

REPRESENTATIVE FOR PETITIONER:

Charles R. Vaughan, President, Twyckenham Village, Inc.

REPRESENTATIVE FOR RESPONDENT:

Pamela J. Hruska, Tippecanoe County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Twyckenham Village, Inc.,	)	Petition No:	79-160-07-1-4-00001
)		
Petitioner,	)	Parcel No:	160140180079
)		
v.)		
	)	County:	Tippecanoe
Tippecanoe County Assessor,	)	Township:	Wea
)		
Respondent.	)	Assessment Year:	2007

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

March 10, 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, Charles R. Vaughan, on behalf of Twyckenham Village, Inc., filed a Form 131 Petition for Review of Assessment on January 8, 2009, petitioning the Board to conduct an administrative review of the above petition. The Tippecanoe County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on December 9, 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 17, 2009, in Lafayette, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:¹

Charles R. Vaughan, President, Twyckenham Village, Inc.
David A Miller, Petitioner's Accountant
Rod Evans, Commercial Real Estate Broker, F.C. Tucker
Sabrina Blackwell, Real Estate Agent, F.C. Tucker

For the Respondent:

Pamela J. Hruska, Tippecanoe County Deputy Assessor

¹ Mr. Miller and Ms. Blackwell were sworn in but they did not present any testimony.

5. The Petitioner presented the following exhibit:

Petitioner Exhibit 1 – Broker’s opinion of value on 3000 South 9th Street, Lafayette, prepared by Rod Evans, F.C. Tucker, dated March 17, 2008.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Tippecanoe County’s response to the Petitioner’s issue,

Respondent Exhibit 2 – Property record card for Parcel No. 160134050010, located at 3105 South 9th Street, Lafayette,

Respondent Exhibit 3 – Property record card for Parcel No. 160140180079, located at 3000 South 9th Street, Lafayette,

Respondent Exhibit 4 – GIS aerial map of the subject property,

Respondent Exhibit 5 – Six exterior photographs of the subject property,

Respondent Exhibit 6 – GIS aerial map of the subject property,

Respondent Exhibit 7 – Google photograph and map of 3000 South 9th Street, Lafayette,

Respondent Exhibit 8 – Tippecanoe County’s IncomeWorks property profile worksheet for Twyckenham Village, Inc.

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 with attachments,

Board Exhibit B – Notice of Hearing, dated October 6, 2009,

Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a 24,048 square foot neighborhood shopping center on 5.10 acres located at 3000 South 9th Street, Lafayette, Wea Township in Tippecanoe County.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2007, the PTABOA determined the assessed value of the property to be \$765,300 for land and \$1,003,600 for the improvements, for a total assessed value of \$1,768,900.

11. At the Board hearing, the Petitioner requested an assessed value of \$1,011,555.²

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 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

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 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).
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 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”).
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*,

² On the Form 131 petition, Mr. Vaughan requested an assessed value of \$400,000 for land and \$1,003,600 for the improvements, for a total assessed value of \$1,403,600 for the March 1, 2007, assessment year.

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.

PETITIONER'S CONTENTIONS

16. The Petitioner contends that the property under appeal is valued in excess of its market value-in-use. *Vaughan testimony*. In support of its position, the Petitioner submitted a broker's opinion of value prepared by Rod Evans of F.C. Tucker. *Petitioner Exhibit 1*. Mr. Evans testified that he is a licensed real estate broker with 23 years of experience in commercial real estate. *Evans testimony*. In his broker's opinion, Mr. Evans estimated the property's value to be \$1,011,555 as of March 17, 2008. *Petitioner Exhibit 1; Evans testimony*.
17. In his analysis, Mr. Evans testified that he used the actual income and expenses from the Petitioner's property in 2007 and applied a capitalization rate of 9.5%. *Petitioner Exhibit 1; Evans testimony*. According to Mr. Evans, the subject property had an average rental rate of \$8.00 per square foot, which the broker used to calculate the property's gross income. *Id*. Next, Mr. Evans testified, he subtracted the property's actual expenses such as real estate taxes, actual vacancy rate, insurance, and management and maintenance fees.³ *Id*. Finally, Mr. Evans applied a capitalization rate of 9.5%, which he determined by combining factors, such as location, condition of the property, current economic climate and interest rate. *Id*.
18. In his rebuttal testimony, the Petitioner's witness argues that the Respondent's comparable analysis on the land should be given little weight. *Evans testimony*. According to Mr. Evans, vacant commercial land will normally have a higher market

³ According to Mr. Evans, the subject property has a high vacancy rate because 15% of the building has not been completed and 10% of the building has been vacant for several years. *Evans testimony*. In addition, there has been substantial commercial growth on 350 South, which has reduced traffic flow by the subject property. *Evans testimony*.

value than commercial property with a building, because the buyers of vacant land can develop the land to fit their specific needs. *Evans testimony.*

RESPONDENT'S CONTENTIONS

19. The Respondent contends the Petitioner's property is valued correctly based on an income approach calculation she developed using *IncomeWorks* software. *Petitioner Exhibit 8; Hruska testimony.* According to Ms. Hruska, the program calculates a property's value using local market rents, vacancy rates and expenses.⁴ *Id.* Then the program adjusts for location, access, traffic volume, condition, quality and age. *Id.* Based on the adjustments, Ms. Hruska testified, the program automatically calculates the capitalization rate. *Id.* According to Ms. Hruska, she used \$11 per square foot for market rent, a vacancy rate of 18%, and an expense ratio of \$2.95 per square foot. *Id.* *IncomeWorks* applied a capitalization rate of 8.5%, resulting in an estimated value of \$1,717,310. *Id.*
20. The Respondent further argues that the Petitioner's appeal form claimed the land should be valued at \$400,000. *Board Exhibit A; Hruska testimony.* However, a nearby 1.75 acre parcel sold in 2005 for \$450,000. *Respondent Exhibits 1 and 2; Hruska testimony.* Because the Petitioner's parcel is 5.1 acres, the Respondent's representative argues, the subject property's land is assessed at below its market value. *Id.*

ANALYSIS

21. 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

⁴ Ms. Hruska testified she estimated the vacancy rate of the subject property from an aerial map. *Respondent Exhibit 6; Hruska testimony.*

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. *Id.* at 3, 13-15. 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 (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).

22. 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 the presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 826 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
23. 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 date, the valuation date is January 1, 2006. 50 IAC 21-3-3.
24. Here, the Petitioner contends its property is over-valued based on its broker's opinion of value. *Vaughan and Evans testimony*. According to the Petitioner's broker, Mr. Evans, he applied the income approach and used the property's 2007 rent and expenses to estimate the property's value at \$1,011,555, as of March 17, 2008. *Petitioner Exhibit 1; Evans testimony*.

25. “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. The income approach, thus, focuses on the intrinsic value of the property, not upon the Petitioner’s operation of the property because property-specific rents or expenses may reflect elements other than the value of the property “such as quality of management, skill of work force, competition and the like.” *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). See also MANUAL at 5 (“[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data”).
26. Here, the Petitioner offered 2007 rental and expense information from the subject property. The Petitioner, however, provided no evidence to demonstrate whether the income and expenses were typical for comparable properties in the market.⁵ Thus, any low rental income or high expense levels may be attributable to the Petitioner’s management of the property as opposed to a property’s market value. See *Thorntown Telephone Company*, 588 N.E.2d at 619. See also, *Lake County Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). In fact,

⁵ The Petitioner’s evidence also shows the “Broker’s Opinion of Value” deducted real estate taxes as an expense. *Petitioner Exhibit 1*. The Petitioner’s witness, Mr. Evans, testified real estate taxes are always deducted as an expense. *Evans testimony*. The Respondent, however, argues that real estate taxes are accounted for in the capitalization rate and therefore are not an allowable expense. *Hruska testimony*. “[W]hen property is valued for ad valorem tax purposes, taxes should not be considered an expense item”. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION 240 (2d ed. 1996). Real estate taxes are not an allowable expense for ad valorem purposes because the amount of property tax is contingent upon the correct value of the real estate. *Id.*

the Petitioner's witness testified the average rental income of \$8.00 per square foot was on the "low side." *Evans testimony*.

27. Additionally, the Petitioner did not adequately support its 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.2d 269, 275 (Ind. Tax Ct. 2005). Here the Petitioner's witness based the capitalization rate on his experience and knowledge of the market. 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. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley 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).

28. Moreover, the Petitioner failed to show that its income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, the Petitioner's income approach calculation lacks 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).

29. Finally, the Petitioner's witness testified that he estimated the property's market value to be approximately \$1,011,555, in a letter dated March 17, 2008.⁶ *Petitioner Exhibit 1*. The required valuation date for a 2007 assessment is January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. The Petitioner failed to explain how the March 17, 2008, estimate of value demonstrates or relates to the property's value as of January 1, 2006. *See Long v. Wayne Township Assessor*, 812 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005). Thus, the Petitioner failed to raise a prima facie case that its assessment is incorrect.
30. Where the taxpayer fails to provide probative evidence that an 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).

SUMMARY OF FINAL DETERMINATION

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

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

⁶ To the extent the Petitioner can be seen as arguing that the property suffers from obsolescence based on its vacancy rate, the Board finds the Petitioner failed to adequately present such a case. For a Petitioner to show that it is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence the Petitioner believes is present and quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Here the Petitioner identified some factors that it contends is causing the property's vacancy. The Petitioner however failed to quantify the amount of the obsolescence it contends is present in the property. Merely arguing the property has a high vacancy rate is insufficient to prove an error in the assessment. The Petitioner must show the property has suffered an actual loss in value. *See Champlin Realty Co. v. State Board of Tax Commissioners*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001). *See also Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003).

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>.

