

REPRESENTATIVE FOR PETITIONER:
Carla Bishop, Meritax Property Tax Consultants

REPRESENTATIVES FOR RESPONDENT:
None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Tacco Falcon Point, Inc.,	)	Petition No.:	49-401-02-1-4-00434
	)		49-401-02-1-4-00435
Petitioner,)		
	)	Parcel:	4030416
	)		4030417
v.)		
)		
	)	County:	Marion
Lawrence Township Assessor,	)	Township:	Lawrence
	)	Assessment Year:	2002
Respondent.)		

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

April 16, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (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 Petitioner presented one issue, which the Board restates as:
Did the Petitioner demonstrate that the subject property is assessed in excess of its market value-in-use?

PROCEDURAL HISTORY

2. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its Form 115 Notification of Final Assessment Determination (Form 115) for each of the above-referenced parcels on September 23, 2005. On October 24, 2005, the Petitioner, Tacco Falcon Point, Inc., filed its Form 131 Petitions to the Indiana Board of Tax Review for Review of Assessment (Form 131 petitions).

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On November 21, 2006, Alyson Kunack, the Board's duly designated administrative law Judge (ALJ), held a consolidated administrative hearing on the above-captioned petitions in Indianapolis, Indiana.
4. Carla Bishop, of Meritax Property Tax Consultants, appeared for the Petitioner. Ms. Bishop was sworn and presented testimony. The Respondent did not appear either in person or by authorized representative.
5. The Petitioner presented the following exhibits:¹
Petitioner's Exhibit 1 – Summary of issues

¹ The Petitioner's exhibit coversheet identifies a copy of the Form 131 petition as Petitioner's Exhibit 3. The Form 131 petition, however, was not included with the Petitioner's evidence.

Petitioner's Exhibit 2 – Copy of limited summary appraisal, dated June 7, 2006

6. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A – The Form 131 petitions and attachments
 - Board Exhibit B – Notices of hearings dated September 28, 2006
 - Board Exhibit C – Hearing sign-in sheet

7. The two parcels under appeal are part of an apartment complex that contains four parcels and is located at 10100 East 38th Street in Indianapolis, Indiana. The parcels under appeal are assessed for improvements only, while the other two parcels are assessed as vacant land. Unless otherwise indicated, the Board refers to the four parcels collectively as the “apartment complex.”

8. The ALJ did not inspect the property.

9. The PTABOA determined that the assessed value of the subject property is as follows:

<u>Parcel 4030416</u>		
Land: \$0	Improvements: \$930,800	Total: \$930,800

<u>Parcel 4030417</u>		
Land: \$0	Improvements: \$702,100	Total: \$702,100

10. The Petitioner requests that the apartment complex's total assessment not exceed \$1,050,000.

JURISDICTIONAL FRAMEWORK

11. 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 Ind. 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

12. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
13. 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”).
14. Once a 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.

ANALYSIS

15. The Petitioner presented the following evidence and arguments:
- A. The Petitioner bought the apartment complex through a deed in lieu of foreclosure. *Bishop testimony*. When the Petitioner bought the apartment complex, most of the apartments were uninhabitable. *Bishop testimony; Pet'r Ex. 2*. In fact, only 48 out of 225 apartments were ready for occupancy. *Pet'r Ex. 2 at June 7, 2006, Letter from Richard Correll and David Cain*. The Petitioner has since brought many of the formerly uninhabitable apartments “on line.” *Bishop testimony*.
 - B. In 2006, the Petitioner hired Correll Commercial Real Estate Services to appraise the apartment complex for purposes of its tax appeal. *Bishop testimony*. The Petitioner requested Correll to appraise the apartment complex as of the March 1, 2002, assessment date. *Id.*
 - C. Consistent with their engagement, Richard Correll and David B. Cain, both of whom are certified appraisers, estimated the market value-in-use of the apartment complex to be \$1,050,000 as of March 1, 2002. *Pet'r Ex. 2*. The appraisers relied most heavily on a discounted-cash-flow analysis to value the apartment complex. *Bishop testimony*. The Petitioner contends that the retroactive appraisal provides a better value than if it had been performed in 2002, because the appraisers were able to consider facts that a buyer would not have known in 2002. *Bishop argument*.
 - D. The Respondent divided the apartment complex into four parcels for assessing purposes. *Bishop testimony*. The two parcels to which the Respondent assigned improvement values are the subject of this appeal. *Id.* The two parcels not under appeal are assessed as vacant land. *Id.* The Petitioner accepts the land assessments for those parcels but contends that the four parcels’ combined assessment should not exceed \$1,050,000. *Bishop argument*.

Discussion

16. Real property is assessed based on its "true tax value," *See* Ind. Code § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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). As set forth in the 2002 Real Property Assessment Manual (Manual), 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. In Indiana, assessing officials primarily use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), to assess real property.

17. A property's true tax value, as determined by applying the Guidelines' cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may rebut that presumption with evidence relevant to the property's market value-in-use. MANUAL at 5. Appraisals prepared according to the Manual's definition of true tax value generally will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 ("[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)."). A taxpayer may also rely upon sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

18. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, a party relying on an appraisal that estimates a property's market value-in-use as of a date

substantially removed from the relevant valuation date must explain how the appraised value relates to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property); *see also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006) (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without *some explanation* as to how these values relate to the January 1, 1999 value.”)(emphasis in original).

19. Here, the Petitioner relies primarily on the appraisal performed by Messrs. Correll and Cain, which estimates the apartment complex's market value-in-use at \$1,050,000, as of March 1, 2002. *Pet'r Ex.2*. The appraisers used generally accepted methodologies and performed their work in accordance with USPAP. And the appraisers correctly based their analysis on the apartment complex's physical condition as of the March 1, 2002 assessment date. But neither the Petitioner nor the appraisers explained how the appraisers' value estimate relates to the apartment complex's market value-in-use as of the January 1, 1999, valuation date. The Correll-Cain appraisal therefore lacks probative value.
20. The Petitioner also points to the apartment complex's deteriorated condition on March 1, 2002. *Bishop testimony*. Outside of the appraisal — which, as explained above, lacks probative value — the Petitioner did not present any evidence to quantify the effect of that deterioration on the apartment complex's market value-in-use. Thus, the Petitioner's evidence regarding the complex's physical condition does not establish a prima facie case of error.
21. Finally, Ms. Bishop testified that the Petitioner obtained the apartment complex through a deed in lieu of foreclosure. *Bishop testimony*. The Petitioner, however, did not present any evidence to show the amount of the claim or judgment that it forbore from collecting in exchange for the deed in lieu of foreclosure. The Petitioner likewise did not present any evidence at the hearing to show the date of that transaction. The Petitioner did

provide some of that information in a document entitled “Summary of Issues – Form 130 Appeal,” which the Petitioner attached to its Form 131 petition. *See Board Ex. A.* But the Petitioner did not offer that summary into evidence nor did Ms. Bishop testify about any of the allegations contained in the summary. The Board therefore does not consider those allegations in reaching its final determination. Even if the Board were to consider the allegations contained in that summary, the summary itself acknowledges that the transaction by which the Petitioner obtained the apartment complex “cannot be considered representative of market as stand alone evidence.” *Board Ex. A.*

22. Because the Petitioner failed to make a prima facie case, the burden never shifted to the Respondent to defend its assessments. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the assessments should not be changed.

SUMMARY OF FINAL DETERMINATION

23. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. There is no change in the assessment.

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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.