

REPRESENTATIVES FOR PETITIONER:

Joshua J. Malancuk, PricewaterhouseCoopers, LLP
Ben Buckles, PricewaterhouseCoopers, LLP

REPRESENTATIVE FOR RESPONDENT:

Brian Thomas, Ad Valorem Solutions

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

TRIMAS FASTENERS, INC.,)	Petition Nos.: 12-014-02-1-3-00006
)	12-014-02-1-3-00007
Petitioner,)	Parcel Nos.: 0140806107
)	0140806109
v.)	
)	Clinton County
WASHINGTON TOWNSHIP)	Washington Township
ASSESSOR, CLINTON COUNTY,)	
)	Assessment Year: 2002
Respondent.)	

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

January 3, 2007

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: Should the current assessments be changed to more accurately reflect the overall market value-in-use of both properties based on appraisals offered by the Petitioner or the Respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. TriMas Fasteners, Inc., initiated an appeal of its assessments by filing written documents on July 18, 2003. The Clinton County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on August 18, 2004. Pursuant to Ind. Code § 6-1.1-15-3, Robert J. Zalupski, Chief Financial Officer of TriMas Fasteners, Inc., and Joshua J. Malancuk, PricewaterhouseCoopers, LLP, filed two Forms 131, Petitions for Review of Assessment, on September 20, 2004.
2. The Board scheduled a hearing for February 16, 2006. *Board Ex. C.* The Respondent requested a continuance. *Board Ex. D.* The Board granted the continuance. *Board Ex. E.* The Board re-scheduled the hearing for May 24, 2006. *Board Ex. B.*

Hearing Facts and Other Matters of Record

3. Brian McKinney, the Administrative Law Judge authorized by the Board, held the hearing in Frankfort on May 24, 2006. The Administrative Law Judge did not conduct an on-site inspection of the properties.
4. The following persons were sworn as witnesses at the hearing:¹
 - Thomas K. McGee, Director of Corporate Development, TriMas Fasteners, Inc.,
 - Benjamin Buckles, PricewaterhouseCoopers, LLP,
 - Joshua J. Malancuk, PricewaterhouseCoopers, LLP,
 - Lawrence W. Mitchell, President, Mitchell Appraisals, Inc.,
 - James A. Morris II, Ad Valorem Solutions,
 - Brian Thomas, Ad Valorem Solutions,
 - Edward Helmer, Appraiser, Helmer Appraisals, Inc.

¹ Katie Faucett, the Clinton County Assessor, was present at the hearing, but was not sworn.

5. The subject property is a manufacturing facility located at 3281 W. County Road 0 NS, Frankfort, Indiana.

6. The PTABOA determined the 2002 assessed value for parcel 0140806107 is:
land \$411,800 improvements \$4,792,800 total \$5,204,600.

7. The PTABOA determined the 2002 assessed value for parcel 0140806109 is:
land \$33,100 improvements \$1,947,600 total \$1,980,700.

8. The Petitioner contends the total assessed value should be \$2,960,000 for both parcels.

9. The following exhibits were presented:
 - Petitioner Exhibit 1 – Form 131 Petitions, with attachments,
 - Petitioner Exhibit 2 – Form 130 Petitions, with attachments,
 - Petitioner Exhibit 3 – Power of Attorney,
 - Petitioner Exhibit 4 – Tax Representative Disclosure,
 - Petitioner Exhibit 5 – Property record cards (PRC) for both parcels under appeal,
 - Petitioner Exhibit 6 – REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 -
VERSION A, Appendix F at 4, 8-21; Glossary at 19,
 - Petitioner Exhibit 7A – Mitchell review of the Integra appraisal,
 - Petitioner Exhibit 7B – Complete appraisal of subject properties by Mitchell
Appraisals, Inc.,
 - Petitioner Exhibit 8 – Two page value comparison and pricing for subject
properties,
 - Petitioner Exhibit 9 – Brief,
 - Petitioner Exhibit 10 – Valuation report prepared by PricewaterhouseCoopers,
LLC for the subject properties,
 - Petitioner Exhibit 11 – Broker opinion of value for Rohn property by Hart Corp.,
 - Petitioner Exhibit 12 – Broker opinion of value for Rohn property by CB Richard
Ellis,

Petitioner Exhibit 13 – Broker opinion of value for Rohn property by Colliers International,

Petitioner Exhibit 14 – Closing statement of Rohn property, May 12, 2004,

Petitioner Exhibit 15 – Eight photographs of the subject properties, twelve photographs of the Rohn property, the Rohn property PRC, and an interior diagram of the subject properties,

Petitioner Exhibit 16 – Information on Radian Communication Services Corp.,

Respondent Exhibit A – Brief and list of exhibits,

Respondent Exhibit B – PRC for parcel 0140806105 right of way for the subject property,

Respondent Exhibit C – Sales disclosure for the subject properties dated September 29, 2003,

Respondent Exhibit D – Integra Realty Resources appraisal of the subject properties,

Respondent Exhibit E – Appraisal prepared by Helmer Appraisal, Inc. of the subject properties,

Respondent Exhibit F – Sales disclosure for the subject properties dated January 12, 2006,

Respondent Exhibit G – Definitions of value-in-use and use value from *The Dictionary of Real Estate Appraisal*, 4th Edition,

Respondent Exhibit H – 2002 REAL PROPERTY ASSESSMENT MANUAL, pages 2-4,

Respondent Exhibit I – Cost multiplier spreadsheet,

Respondent Exhibit J – Verified Assessed Value Analysis,

Respondent Exhibit K – GUIDELINES, Appendix F page 14,

Respondent Exhibit L – *The Appraisal of Real Estate*, page 476,

Respondent Exhibit M – Standard 1-3(b), Uniform Standards of Professional Appraisal Practice (USPAP),

Respondent Exhibit N – *The Appraisal of Real Estate*, chapter 12, page 1,

Respondent Exhibit O – Two maps comparing locations of comparable properties used in the Helmer appraisal and the Mitchell appraisal,

Respondent Exhibit P – *The Appraisal of Real Estate*, pages 412 – 414,

Respondent Exhibit Q – 50 IAC 21-5-2, Application of factor,
Respondent Exhibit R – Inflation statistics for January 1999 to January 2006,
Respondent Exhibit S – Letter from Larry Mitchell to Josh Malancuk dated April
2, 2004,
Respondent Exhibit T – Oral Real Estate Appraisal Written Summary by
Lawrence Mitchell dated July 16, 2004,
Board Exhibit A – The Form 131 petitions,
Board Exhibit B – Notice of Hearing for May 24, 2006, hearing date,
Board Exhibit C – Notice of Hearing for February 16, 2006,
Board Exhibit D – Request for continuance of the February 16, 2006, hearing
received on January 27, 2006,
Board Exhibit E – Letter granting continuance of February 16, 2006, hearing,
Board Exhibit F – Petitioner's motion to exclude evidence and witness testimony
received on May 15, 2006,
Board Exhibit G – Respondent's opposition to exclusion or, in the alternative,
motion to continue hearing received on May 18, 2006,
Board Exhibit H – Letter from the Administrative Law Judge to the parties
acknowledging the motions and informing them that the matter
would be addressed at the hearing on May 24, 2006,
Board Exhibit I – Petitioner's response to motion for continuance received on
May 19, 2006,
Board Exhibit J – Transcript of Proceedings,
Board Exhibit K – Notice of Appearance of Consultant on Behalf of Assessor.

Objections

10. In a pre-hearing motion and again at the start of the hearing, the Petitioner objected to most of the Respondent's exhibits and testimony.² *Buckles argument, Board Ex. J at 10 – 13; Board Ex. F.* Specifically, the Petitioner argued that the Respondent's list of exhibits

² The Petitioner specifically had no objection to Respondent Exhibits S and T. *Board Exhibit J at 170-71.* Consequently, those two exhibits are admitted.

and witnesses was not provided at least fifteen business days before the hearing date as required by 52 IAC 2-7-1(b). The Petitioner also objected to the admission of Respondent Exhibits A and K – R because they were not provided at least five business days before the hearing date as required by 52 IAC 2-7-1(a). The Respondent established that copies of the lists were mailed at least fifteen calendar days before the hearing. The Respondent offered no probative evidence to dispute the facts presented by the Petitioner on this point.

11. Nevertheless, the Respondent argues that its evidence is admissible for three reasons. First, the Respondent claims the time requirement is ambiguous. Second, the Respondent claims that the Petitioner suffered no harm from any failure. Third, the Respondent claims that it can properly offer "rebuttal" evidence regardless of any failure to comply with the prehearing exchange rules. The Board, however, does not find any of these reasons to be sufficient to justify admission of the evidence.

12. The Board's procedural rules are clear that the exchange times are at least five *business* days prior to the hearing and fifteen *business* days prior to the hearing. 52 IAC 2-7-1(b). The first hearing notice states, "Fifteen (15) days before the hearing date, the parties must exchange a list of witnesses and exhibits. Five (5) days before the hearing date, the parties must exchange evidence and summary of witness testimony to be presented at the hearing." *Board Exhibit C*. The second hearing notice states, "At least 15 days before the hearing date, the parties must exchange a list of witnesses and exhibits. At least 5 business days before the hearing date, the parties must exchange evidence and summaries of witness testimony to be presented" *Board Exhibit B*. Neither notice refers to calendar days or conflicts with the procedural rule. As an authorized representative, Mr. Thomas should be familiar with those rules and follow them. His response to the Petitioner's motion makes it clear that he was cognizant of the specific "business days" requirement in the rule. That response implies fault with the hearing notice because it provides no regulation or code citation. In this case, that point is irrelevant because it is clear that Mr. Thomas was keenly aware of the distinction between business days and calendar days. Assuming, *arguendo*, that Mr. Thomas spoke to a member of the Board's

staff about the purported "ambiguity" about how to calculate the days, this conversation is not sufficient to change the clear provision in the procedural rules. *Middleton Motors, Inc. v. Ind. Dep't of State Rev.*, 380 N.E.2d 79, 81 (Ind. 1978). Furthermore, this part of the Respondent's argument does nothing to address the additional procedural failures regarding the exchange of evidence.

13. The Respondent also argues that its failure should be overlooked because the Petitioner suffered no harm: "Can I ask what harm 11 business days versus 15 days did to the petitioner's case ...? The only new evidence I've supplied is an appraiser, and an appraisal, which you did know about because that was the reason for the continuance." *Board Exhibit J at 77*. Again, the Respondent did not address the failure to provide copies of some exhibits and summaries of testimony five days before the hearing. If the Respondent had inadvertently missed the specified time for exchanging lists of witnesses and exhibits by a day or two, the argument that the Petitioner suffered no harm might be more persuasive. In this case, however, it is clear that the time decision was purposeful and not inadvertent. Furthermore, the Respondent did not attempt to disprove the testimony that it also failed to comply with the requirement to exchange some of the exhibits (Exhibit A and K-R) and summaries five business days before the hearing. The Respondent's pattern of conduct is sufficient to justify a sanction, regardless of the provable harm resulting from the failure to follow the rules.

14. In a third attempt to avoid the rules, the Respondent presented a large part of its evidence as "rebuttal" with an underlying presumption that such evidence is somehow exempt from the requirements of 52 IAC 2-7-1(b). The Respondent cited no authority and made no substantial argument to support this position. After reviewing this "rebuttal" evidence, it is clear that very little, if any, of that evidence can reasonably be characterized as true rebuttal. In fact, the exhibits and the testimony relate primarily to the Respondent's case in chief. The Respondent's proposed position regarding "rebuttal" is an unacceptable attempt to avoid equal application of the prehearing disclosure and exchange provisions in 52 IAC 2-7-1(b) to both parties. The Board will not approve of such a wholesale disregard of the rule.

15. The Board sustains Petitioner's objection to Respondent's exhibits and testimony.³ Therefore, if the Petitioner made a prima facie case, it is entitled to relief. Even if the Respondent's evidence were admitted, the weight of the evidence is in the Petitioner's favor. Therefore, sustaining the Petitioner's objection does not change the outcome of this case.
16. The Respondent objected to testimony provided by Mr. Lawrence Mitchell regarding two appraisals presented by the Respondent. Because the Board sustained the objection to those two appraisals and Edward Helmer's testimony, the attempt to impeach or rebut such evidence is moot. Alternatively, if the appraisals and Mr. Helmer's testimony were admitted, the objection to Mr. Mitchell's testimony would be denied. The Respondent asserted Mr. Mitchell had predetermined the value of the property before his testimony, and therefore he was not objective. *Thomas argument, Board Ex. J at 168 – 170*. This argument addresses the weight of the testimony, not its admissibility.

Petitioner's Case

17. The Petitioner presented an appraisal prepared by Lawrence Mitchell, MAI, Indiana Certified General Appraiser, and Brian K. Moore-Leininger, Appraiser, from Mitchell Appraisals, Inc. *Pet'r Ex. 7B*. The Mitchell appraisal estimated the value of the properties using both the sales comparison approach and the cost approach. It did not include the income approach due to the lack of comparable market based lease transactions. *Pet'r Ex. 7B at 28*.
18. The Mitchell appraisal described the local economy as stable. *Pet'r Ex. 7B at 16*. Its sales comparison approach was based on five sales of comparable properties and included only properties that were used for the same purpose both before and after those sales.

³ During the course of the hearing, the Respondent objected to the Petitioner's objection. The Respondent failed to state what the basis for such an objection might be. Such unspecified objections are meaningless and raise no issue for the Board to decide. Nevertheless, for clarity of the record, the Respondent's objection to objection is denied.

The prices for those five properties were between \$9.29 and \$19.56 per square foot. The estimated value was \$2,960,000 (\$14.05 per square foot) for the parcels under appeal.

Mitchell testimony, Board Ex. J at 52 -55; Pet'r Ex. 7B at 40.

19. The Mitchell appraisal concluded the reproduction cost would be \$9,363,600. *Pet'r Ex. 7B at 57.* It determined the Petitioner's property experienced \$1,485,573 in physical depreciation and \$5,380,000 in external obsolescence depreciation. Adding the depreciated value of \$2,498,027 to the site value of \$465,000 resulted in a cost approach value of \$2,963,027. *Id.*
20. In reconciling the different approaches, this appraisal placed more weight on the sales comparison approach. According to the Mitchell appraisal, the reconciled value of the property was \$2,960,000 on January 1, 1999. *Pet'r Ex. 7B at 58.*
21. Mr. Mitchell prepared another analysis using more properties as comparables. He described it as a reasonableness test. It included properties from the Indianapolis market. *Mitchell testimony, Board Ex. J at 57.* These additional properties had sale prices between \$8.55 per square foot and \$25.65 per square foot, with an average sale price of \$16.60 per square foot. *Pet'r Ex. 7B at 42.* Mr. Mitchell also looked at listing prices for comparable properties and the marketing plans for the comparable Rohn property. This additional analysis supported his value conclusion for the parcels under appeal. *Pet'r Ex. 7B at 43.*
22. The Rohn property is comparable to the parcels under appeal. *McGee testimony, Board Ex. J at 31.* The properties are less than a mile apart. Both are manufacturing facilities built in the mid-1990s. They are approximately the same size (200,000 square feet and 172,000 square feet). *Id.* Three different brokers prepared opinions of value for the Rohn property in 2004 at the direction of the prior owner, Radian Communication Services Corporation (Radian). These broker opinions concluded an appropriate asking price for the Rohn property would range from \$2,335,000 to \$4,200,000. *McGee testimony, Board Ex. J at 32 - 33; Pet'r Exs. 11 - 13.* The Petitioner purchased this

comparable property from Radian for \$2,640,000 in 2004. *McGee testimony, Board Ex. J at 28 - 31*. The purchase price of the comparable property supports the appraisal. *Mitchell testimony, Board Ex. J at 59*.

23. The Petitioner's property experienced external obsolescence because of an oversupply of its type of space. *Malancuk argument, Board Ex. J at 24*. This conclusion was based on a comparable sales analysis. *Mitchell testimony, Board Ex. J at 174*.
24. Mr. Mitchell reviewed both of the Respondent's appraisals to determine compliance with USPAP standards. No USPAP standard prevents him from acting as both appraiser and reviewer. He had no bias. *Mitchell testimony, Board Ex. J at 184*. The Petitioner's property did not have a long-term lease on January 1, 1999. *Mitchell testimony, Board Ex. J at 180*. All the comparable properties used in both the sales comparison and income approaches in the Complete Appraisal in a Self-Contained Appraisal Report prepared by Integra Realty Resources, however, were leased fee properties with long term leases. *Mitchell testimony, Board Ex. J at 162; Pet'r Ex. 7A at 7*. The Integra appraisal valued the property for investment purposes rather than determining a fee simple value. *Mitchell testimony, Board Ex. J at 156*. Additionally, the Integra appraisal was prepared for an internal company transaction rather than an arm's-length sale. *Mitchell testimony, Board Ex. J at 159; Resp't Ex. D at 4*.
25. Mr. Mitchell's review of the Limited Summary Appraisal Report prepared by Helmer Appraisal, Inc. found several errors. It used a 2002 valuation date rather than 1999. It used the incorrect definition of value-in-use. It used sales that were subsequent to the valuation date. It described sales as fee simple sales when they were leased fee sales. Some of the adjustments in the appraisal appear to be inconsistent. The income approach included no vacancy or collection loss. Mr. Mitchell concluded that the Helmer appraisal does not comply with USPAP. *Mitchell testimony, Board Ex. J at 163 - 166*.

Respondent's Case⁴

26. The Helmer appraisal and the Integra appraisal show the total value of the subject parcels should be approximately \$8,000,000. *Thomas argument; Resp't Exs. D, E.*
27. Lisa S. Spees, Certified General Real Estate Appraiser, and Michael C. Lady, MAI, SRA, CCIM prepared the Integra appraisal. The Integra appraisal was prepared for “assessing the collateral value for a mortgage in regard to the sale and leaseback transaction of the subject.” *Resp't Ex. D at 4.*
28. The Integra appraisal used three approaches to value. The sales comparison approach was based on six properties and concluded the value was \$7,700,000 for the improvements. Adding that value to the land value, the appraisal arrived at a total of \$8,076,000 for the sales comparison approach. *Resp't Ex. D at 74.* The Integra appraisal used the income approach and concluded that the value was \$8,120,000. *Id. at 91.* Using the cost approach, the value was \$8,477,000. *Id. at 66.* The Integra appraisal gave the most weight to the sales comparison and the income approaches. It ultimately concluded the value was \$8,100,000 as of July 31, 2003. *Id. at 93.* The Integra appraisal concluded the “market area is in the growth stage of its life cycle....” *Id. at 19.*
29. The Helmer appraisal also used three approaches to value.⁵ *Resp't Ex. E.* The sales comparable approach used six properties as comparables. Those properties sold for \$28.00 per square foot to \$45.00 per square foot. *Helmer testimony, Board Ex. J at 124.* The average size of the comparable structures was 167,000 square feet, the average lot was thirteen acres, and the average construction date was 1992. *Id. at 124 – 125.* The comparables used in the Helmer appraisal were primarily the same as the comparables in the Integra appraisal. *Id. at 133.*

⁴ Although the objections to the Respondent's evidence (except Exhibits S and T) were sustained, this summary of the Respondent's case is included for continuity and to support the Board's alternative determination that even if all the evidence were considered it would not change the outcome of this case.

⁵ The pages in the Helmer appraisal are not numbered. There will be no specific page references to it.

30. Based on the sales comparison approach, the Helmer appraisal determined the value of the subject property would be \$37.52 per square foot, for a total of \$7,950,000 with the land included. *Helmer testimony, Board Ex. J at 124 - 125*. It concluded the value was approximately \$8,000,000 based on the cost approach. *Id. at 125 - 126*. Using the income approach based on leases for comparable properties, the Helmer appraisal determined the property was worth \$8,156,000. *Id. at 126*. Reconciling the three approaches to value, the Helmer appraisal concluded the value was \$8,000,000 as of March 1, 2002. *Id.*
31. The Respondent presented maps showing the locations of the comparable properties used in all three appraisals. *Resp't Ex. O; Thomas testimony, Board Ex. J at 95 - 96*. Integra's and Helmer's comparables are located closer to the parcels under appeal than the comparables selected by Mitchell. *Id.*
32. The Respondent presented a Verified Assessment Analysis that included assessment data and property record cards from different industrial properties in Clinton County to establish consistency in the assessments. *Resp't Ex. J*.
33. The Petitioner's property sold for \$8,200,000 in 2003 and \$9,600,000 in 2006. *Resp't Exs. C, F*. The Respondent presented a cost multiplier from Marshall Valuation Service that trended the assessed value forward to 2003 and 2006. The calculations resulted in values that are approximately the same as those sales prices. *Resp't Ex. I*. The Respondent also presented data showing the inflation rate between January 1999 and January 2006 was 20.69%. *Resp't Ex. R*.
34. Prior to his review of the Helmer and Integra appraisals, Mr. Mitchell had already formed an opinion of value for the property as shown in a letter dated April 2, 2004, and an Oral Real Estate Appraisal Written Summary. The Respondent claims this fact contradicts the assertion that Mr. Mitchell's review of the Helmer and Integra appraisals was unbiased. *Thomas argument, Board Ex. J at 168 - 170; Resp't Exs. S, T*.

35. Radian purchased the Rohn property after Rohn emerged from bankruptcy. The building was empty at the time of its acquisition by Radian. *Thomas testimony, Board Ex. J at 181 – 182.*

Analysis

36. 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 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).
37. 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 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”).
38. 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.
39. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that

explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.

40. The most effective method to show the value assigned by an assessor is incorrect is through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).
41. For the 2002 reassessment, an assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. If a party presents evidence of value relating to a different time, the party is required to establish how those values demonstrate, or are relevant to, the value of the subject property as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
42. The Petitioner presented a professional, independent appraisal by Mr. Mitchell concluding the total value of the property (both parcels) was \$2,960,000 on January 1, 1999. This appraisal alone is sufficient to make a prima facie case for the Petitioner.
43. The Mitchell appraisal describes the local economy as stable. *Pet'r Ex. 7B at 16*. The Integra appraisal concluded the “market area is in the growth stage of its life cycle.” *Resp't Ex. D at 19*. The Helmer appraisal concluded “[t]he subject property area is stable. The subject market has had steady growth in the last three years with the Clinton County Market being stable.” *Resp't Ex. E*. These conclusions are further supported by the Respondent’s data showing the inflation rate between January 1999 and January 2006 was 20.69%. *Resp't Ex. R*. Because the market was stable (or improving) during the period 1999 through 2006, the 2004 comparable sale and the related broker opinions

establish an upper limit of value for the Rohn property. The Rohn property would not have been more valuable as of January 1, 1999, than when it sold approximately five years later. The Petitioner's purchase of the comparable Rohn property for \$2,640,000 in 2004, while not by itself sufficient to prove what the assessment should be, provides support for the credibility of the Mitchell appraisal. Similarly, the three broker opinions regarding the price for the Rohn property (prepared in 2004 at the direction of the prior owner) support that the Petitioner paid a reasonable price and they also support the credibility of the Mitchell appraisal, even though the broker opinions would not independently be sufficient to prove what the assessment should be.

44. The Petitioner's evidence is sufficient to establish a prima facie case the total assessed value of the property should be \$2,960,000.
45. The Integra appraisal concluded the value was \$8,100,000 as of July 31, 2003. The Helmer appraisal concluded the value of the property was \$8,000,000 as of March 1, 2002. Neither appraisal conforms to the required valuation date for a 2002 assessment, which is January 1, 1999. Although the Respondent offered some information regarding a cost multiplier and the rate of inflation between 1999 and 2006, the Respondent failed to walk the Board through any method of relating those appraisals to a 1999 value. Consequently, the appraisals do not help to prove what the assessment should be. *Long*, 821 N.E.2d at 471; *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).
46. The Integra appraisal states it is "assessing the collateral value for a mortgage in regard to the sale and leaseback transaction of the subject" and "the transaction is an internal company transaction and not an arms length sale." *Resp't Ex. D at 4*. These statements diminish the credibility of this appraisal in regard to the market value-in-use of the subject property.
47. The Helmer appraisal was based on an analysis of leased fee properties, most of which were the same comparable properties identified in the Integra appraisal. These

comparable properties were selected to determine the value of a leaseback transaction rather than the value-in-use of the property. The property under appeal was not leased as of January 1, 1999. *Mitchell testimony, Board Ex. J at 180*. The Petitioner established that having a long-term lease can impact the market for a property. *Mitchell testimony, Board Ex. J at 152 – 157; Petitioner Ex. 7B at 18*. In contrast, the Respondent offered no explanation about how properties with long-term leases are comparable to the subject property, which had no lease in place on the valuation date. This distinction makes the Integra and Helmer appraisals less persuasive than the Mitchell appraisal.

48. The fact that the subject property sold for \$8,200,000 in 2003 and it sold again for \$9,600,000 in 2006 certainly could be significant. The Respondent presented a cost multiplier and calculations that arguably relate those sale prices back to the current assessments and value as of 1999. On a first level of analysis, the sales tend to show that the Mitchell appraisal is too low, but the analysis must go deeper. The Petitioner established that when they sold there had been a significant change because a long-term lease was entered that made the property more valuable for investment purposes. The Respondent did not dispute that a long-term lease was entered before the subsequent sales. The Petitioner offered substantial evidence that this fact made an important difference and the Respondent failed to provide substantial evidence or argument to dispute the point. Consequently, the 2003 and 2006 sales do not convincingly outweigh the value established by the Mitchell appraisal.
49. Finally, the Respondent attempted to support the current assessments with a "Verified Assessed Value Analysis" of the subject and several other facilities in the immediate area. *Resp't Ex. J; Board Ex. J at 142-145*. This "Analysis" purports to show that the assessed values per square foot for the subject and several comparables are within a "pretty tight" range. The Respondent provided property record cards and established the age of each property, the square footage, and that they are all within the "immediate geographic area." *Board Ex. J at 143*. The Respondent failed to provide sufficient facts and analysis to give any evidentiary weight to the price per square foot of the other properties. *Long, 821 N.E.2d at 471* (requiring the proponent to explain the

characteristics of the subject property, compare those characteristics to the other properties and then explain how any differences affected the relevant market value-in-use.) The Respondent's argument implies that the subject assessment draws validity from the fact that it falls within a "pretty tight" range established by other assessments. The Respondent does not provide any authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property or what that range might be. Therefore, this conclusory statement does not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). Furthermore, because the taxpayer specifically is permitted to offer evidence relevant to the market value-in-use of a property that includes sales and appraisals, an argument that the value is somehow close enough to be acceptable appears to be wrong. MANUAL at 5.

50. The total value of the two parcels should be changed to \$2,960,000. The new combined value should be allocated to each parcel in the same proportion as previously assessed.

Summary of Final Determination

51. The Petitioner presented a prima facie case. The Respondent failed to rebut the Petitioner's evidence. Alternatively, to the extent that any of the Respondent's evidence might be admissible, the Petitioner's evidence outweighs it. The total value of the two parcels must be changed to \$2,960,000.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.