

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 29-006-07-1-4-00058  
**Petitioner:** River Glen Country Club, LLC  
**Respondent:** Hamilton County Assessor  
**Parcel No.:** 1510350011002000  
**Assessment Year:** 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) by written document on February 25, 2008.
2. The PTABOA issued notice of its decision on November 24, 2008.
3. The Petitioner filed a Form 131 petition with the Board on December 24, 2008. The Petitioner elected to have its case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated February 11, 2010.
5. The Board held an administrative hearing on April 14, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Ralph Campbell, Property Valuation Services, Inc.
  - b. For Respondent:<sup>1</sup> Debbie Folkerts, Hamilton County Assessor  
Terry McAbee, Hamilton County Deputy Assessor

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<sup>1</sup> Marilyn S. Meighen, Meighen & Associates, P.C. appeared as counsel for the Respondent.

## Facts

7. The subject property is a 6,820 square foot commercial utility storage building with a concrete silo and a utility shed on 2.22 acres located at 12003 Allisonville Road, Fishers, Delaware Township, in Hamilton County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of the Petitioner's property to be \$529,500 for land and \$70,400 for the improvements, for a total assessed value of \$599,900.
10. The Petitioner requested an assessed value of \$220,200 for the land and \$70,400 for the improvements, for a total assessed value of \$290,600 on its Form 131 appeal. At the hearing, the Petitioner valued the property at \$231,300.

## Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its assessment:
  - a. The Petitioner contends its property is over-valued based on an income approach valuation. *Campbell testimony*. In support of this contention, the Petitioner's representative presented an income analysis. *Petitioner Exhibit 4*. According to Mr. Campbell, he calculated the property's 2006 gross income using the "average asking rent" and vacancy rate in the Indianapolis industrial real estate market as published in the January 7, 2008, Indianapolis Business Journal. *Petitioner Exhibit 4.1 and 4.2; Campbell testimony*. Mr. Campbell then subtracted an average reserve of twenty-five cents per square foot as published on Realty Rates.com. *Petitioner Exhibit 4.1 and 4.3; Campbell testimony*. Mr. Campbell applied a capitalization rate of 7.6%, which he determined from the Real Estate Research Corporation website for warehouse type property located in Indianapolis. *Petitioner Exhibit 4.4; Campbell testimony*. Based on his analysis, Mr. Campbell estimated the property's value to be \$231,300. *Petitioner Exhibit 4.1; Campbell testimony*. In response to questions, Mr. Campbell admitted that the property under appeal is not being leased, but is used by the golf course as a storage facility and for the repair of lawnmowers. *Campbell testimony*. Further, Mr. Campbell admitted that his income analysis was based on information from the Indianapolis area, while the Petitioner's property is located in Fishers, Indiana. *Campbell testimony*. Mr. Campbell testified he did not specifically research the market in Fishers. *Campbell testimony*.
  - b. The Petitioner's representative further argues that the property under appeal is not worth its assessed value. *Campbell testimony*. Mr. Campbell testified the building on the property was originally assessed as a two-story barn, but approximately 10 to 15 years ago was changed to commercial utility storage with

a small shop. *Petitioner Exhibit 5; Campbell testimony.* According to Mr. Campbell, the property was listed for sale in 2007 for \$627,000. *Respondent Exhibit H; Campbell testimony.* However, Mr. Campbell argued, that as of April of 2010, the Petitioner has not been able to sell the property. *Campbell testimony.*

- c. Finally, in his rebuttal argument, Mr. Campbell contends the Board should disregard the Respondent's four comparable sales. *Campbell testimony.* According to Mr. Campbell, in two of the Respondent's comparable sales, the land is one-third the size of the subject property and the remaining two properties sold in 2004 and 2007, which is too removed from the January 1, 2006, valuation date to be relevant. *Campbell testimony.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the property under appeal is correctly assessed based on the sales of comparable properties. *Meighen argument; McAbee testimony.* In support of this position, the Respondent submitted a plat map, property record cards and sales data from the area of the Petitioner's property. *Respondent Exhibits B, C, D, E and F; McAbee testimony.* According to the Respondent's witness, Mr. McAbee, the property located at 10967 Allisonville Road, which consists of 2.72 acres of land, sold on November 21, 2007, for \$800,000 or \$294,100 per acre. *Respondent Exhibit C; McAbee testimony.* The property located at 11222 Allisonville Road, which is a .775 acre tract, sold on April 13, 2005, for \$400,000 or \$516,100 per acre. *Respondent Exhibit D; McAbee testimony.* The third property, 11554 Allisonville Road, is a carwash located on .743 acre which sold on March 15, 2006, for \$700,000. *Respondent Exhibit E; McAbee testimony.* According to Mr. McAbee, when the assessed value of the car wash is removed from the sales price, the land sold for \$737,400 per acre. *Id.* The last property, located at 11902 Lakeside Drive, is 1.388 acres of land which sold on May 12, 2004, for \$175,700 per acre. *Id.* Mr. McAbee testified that the subject property is currently assessed for \$238,500 per acre. *McAbee testimony.* Thus, the Respondent argues, land in the area is selling for more than the subject property's current assessment. *Meighen argument; McAbee testimony.*
- b. Similarly, the Respondent argues, the Petitioner's assessment is fair based on the listing price of a nearby property. *McAbee testimony.* According to Mr. McAbee, a 1.32 acre tract of land located at Allisonville Road and East 116<sup>th</sup> Street was listed for sale on August 18, 2008, for \$410,000 or \$310,606 per acre. *Respondent Exhibit G; McAbee testimony.* The Respondent argues that this suggests property values in the area have remained steady and have not experienced a dramatic decline in value as implied by the Petitioner's evidence. *McAbee testimony.*
- c. Finally, the Respondent argues, the Petitioner's assessment is fair based on the Petitioner's attempt to sell the subject property. *Respondent Exhibit H; McAbee*

*testimony.* Mr. McAbee testified that the property under appeal was listed for sale on or about July 11, 2007, for \$627,000 or \$285,000 per acre.<sup>2</sup> *Id.* According to Mr. McAbee, the 2002 Real Property Assessment Manual states that the true tax value of a property may be thought of as the asking price of the property by its owner, because the asking price represents how much utility must be replaced to induce the owner to abandon or sell the property. *Petitioner Exhibit 3; McAbee testimony.*

### **Record**

13. The official record for this matter is made up of the following:

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Notice of Assessment of Land and Structures –  
Form 11, dated January 14, 2008,

Petitioner Exhibit 2 – Property record card for the subject property,

Petitioner Exhibit 3 – Page 2 of the 2002 REAL PROPERTY ASSESSMENT  
MANUAL,

Petitioner Exhibit 4.1 – Petitioner’s income approach calculation, prepared  
by Ralph Campbell,

Petitioner Exhibit 4.2 – Indianapolis Industrial Real Estate Market 2006  
vacancy rates and average asking rents, published  
in the Indianapolis Business Journal, dated  
January 7, 2008,

Petitioner Exhibit 4.3 – 2006 Average Reserve Requirements, published  
by Realty Rates.com, dated November 14, 2006,

Petitioner Exhibit 4.4 – Indianapolis Capitalization Rate for Fall 2006,  
published by Real Estate Research Corporation,

Petitioner Exhibit 5 – Exterior photographs of the subject property,

Respondent Exhibit A – Property record card for the subject property,

Respondent Exhibit B – Plat map of the property under appeal and  
comparable land sales,

Respondent Exhibit C – Property record card for 10967 Allisonville Road,  
Fishers,

Respondent Exhibit D – Property record card for 11222 Allisonville Road,  
Fishers,

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<sup>2</sup> Mr. McAbee contends the listing price of the property under appeal shows the property under appeal is being marketed as 2.20 acres of bare land. *Respondent Exhibit H; McAbee testimony.* Thereby, implying the “barn” located on the property adds no value to the subject property. *Id.*

Respondent Exhibit E – Property record card for 11554 Allisonville Road, Fishers,

Respondent Exhibit F – Property record card for 11902 Lakeside Drive, Fishers,

Respondent Exhibit G – Commercial land listing for a property located at Allisonville Road and East 116<sup>th</sup> Street, Fishers, published by LoopNet.com, dated August 18, 2008,

Respondent Exhibit H – Property listing for the subject property, published by LoopNet.com, dated July 11, 2007,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:
- a. 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 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).
  - b. 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”).
  - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s case. *Id; Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of its property. The Board reached this decision for the following reasons:

- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).
- b. 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 Township 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here, although the property under appeal is used by the Petitioner for golf storage and a lawnmower repair shop, Mr. Campbell contends the property should be valued using the income approach. *Campbell testimony*. “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. According to Mr. Campbell, he calculated the value of the Petitioner’s property using the third quarter of 2006 market rents and vacancy rates from the Indianapolis Business Journal, reserve expense from RealtyRate.com and a capitalization rate from Real Estate Research Corporation. *Petitioner Exhibits 4.1 – 4.4; Campbell testimony*. Based on these published figures, Mr. Campbell estimated the property’s value at \$231,300. *Petitioner Exhibit 4.1; Campbell testimony*.
- e. The Petitioner’s representative’s summary version of the income approach failed to raise a prima facie case for several reasons. First, Mr. Campbell had a financial

interest in the Board lowering the subject property's assessment. *See Board Exhibit A*. While contingently paid expert witnesses are not absolutely prohibited from testifying in Indiana, it is generally inappropriate to pay an expert witness a contingent fee. *Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 877 (Ind. Tax Ct. 1993); *see also* Ind. Professional Conduct Rule 3.4(b) (The common law rule in most jurisdictions is that . . . it is improper to pay an expert witness a contingent fee.). Some states have even held certain contracts for paying expert witnesses contingent fees void as against public policy. *Wirth*, 613 N.E.2d at 876 (*citing, e.g. Dupree v. Malpractice Research, Inc.* 179 Mich. App. 254, 445 N.W.2d 498 (1989)). As the Indiana Tax Court explained, the rationale underlying that strong judicial disfavor goes to the heart of the judicial process. A contingent witness fee raises the specter of an auctioning of the truth and casts a pall over the entire fact finding process. *Id.* at 876-77. While the potential for abuse is less in a bench trial than in a jury trial (*Wirth*, 613 N.E.2d at 877), it is still significant. Thus, Mr. Campbell's estimate of value is not as persuasive as a similar analysis made by a non-contingently paid licensed appraiser.

- f. Further, Mr. Campbell's analysis itself is not sufficiently reliable to be probative of the property's value. Most notably, Mr. Campbell failed to provide a factual basis or substantial explanation as to how his income calculation is relevant to the property under appeal, which he testified is a non-income producing property. Moreover, Mr. Campbell's income analysis was developed from the average rents, average vacancy rates, and industry-wide reserve expenses for industrial or warehouse properties located in the Indianapolis real estate market. *Petitioner Exhibits 4.1 – 4.3*. Mr. Campbell, however, provided no evidence to demonstrate that the property, located in Fishers, is comparable to or part of the same market as Indianapolis. Nor did he show that the Petitioner's storage barn is comparable to the "average" industrial or warehouse facility. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitely Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- g. Additionally, Mr. Campbell did not adequately support his capitalization rate. A capitalization rate "reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2 269, 275 (Ind. Tax Ct. 2005). Here Mr. Campbell based the capitalization rate on the Real Estate Research Corporation website. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. It is not sufficient to merely present a print out of a website and purport to rely on the data without showing that

Real Estate Research Corporation is a credible data service that is typically relied upon by appraisal professionals as representative of the local market.

- h. Ultimately, Mr. Campbell failed to show that his income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, Mr. Campbell's income approach lacks sufficient 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).
- i. The Petitioner also argues that its property is over-valued because it has been unable to sell the property. *Campbell testimony*. In support of this contention, Mr. Campbell testified the Petitioner's property was offered for sale on July 11, 2007, for \$627,000, but the property has not sold. *Respondent Exhibit H; Campbell testimony*. While a taxpayer's unsuccessful attempts to sell a property may, in fact, be some indication of a property's value, there is no evidence that would allow the Board to determine how the Petitioner's July 11, 2007, listing price relates to the January 1, 2006, statutory valuation date. *See Long*, 812 N.E.2d at 466, 469-71. Moreover, the Petitioner's list price exceeds its assessed value, which supports a conclusion that the Petitioner itself does not believe its property is over-valued, but, in fact, is worth more than its assessed value.
- j. Where the taxpayer fails to provide probative evidence that its assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_



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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

### 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>.**