

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

**Petition Nos.:** 09-010-09-1-3-00120  
09-010-09-1-3-00121  
09-010-09-1-3-00122  
09-010-09-1-3-00123  
09-010-10-1-3-00121  
09-010-10-1-3-00122  
09-010-10-1-3-00123  
09-010-10-1-3-00124

**Petitioner:** 1 General Street, LLC  
**Respondent:** Cass County Assessor  
**Parcel Nos.:** 09-17-56-141-010.000-010  
09-17-56-143-010.000-010  
09-17-56-145-002.000-010  
09-17-56-145-003.000-010

**Assessment Years:** 2009 and 2010

The Indiana Board of Tax Review (the Board) issues this determination in the above matters, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated assessment appeals with the Cass County Property Tax Assessment Board of Appeals (the PTABOA) for each of its four parcels by letter dated April 19, 2010, for the 2009 assessment year and by letter dated August 27, 2010, for the 2010 assessment year.
2. The PTABOA issued notices of its decision on May 11, 2011, for both the 2009 and 2010 tax years.
3. The Petitioner filed its Form 131 petitions with the Board on June 21, 2011, for the 2009 and 2010 tax years for each of its four parcels. The Petitioner elected to have its cases heard according to the Board's small claim procedures.
4. The Board issued notices of hearing to the parties dated August 26, 2011.
5. The Board held an administrative hearing on November 17, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Dirk Abe Rivera, Uzelac & Associates, Inc.
  - b. For Respondent: Cathy Isaacs, Cass County Assessor  
Brian Thomas, Ad Valorem Solutions

### **Facts**

7. The subject property is an industrial facility consisting of three vacant parcels, Parcel No. 09-17-56-141-010.000-010, Parcel No. 09-17-56-145-002.000-010, and Parcel No. 09-17-56-145-003.000-010, and a parcel with a 231,000 square foot building, Parcel No. 09-17-56-143-010.000-010, located at 1 General Street, Logansport, Eel Township, in Cass County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2009, the PTABOA determined the assessed values of the Petitioner's parcels to be \$2,500 for the land for Parcel No. 09-17-56-141-010.000-010; \$518,000 for the land and \$299,900 for the improvements, for a total assessed value of \$817,900 for Parcel No. 09-17-56-143-010.000-010; \$2,100 for the land for Parcel No. 09-17-56-145-002.000-010; and \$2,100 for the land for Parcel No. 09-17-56-145-003.000-010. The total assessed value of all four parcels together, as determined by the PTABOA, was \$824,600 for 2009.
10. For 2010, the PTABOA determined the assessed values of the Petitioner's parcels to be \$2,200 for the land for Parcel No. 09-17-56-141-010.000-010; \$560,500 for the land and \$267,000 for the improvements, for a total assessed value of \$827,500 for Parcel No. 09-17-56-143-010.000-010;<sup>1</sup> \$2,100 for the land for Parcel No. 09-17-56-145-002.000-010; and \$2,100 for the land for Parcel No. 09-17-56-145-003.000-010. The total assessed value of all four parcels together, as determined by the PTABOA was \$833,900 for 2010.
11. The Petitioner requested a total assessed value of \$450,000 for the four parcels together for each tax year.

### **Issue**

12. Summary of the Petitioner's contentions in support of an alleged error in its properties' assessments:

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<sup>1</sup> The parties agreed that the land value of \$560,500 shown on the PTABOA Form 115 issued May 11, 2011, was a typographical error. According to the parties, the land value for Parcel No. 09-17-56-143-010.000-010 was \$460,500 for 2010; resulting in an assessed value of \$733,900 for all four parcels for the March 1, 2010, assessment.

- a. The Petitioner’s representative contends that the Petitioner’s properties were assessed for more than their market values-in-use in 2009 and 2010, based on the property’s listing prices. *Rivera testimony*. In support of his position, the Petitioner’s representative submitted a “LoopNet” sale and lease history, an aerial map, and listing contracts dated April 5, 2009, and July 22, 2010, respectively. *Petitioner Exhibits 2-5*. According to Mr. Rivera, the properties under appeal were listed for sale with Tom Harrold of Harrold-Chandler Real Estate, LLC, on April 5, 2009, for \$600,000 and then reduced to \$425,000 on July 22, 2010.<sup>2</sup> *Rivera testimony; Petitioner Exhibits 4 and 5*. Still, the Petitioner has not received any offers on the property. *Id.* Because there is no demand for industrial property, Mr. Rivera argues, the assessed value of the subject properties should be reduced to the current listing price for 2009 and 2010. *Rivera testimony*.
- b. The Petitioner’s representative further contends that the Petitioner’s properties’ assessed values were overstated in 2009 and 2010 based on the listing price of a similar property in the area. *Rivera testimony*. In support of this position, Mr. Rivera submitted a multiple listing sheet and a sale status report for 303 Water Street. *Petitioner Exhibit 6*. According to Mr. Rivera, 303 Water Street, which is listed for \$800,000, is similar in building size to the Petitioner’s properties, but has more land, is in a better location, and has direct access to Water Street. *Rivera testimony*. The Petitioner’s properties, on the other hand, which are inferior to the comparable property, were assessed for \$824,600 in 2009 and \$733,900 in 2010. *Rivera testimony; Petitioner Exhibits 6 and 8*. Thus, Mr. Rivera argues, the Petitioner’s property is valued higher than a superior property in the area. *Rivera testimony*.
- c. Finally, the Petitioner’s representative contends that the properties would not sell for their assessed values because of the location of the facility. *Rivera testimony*. According to Mr. Rivera, the aerial map shows the Petitioner’s properties are located in a residential area with no “immediate” access to any major road. *Id.*; *Petitioner Exhibit 3*. Mr. Rivera argues this is not an “ideal location” for an industrial property. *Id.*

13. Summary of the Respondent’s contentions in support of the properties’ assessments:

- a. The Respondent’s representative argues that the Petitioner’s properties were properly assessed in 2009 for \$824,600, based on the property’s listing history. *Thomas testimony*. While the Petitioner’s representative submitted a letter to the PTABOA stating that the Petitioner’s property had been on the market for four years for \$600,000, Mr. Thomas argues, the LoopNet listing shows that on July

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<sup>2</sup> The Board notes that although the listing contracts specified listing prices of \$600,000 and \$425,000, respectively, the properties were actually listed for \$595,000 and \$450,000 in 2010 and 2011. *See Petitioner Exhibits 4 and 5*.

25, 2007, the property was listed for sale for \$975,000 and on August 13, 2008, its listing price was reduced to \$875,000. *Id.*; *Respondent Exhibit C*. Mr. Thomas argues that on the January 1, 2008, valuation date for the March 1, 2009, assessment, the Petitioner's properties were assessed for less than the property's listing price. *Id.* Thus, he argues, the Petitioner's properties were not over-assessed. *Thomas testimony*.

- b. Similarly, the Respondent's representative argues, the Petitioner's properties were assessed correctly for 2010. *Thomas testimony*. According to Mr. Thomas, the county recognized the downward trend in market for 2010 and reduced the Petitioner's assessed value to \$733,900 for the March 1, 2010, valuation date.<sup>3</sup> *Id.* Because the property was listed on April 8, 2009, for \$750,000, Mr. Thomas argues, the Petitioner's properties were not over-valued for 2010. *Thomas testimony*; *Respondent Exhibit C*.

### **Record**

14. The official record for this matter is made up of the following:

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Excerpt from the International Association of Assessing Officers “Property Assessment Valuation,” second edition,

Petitioner Exhibit 2 – Listing history for the subject property from April 12, 2006, through September 19, 2011,

Petitioner Exhibit 3 – Aerial map,

Petitioner Exhibit 4 – Listing contract dated April 5, 2009, and a LoopNet listing with three photographs of the subject property dated March 2, 2011,

Petitioner Exhibit 5 – Listing contract dated July 22, 2010, and a LoopNet listing with three photographs of the subject property dated October 24, 2011,

Petitioner Exhibit 6 – CoStar listing sheet dated April 20, 2011, and a “Comprehensive Change Report” from March 11, 1998, through August 11, 2011, for 303 Water Street, Logansport,

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<sup>3</sup> Again, the Board notes that the PTABOA determination values the Petitioner's properties at \$833,900 for the 2010 assessment.

Petitioner Exhibit 7 – Power of attorney from 1 General Street, LLC, to Uzelac & Associates, Inc.,

Petitioner Exhibit 8 – Petitioner’s spreadsheet showing 2009 and 2010 current and proposed assessed values for the Petitioner’s property,

Respondent Exhibit A – Respondent’s written summary for the Petitioner’s 2009 and 2010 appeals,

Respondent Exhibit B – Letter from Abe Rivera, Uzelac & Associates, Inc., to Cathy Isaacs, Cass County Assessor, dated April 19, 2011,

Respondent Exhibit C – LoopNet listing history for the subject property,

Board Exhibit A – Form 131 petitions with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

### Analysis

15. The most applicable governing cases are:
- a. 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 Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
  - b. 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”).
  - c. 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.
16. While the Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the 2009 assessed values of its properties, the Petitioner provided

sufficient evidence to establish a prima facie case for a reduction in the properties' 2010 assessed values. 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). Appraisers have traditionally 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 assess 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 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 Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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 (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer evidence of actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment's presumed 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. 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). For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3. For the 2010 assessment, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- d. The Petitioner's representative first argues that the assessed value of the Petitioner's property should be reduced because the Petitioner has been unable to sell the property for its current LoopNet listing price of \$450,000. *Rivera testimony*. The Petitioner's representative also presented two listing contracts. *Petitioner Exhibits 4 and 5*. The first listing contract, dated April 5, 2009, offered the property for sale for \$600,000. *Petitioner Exhibit 4*. The second listing contract, dated July 22, 2010, offered the property for sale for \$425,000. *Petitioner Exhibit 5*. The actual listing history, however, shows that the properties were listed in 2006 for \$1,250,000 and the price was reduced to \$850,000 on March 27, 2007. *Petitioner Exhibit 2*. On July 25, 2007, the property's listing price was increased to \$975,000 and reduced to \$875,000 on

August 13, 2008. *Id.* Then, on April 8, 2009, the property's price was reduced to \$750,000 and the price was reduced again on October 13, 2009, to 650,000. *Id.* Finally, the property was listed for \$595,000 on January 29, 2010, and reduced to \$450,000 on September 19, 2011. *Id.*

- e. "True tax value may be thought of as the ask price of property by its owner, because this value more clearly represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property." MANUAL at 2. Thus, when reasonable marketing efforts are made to sell a property at a given price for a long period of time and those efforts are unsuccessful, it can be inferred that the market value-in-use of a property is something less than its asking price. For the March 1, 2009, assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3. Here, the parties' evidence shows that the property under appeal was listed for sale on July 25, 2007, for \$975,000 and reduced to \$875,000 on August 13, 2008. The Board notes, however, that for the March 1, 2009, assessment date, the properties' assessed values totaled only \$824,600.
- f. Mr. Rivera argues that, because the properties are currently listed at \$450,000 and still have still not sold, the properties' market value is substantially lower than the properties' 2009 assessed value. *Rivera testimony*. However the fact that the Petitioner could not sell its properties for \$450,000 in 2011 is not evidence that the properties would not have sold for \$450,000 in 2006 when the Petitioner first listed the properties or that the properties would not have sold if the Petitioner had offered them for sale in 2008 or 2009 for that price. Thus, the Petitioner's current listing price fails to show the properties were over-assessed for the March 1, 2009, assessment date and the properties' listing prices in 2008 support the properties' assessed values.
- g. For 2010, however, the valuation date was March 1, 2010. 50 IAC 27-5-2(c). According to the properties' listing history, the properties were offered for \$650,000 as October 13, 2009, and reduced to \$595,000 on January 1, 2010. *Exhibit 2*. The properties did not sell for this price and, in fact, the listing price was reduced again in 2011. Thus, the Petitioner presented some evidence that, as of the valuation date, the value of its properties was no more than \$595,000. The Board therefore finds the Petitioner's representative raised a prima facie case that the Petitioner's properties were over-assessed for the 2010 assessment year.
- h. The Petitioner's representative also contends that the Petitioner's properties were over-valued based on the listing price of a similar property in the area. *Rivera testimony*. In support of this position, Mr. Rivera submitted a multiple listing sheet and a sale status report for 303 Water Street. *Petitioner Exhibit 6*. In essence, Mr. Rivera offers a "sales comparison approach valuation" based on a comparable property's listing price. In order to effectively use the sales

comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner’s representative merely argued that the building on the comparable property is similar in size, but the property has more land and is in a better location than the subject property. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). In addition, Mr. Rivera made no attempt to value the differences between the properties. Thus, the Petitioner failed to show its properties were over-valued based on the listing price of the property located at 303 Water Street.

- i. Finally, the Petitioner’s representative contends that the Petitioner’s properties are not worth their assessed value based on the location of the facility. *Rivera testimony*. According to Mr. Rivera, the Petitioner’s properties are located in a residential area with no “immediate” access to any major road. *Id.*; *Petitioner Exhibit 3*. External obsolescence is caused by an influence outside of a property’s boundaries that has a negative influence on the property’s value. GUIDELINES, app. F at 4. To receive an adjustment for obsolescence, a property owner must identify the causes of obsolescence 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). Thus, the Petitioner must present probative evidence that the causes of obsolescence it identifies are resulting in an actual loss in value to the property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Thus, because the Petitioner failed to tie the location of the property to an actual loss in the value of the property, the Petitioner’s representative failed to raise a prima facie case that the subject property’s assessment was incorrect.
- j. The Petitioner failed to raise a prima facie case for a reduction in the assessed value of its properties for the 2009 assessment. Where a Petitioner has not supported its claims with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- k. However, the Petitioner raised a prima facie case that its properties were over-valued for the 2010 assessment year. Once the Petitioner’s representative



establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

1. Here, the Respondent's representative did not dispute the Petitioner's LoopNet listing price information. He merely argued that the county's assessed value of \$733,900 for the March 1, 2010, valuation date was consistent with Petitioner's listing price of \$750,000 on April 8, 2009. While the Petitioner's April 8, 2009, listing for the properties is some indication of the properties' value as of that date, the Board finds the listing dates more contemporaneous with the March 1, 2010, valuation date to be more persuasive of the properties' value as of that date. Thus, the Board finds the weight of the evidence supports a value of \$595,000 for the Petitioner's properties together for 2010.

### **Conclusion**

17. The Petitioner failed to raise a prima facie case for a reduction in its properties' March 1, 2009, assessment. However, the Petitioner raised a prima facie case that its properties were over-valued for the March 1, 2010, assessment. The Respondent offered some rebuttal evidence. The Board finds that the weight of the evidence supports a total value of \$595,000 for the Petitioner's four parcels for 2010.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessed values of the Petitioner's properties should not be changed for the March 1, 2009, assessment, but should be lowered to \$595,000 for the 2010 assessment.

ISSUED: January 31, 2012

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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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 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 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/bills/2007/SE0287.1.html>.**