

REPRESENTATIVE FOR PETITIONER:
Wingfield L. Chubb, President

REPRESENTATIVE FOR RESPONDENT:
Christopher A. Buckley, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Indian Oak Inn Corp.)	Petition No.:	64-023-07-1-4-00049
)		
Petitioner,)		
)	Parcel No.:	64-04-31-156-012.000-023
v.)		
)		
Porter County Assessor,)	County:	Porter
)		
Respondent.)	Assessment Year:	2007

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

December 12, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 Petitioner's land is over-stated for the 2007 assessment year based on the assessed values of neighboring parcels.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeal by filing a Form 130 Petition with the Porter County Property Tax Assessment Board of Appeals (PTABOA) on April 9, 2009. The PTABOA issued its assessment determination on October 12, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on November 22, 2010, petitioning the Board to conduct an administrative review of the property's 2007 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on September 19, 2011, in Valparaiso, Indiana.
5. The following persons were sworn at the hearing:

For the Petitioner:

Wingfield L. Chubb, President,

For the Respondent:

Jon M. Snyder, Porter County Assessor,
Timothy A. Jorzak, Director of Commercial Operations.

6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Form 131 petition,
 - Petitioner Exhibit 2 – Form 115, PTABOA decision,
 - Petitioner Exhibit 3 – Summary of the Petitioner’s arguments,
 - Petitioner Exhibit 4 – Porter County Ratio Study,
 - Petitioner Exhibit 5 – Department of Local Government Finance Memorandum, dated January of 2010,¹
 - Petitioner Exhibit 6 – Property record card for McDonald’s Real Estate Company’s property on Indian Boundary Road,
 - Petitioner Exhibit 7 – Property record cards for comparable parcels,
 - Petitioner Exhibit 8 – Aerial photograph of the neighborhood.

7. The Respondent did not submit any exhibits.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing, dated August 10, 2011,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a hotel on a 2.23 acre parcel of land located at 558 Indian Boundary Road, Chesterton, Indiana.

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

11. For 2007, the PTABOA determined the assessed value of the Petitioner’s property to be \$446,800 for the land and \$950,900 for the improvements, for a total assessed value of \$1,397,700.

12. For 2007, the Petitioner contends the assessed value should be \$112,538 for the land and \$950,900 for the improvements, for a total assessed value of \$1,063,438.

¹ The Petitioner did not submit a copy of the DLGF Memorandum at hearing; instead it requested that the Board take judicial notice of the document.

JURISDICTIONAL FRAMEWORK

13. 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, (3) property tax exemptions, and (4) property tax credits 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

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
15. 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. Wash. Twp. 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”).
16. 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.

PARTIES' CONTENTIONS

17. The Petitioner contends that the assessed value of its land is over-stated based on the assessments of neighboring properties. The Petitioner presented the following evidence in support of its contentions:
- A. The Petitioner's representative testified that the subject property was once part of a larger business operation. *Chubb testimony*. According to Mr. Chubb, in 2005, a portion of the property was sold to Bapa Enterprises and was converted to a Best Western hotel. *Id.* The Petitioner was left with a remnant of the property and a hotel which has been a non-performing asset with a negative income since the sale.² *Id.*
 - B. The Petitioner's representative argues that the subject property should be assessed like the Best Western property. *Chubb testimony*. According to Mr. Chubb, the Best Western property was assessed at \$200,000 an acre for type 11 land, but the assessor adjusted the land value downward to \$73,000 an acre by applying an influence factor and changing a portion of the land to type 14 for wetlands.³ *Id. Petitioner Exhibit 7B*. Although the assessor lowered the value based on the purchase price of the Best Western property, Mr. Chubb argues, that parcel was once a part of the subject property, and therefore the subject property's land should receive the same treatment. *Chubb argument*.
 - C. Similarly, Mr. Chubb contends that the subject property's land is assessed higher than the land of other similar properties. *Chubb testimony*. In support of this contention, Mr. Chubb submitted property record cards for four properties located in the neighborhoods that the county used in its ratio study. *Petitioner Exhibits 4, 7E-7H*.

² The Respondent's counsel moved to strike any testimony concerning Mr. Chubb's opinion of income that the property generates. The ALJ over-ruled the objection finding it went to the weight of the testimony, rather than its admissibility.

³ The commercial/industrial land classifications are: primary (type 11) which is land located under buildings, regularly used parking areas, roadways, regularly used yard storage, and necessary support land; secondary (type 12) land, which is secondary to the primary use of the building, such as parking areas and yard storage that is not used regularly; usable/undeveloped (type 13) land that is vacant and held for future development; and unusable/undeveloped (type 14) land that is unusable for commercial or industrial purposes. GUIDELINES, Chap. 1, pg. 85.

According to Mr. Chubb, the Rising Hospitality property is comparable to the subject property because it is an independent hotel and not a franchise. *Chubb testimony*. The Rising Hospitality property is assessed at roughly \$73,000 an acre for type 11 land. *Id*; *Petitioner Exhibit 7D*. The other properties are assessed at \$90,000 an acre for type 11 land, except for one property that had a base rate of \$100,000 an acre. *Chubb testimony*; *Petitioner Exhibits 7E through 7H*. Based on these land rates, Mr. Chubb concludes, it is unclear why the assessor applied a \$200,000 base rate to the subject property. *Chubb testimony*; *Petitioner Exhibit 7H*.

- D. Mr. Chubb further argues that the assessor erred in trending land values in the neighborhood because the assessor only used one sale in the neighborhood for the assessment. *Chubb argument*. Mr. Chubb, citing a DLGF memorandum, contends that neighborhoods must have five or more sales if the sales comparison approach is used to value properties and a larger sample is needed for greater precision. *Id.*; *Petitioner Exhibit 5*.
- E. Furthermore, Mr. Chubb argues, that the one sale was not representative of the parcels in the neighborhood. *Chubb argument*. According to Mr. Chubb, McDonald's, who purchased the property, had an operation next door to the property and acquired the parcel to expand its restaurant. *Id*. In addition, Mr. Chubb argues, the McDonald's property fronts on Indian Boundary Road; while other parcels in the neighborhood do not have similar access to the road. *Id*. Moreover, Mr. Chubb argues, it is not clear how the assessor derived a \$200,000 per acre land value from the \$650,000 purchase price of the McDonald's property because the parcel was improved with a restaurant and bank building that represented a significant part of the property's value. *Id*. Nonetheless, Mr. Chubb argues, the McDonald's property, which was assessed for \$185,000 per acre, was assessed at a lower base rate than the subject property, which was assessed for \$200,000 an acre. *Id*.
- F. Finally, the Petitioner's representative argues that the land on the subject property was classified incorrectly and an influence factor should be applied. *Chubb argument*. Mr. Chubb contends that up until 2006 the land on the subject property

was classified as type 11 land and assessed at \$76,000 per acre. *Id.* However, Mr. Chubb argues, the property is actually 1.5 acres of type 11 land and .75 acres of unusable wetlands, or type 14 land. *Id.* According to Mr. Chubb, two comparable properties, the Best Western and the Rising Hospitality property, both have net adjusted values for type 11 land of \$73,000 per acre and the Best Western also has type 14 land assessed at \$4,200 per acre for its wetlands. *Chubb testimony; Petitioner Exhibit 3.* Correcting the land types and using the adjusted base rates of \$73,000 for type 11 land and \$4,200 for type 14 land, Mr. Chubb contends, results in a land assessment of \$112,538 for the Petitioner's property. *Id.*

18. The Respondent contends the property's assessed value is correct and equitable. The Respondent presented the following evidence in support of the assessment:
 - A. The Respondent's witness contends that the Petitioner's property was assessed equitably and uniformly. *Jorczak testimony.* According to Mr. Jorczak, using mass appraisal techniques, the assessor took market data and applied it uniformly to all of the properties in the area, based on the unique characteristics of each property. *Id.* For the properties here, Mr. Jorczak testified, the assessor assigned a value of \$200,000 an acre for primary land. *Id.* While the base rate for the land was computed using market information from the township, rather than just the Petitioner's property's neighborhood, Mr. Jorczak testified that the DLGF allows the sales area to be as broad as it needs to be in order to gain an accurate picture for the area. *Id.*
 - B. Mr. Jorczak also testified that the base rate for land in the neighborhood was computed using a ratio study approved by the DLGF. *Jorczak testimony.* Mr. Jorczak contends the ratio study met the statistical criteria for equity and uniformity. *Id.* While Mr. Jorczak admitted that there was only one sale in the subject property's neighborhood, he argues that seven sales in the township were used in the ratio study. *Jorczak cross-examination; Petitioner Exhibit 10.*

C. Finally, the Respondent’s counsel argues that the Petitioner failed to show the subject property was assessed in excess of its market value-in-use. *Buckley argument*. Mr. Buckley argues that the Petitioner presented no evidence of the property’s market value, such as an appraisal. *Id.* Moreover, the Respondent’s counsel argues, the Petitioner did not present a ratio study comparing the assessed value of nearby properties to the properties’ market values as dictated in *Westfield Golf Practice Center, LLC v. Washington Township Assessor. Id.*

ANALYSIS

19. The Petitioner failed to raise a prima facie case for a reduction in its property’s assessed value. The Board reached this decision for the following reasons:

A. 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). 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 value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

B. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). A taxpayer may rebut that 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*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject

- property or comparable properties and other information compiled according to generally accepted appraisal principles. 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 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- D. The Petitioner first claims that its property’s assessment lacks uniformity and equality. *Chubb argument*. According to Mr. Chubb, other commercial properties in the area were assessed at a lower base rate per acre than the subject property. *Id.* In support of its argument, the Petitioner submitted property record cards for four properties in the Petitioner’s property’s neighborhood. *Petitioner Exhibits 7A, 7C, 7D, and 7E*. The base rates for the properties ranged from \$90,000 to \$200,000 per acre for 2007. *Id.*
- E. In *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Indiana Tax Court addressed a similar “lack of uniformity and equality” claim under Indiana’s present market-value-in-use system. As the court explained, under the old system of assessment, true tax value was determined according to Indiana’s own assessment regulations and bore no relation to any external, objectively verifiable measurement standard. *Westfield Golf*, 859 N.E.2d at 398. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id.*
- F. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. *Westfield Golf*, 859 N.E.2d at 398. The focus shifted from examining how assessment regulations were applied to examining whether a property’s assessed value actually reflects the property’s market value-in-

- use. *Id.* at 399. Thus, the taxpayer in *Westfield* lost on its “lack of uniformity and equality” claim because the taxpayer focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* The Petitioner’s claim here fails for the same reason.
- h. In addition, the Petitioner argues that the county’s base rate for the subject property’s neighborhood was flawed because it was based on a single sale in the subject property’s neighborhood. However, the Petitioner’s evidence shows that, while only one sale occurred in the Petitioner’s neighborhood, the county used seven sales in the township to determine the land rates for the neighborhood. The Petitioner neither presented evidence that seven sales were insufficient to determine a base rate; nor did the Petitioner present evidence of any other sales or prepare a ratio study of its own showing a more “accurate” land value for its property. In fact, the DLGF memorandum submitted by the Petitioner states that a sample size for a neighborhood must be at least five sales. The county, therefore, complied with the memorandum’s requirements. While more sales undoubtedly would have been more reliable, the Petitioner failed to show that the county’s land rate was in error.
- i. The Petitioner also appears to contend that the county’s use of the McDonald’s purchase in its land valuation analysis was somehow an error. But the Petitioner failed to present probative evidence in support of its allegation. 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, 1119 (Ind. Tax Ct. 1998). In fact, the Petitioner’s contention that most of the value of the property was in the buildings rather than the land was demonstrably wrong. According to the property record card, the McDonald’s purchase occurred on November 3, 2005. *Petitioner Exhibit 6*. The same exhibit shows that the buildings were demolished before the next assessment date, March 1, 2006. *Id.* Thus, contrary to the Petitioner’s contentions, the evidence suggests that McDonald’s assigned very little value to the improvements on that

parcel. Similarly, the Petitioner claims the McDonald's location is a superior location to other properties in the neighborhood that do not front on Indian Boundary Road, but it is assessed at the lower base rate of \$185,000 per acre. However, the parcel purchased by McDonalds was assessed as type 13 property - usable/undeveloped land; rather than type 11 – primary developed land. Thus, while the land was assessed at a lower base rate, McDonald's undeveloped land was not “comparable” to the Petitioner's property which was developed land.

- G. Finally, the Petitioner's representative contends that the property's land classification should be corrected to reflect that the parcel has 1.5 acres of type 11 land and .75 acres of type 14 land. Moreover, Mr. Chubb argues, an influence factor should be applied to reduce the value of its land to the same per acre value as the neighboring property. The Petitioner, however, did not submit any evidence to substantiate its claim that part of the subject property is wetlands. Similarly, while the Petitioner contends that its land should be entitled to the same influence factor as the adjacent parcel, the Petitioner did not offer any evidence showing that the subject property's land has the same characteristics as the adjacent property. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470.
- I. Moreover, even if the Petitioner had properly shown that part of its land was wetlands or that an influence factor should have been applied to its land, the Petitioner's claims would still fail because the Petitioner presented no probative evidence of the property's market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property's assessed value was correct as long as the assessment regulations

were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

- J. The Board therefore finds that the Petitioner failed to raise a prima facie case that its property was assessed inequitably or non-uniformly. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

21. The Petitioner failed to raise a prima facie case that its property was over-valued for the 2007 assessment year. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner’s property should not be changed.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>