful comparison of the properties. Consequently, those selling prices do not help to prove an accurate valuation for the subject property.<sup>1</sup>
27. The Respondent also attempted to prove the value of the subject property with the income approach. According to the Respondent, the Petitioner claimed the rent from the subject property was only \$9 per square foot, but actually the income should be figured at a rate

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<sup>1</sup> Furthermore, one of the sales occurred in August 2006, but the Respondent failed to establish a link to the relevant valuation date of March 1, 2011. *Long*, 821 N.E.2d at 471.

of \$11 per square foot, which is more probable for the Mooresville area. The Respondent relied on evidence related to one other property identified as a neighborhood shopping center (Respondent Exhibits 7, 8, 9) to support \$11 per square foot. Again, the Respondent provided virtually no meaningful facts or analysis for comparing these properties beyond the fact they are neighborhood shopping centers in Mooresville. Therefore, the fact that space in this other property is available for leasing at \$11 per square foot is meaningless. This kind of conclusory comparison is not probative evidence.

28. In addition, the Respondent offered an “IncomeWorks Evaluation Report” that purports to apply a direct capitalization income approach to the subject property. The Respondent explained that IncomeWorks is a company that gathers sales and lease information specifically for each county. The IncomeWorks Evaluation Report was generated from its software. This one-page document indicates it was prepared by Robin Davidson. There is no indication in the record of who this person is, or what his/her qualifications might be. This Report indicates it used rental income of \$11.63 per square foot, but contains no substantial basis for that conclusory number. Similarly, the Report allows 16.83% for vacancy, \$3.92 per square foot for expenses, and used a capitalization rate of 9.50%. The record contains no substantial basis for any of these numbers, either. And the record contains no evidence that the Report was prepared according to generally accepted appraisal principles. Therefore, the Report has no probative value. It does not substantially support the assessed value that is on the subject property for 2011.
29. Because the Respondent did not offer probative evidence to support assessment, she failed to meet her burden of proof. Ordinarily, that failure would require that the 2011 assessment to be reduced to the 2010 assessed value, which was \$836,200. But during the hearing the Petitioners claimed the value should be \$850,000. According to the Petitioners, this figure is their current asking price for the property and an amount that would be a fair 2011 assessed value. Under these circumstances, the Board will not make the assessed value less than the Petitioners claimed.

**SUMMARY OF FINAL DETERMINATION**

30. The Respondent failed to establish a prima facie case in support of the current assessment. Therefore, the assessment is reduced to \$850,000.

This Final Determination of the above captioned matter is issued 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>