

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

**Petitions:** 54-030-09-1-4-00176  
54-030-09-1-4-00177  
54-030-10-1-4-00007  
54-030-10-1-4-00110  
**Petitioner:** TPI of Montgomery County, LLC  
**Respondent:** Montgomery County Assessor  
**Parcels:** 54-17-32-333-025.000-030  
54-17-32-333-001.000-030  
**Assessment Years:** 2009 and 2010

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

**Procedural History**

1. The Petitioner initiated the 2009 assessment appeals with the Montgomery County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 petitions on June 2, 2010. The Petitioner filed the 2010 appeals on June 24, 2010.
2. The PTABOA mailed notice of its decisions for 2009 and 2010, Forms 115, on February 21, 2012.
3. The Petitioner filed its Form 131 petitions with the Board on April 11, 2012. The Petitioner elected the Board's small claims procedures.
4. The Board issued the notices of hearing on May 9, 2013, and May 13, 2013.
5. Administrative Law Judge Ellen Yuhan held the Board's administrative hearing on June 26, 2013. She did not inspect the property.
6. Robert Miller, President of TPI of Montgomery County, LLC (TPI), Phil Boots, Vice-President of TPI, Kelly Ewoldt, County Assessor, and Brian Thomas were sworn as witnesses at the hearing.

**Facts**

7. The subject property is a commercial office building on two parcels. Parcel 54-17-32-333-025.000-030 (parcel 025) is located at 125 W. Main Street and parcel 54-17-32-333-001.000-030 (parcel 001) is located at 101 W. Main Street. The property is located in Crawfordsville.

8. For 2009 and 2010, the PTABOA determined the assessed value for parcel 025 is \$63,400 for land and \$114,600 for improvements (total \$178,000). For 2009 and 2010, the PTABOA determined the assessed value for parcel 001 is \$59,600 for land and \$751,100 for the improvements (total \$810,700).
9. For 2009 and 2010, the Petitioner claimed the total assessment for both parcels should be \$740,000.

### **Contentions**

10. Summary of the Petitioner's case:
  - a. The subject property was purchased for \$740,000 in 2007.<sup>1</sup> The assessed value for 2009 and 2010 is higher than what was paid for the property. The property should be assessed at the price paid for the property. *Miller testimony; Boots testimony; Pet'r Ex. A.*
  - b. The March 1, 2012, assessment of \$780,100 is closer to the purchase price of the property. *Miller testimony; Pet'r Ex. 2.*
  - c. The Respondent's 2009 listing for the property for \$999,900 is old information. The property is currently listed for a lower price. Further, the 2009 asking price is not the value of the property because the property did not sell for that price. *Miller testimony; Boots testimony; Resp't Ex. C.*
11. Summary of the Respondent's case:
  - a. The subject property is premium office space in the downtown Crawfordsville market. The purchase price of the property and the market value-in-use may not be synonymous in this case. The value in-use is based on the real estate and site being valued at a value equal to or in statistically sufficient proximity to other like properties. *Resp't Ex. A.*
  - b. The Respondent contends that, using the assessor's software, the reproduction cost of the improvements would be \$2,680,200. The Respondent did not develop the income approach. Regarding the sales comparison approach, comparable properties would have to be premier office spaces that include more than an acre of land downtown with parking spaces, which is rare. *Resp't Ex. A.*
  - c. The Respondent conducted a search for comparable office properties that sold in Indiana using certain parameters. The Respondent gathered pricing information for

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<sup>1</sup> Petitioner's Exhibit A shows the purchase agreement was entered into on May 2, 2007 and the closing date was shown as "June 26, 2007 or such earlier date as may be agreed upon between Seller and Purchaser." *Pet'r Ex. A.*

buildings 10,000 square feet to 30,000 square feet, constructed between 1985 and 2002 and that sold between January 1, 2008 and January 1, 2011. The median price per square foot of all the sales was \$59.01. Buildings 16,640 square feet and larger had a median price per square foot of \$59.01, while buildings 14,154 square feet and lower had a median price per square foot of \$71.87. The average per square foot value of all sales was \$61.14. For buildings 16,640 square feet and larger the average price per square foot was \$49.41. Buildings 14,154 square feet and lower had an average price per square foot of \$64.85. *Resp't Ex. B.*

- d. The property was bought as an investment property. It appears that the subject property was not really exposed to a regional or national market but just the local market. This property would have definitely been marketable on a regional basis and marketing on a national level would have been advantageous. *Resp't Ex. A.*
- e. The PTABOA considered the listing price of the subject property when it changed the assessed value but did not value the property as high as the list price. The Respondent contends that the PTABOA's adjustments were sufficient and no further changes are applicable. *Thomas testimony; Resp't Ex. C.*

### **Record**

12. The official record for this matter contains the following:

- a. Petitions for Review of Assessment (Form 131),
- b. Digital recording of the hearing,
- c. Petitioner Exhibit A – Purchase and Sale Agreement,  
Petitioner Exhibit B – March 1, 2012 assessment,  
Petitioner Exhibit C – TPI Certificate of Organization,

Respondent Exhibit A – Summary of the Respondent's case,  
Respondent Exhibit B – Sales comparison sheet,  
Respondent Exhibit C – MLS listing for the subject property,<sup>2</sup>

Board Exhibit A – Form 131 petitions,  
Board Exhibit B – Notice of Hearing-Reschedule,  
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

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<sup>2</sup> The Petitioner objected to Respondent Exhibit C because it was an old listing and not the current asking price. The Petitioner also objected on the basis that the listing was the asking price of the property, not the actual market value. The Petitioner's objection goes to the weight assigned to the evidence, not the admissibility. The ALJ admitted the exhibit over the objection.

## **Burden**

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

14. The assessed values under appeal did not increase by more than 5%. Therefore, Indiana Code § 6-1.1-15-17.2 does not apply. The Petitioner has the burden of proof.

## **Analysis**

15. The Petitioner made a prima facie case. The Respondent presented some rebuttal evidence, but the weight of the evidence supports the claim that the assessments must be reduced.
- a. Real property is assessed on its "true tax value," which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. 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.

- b. Regardless of the type of evidence, a party must explain how the evidence relates to the required relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2009 assessment was January 1, 2008. 50 IAC 21-3-3. The valuation date for a March 1, 2010 assessment was March 1, 2010. 50 IAC 27-5-2. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
- c. There is no dispute about the fact that the Petitioner bought the subject property for \$740,000 in June 2007. The sale of a property is often the best evidence of the property's market value-in-use. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct.2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by evidence). In this case, the purchase occurred on or about June 26, 2007, which is only six months before the January 1, 2008 valuation date for the 2009 assessment. Thus, the Board finds that the Petitioner's purchase of the property in 2007 is sufficient to establish a prima facie case that the property was over-valued for the assessment as of March 1, 2009.
- d. On the other hand, the 2007 purchase occurred three years prior to March 1, 2010. Nevertheless, the fact that the PTABOA determined that the assessed values for 2009 and 2010 were the same is an indication that market values remained stable and, therefore, no change would be necessary for the 2010 assessment date. Moreover, the 2012 assessment for the subject property was \$780,100, which is relatively close to the purchase price. Thus, the Board finds that the Petitioner's purchase price for the property is sufficient to establish a prima facie case that the property was over-valued for the 2010 assessment. Consequently, the Board must consider how effectively the Respondent rebutted or impeached the Petitioner's case.
- e. The Respondent offered a list of office properties that sold in the state of Indiana between January 1, 2008 and January 1, 2011, and calculated the median price per square foot and the average price per square foot. In order to compare sales effectively, however, the proponent must establish the comparability of the properties being examined. Simple conclusory statements that a property is "similar" or "comparable" are not probative evidence. *Long*, 821 N.E.2d at 470. The Respondent needed to establish the characteristics of the Petitioner's property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the market value-in-use. *Id.* at 471.

- f. The Respondent offered no evidence or analysis of the specific features of the purportedly comparable office buildings. Similarly, the Respondent offered no evidence or analysis about how any differences affected the relative values of the office buildings. Finally, the Respondent failed to provide a meaningful comparison of the properties. The Respondent merely calculated the median prices per square foot and the average prices per square foot for office properties that sold in Indiana. Because the Respondent failed to identify or value the differences between the properties, the other sales have no probative value. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (“the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These standards are no less applicable to assessing officials.*” (citations omitted and emphasis added)).
- g. The Respondent also presented a summary of the case. The summary professed to address the value of the subject property based on the three approaches to value, but the Respondent only calculated a value based on the cost approach. The Respondent admitted, however, that the replacement/reproduction cost of the subject building would be higher than the sale amount without adding the cost of the land. The Respondent did not develop values using the income approach or the sales comparison approach.
- h. The Respondent claims that it did not appear that this investment property was really exposed to a regional or national market but just the local market. According to the Respondent, this property would have definitely been marketable on a regional basis and marketing on a national level would have been advantageous. The Respondent seems to imply the property would have sold for more had it been marketed to a broader base of investors. Again, this is merely speculation and does nothing to effectively establish the value of the property.
- i. The Respondent presented MLS listing information for the subject property as well. The listing information, dated July 16, 2010, shows the subject property was listed for \$999,900. Nevertheless, a listing for a property that still remains unsold after three years is not a credible indication of value.

### **Conclusion**

- 16. The Petitioner established a prima facie case that its property was over-valued for the 2009 and 2010 assessment years. The Respondent failed to rebut or impeach the Petitioner’s evidence. The Board finds in favor of the Petitioner and holds that the value of the subject property was \$740,000 for the March 1, 2009 and March 1, 2010 assessment dates.

## Final Determination

In accordance with the above findings and conclusions, the assessments will be reduced to a total of \$740,000.

ISSUED: August 26, 2013

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Commissioner, Indiana Board of Tax Review

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### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.