

REPRESENTATIVE FOR PETITIONERS:

Stephen Alexander, *pro se*

REPRESENTATIVE FOR RESPONDENT:

George T. Spenos, Marion County Assessor's Office

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Stephen & Melody Alexander	)	Petition Nos.:	49-101-12-1-4-10002
	)		
Petitioners,	)	Parcel No.	49-11-11-115-006.000-101
	)		
v.	)	County:	Marion
	)		
Marion County Assessor,	)	Township:	Center
	)		
Respondent.	)	Assessment Year:	2012

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

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**Issued: May 10, 2016**

**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**

**PROCEDURAL HISTORY**

1. Stephen and Melody Alexander ("Petitioners") initiated a 2012 assessment appeal on January 28, 2013. The Marion County Property Tax Assessment Board of Appeals

(“PTABOA”) failed to hold a hearing within 180 days as required by Ind. Code § 6-1.1-15-1(k). Petitioners then filed a Form 131 petition directly with the Board on November 12, 2013.

2. Dalene McMillen, the Board’s designated administrative law judge, held a hearing on February 10, 2016. Neither she nor the Board inspected the property.

**HEARING FACTS AND OTHER MATTERS OF RECORD**

3. The subject property is a parking lot located at 601 Russell Avenue in Indianapolis.

4. The following people were sworn and testified:<sup>1</sup>

Stephen Alexander, Taxpayer  
George Spenos, Marion County Deputy Director of Commercial/Industrial Assessments

5. Petitioners offered the following exhibits:

Petitioner Exhibit P1 – First American Title Insurance Company policy and surveyor’s map for 929 & 933 South Illinois and 932 & 915 South Meridian Street in Indianapolis,  
Petitioner Exhibit P2 – Article on the City Way project of downtown Indianapolis.

6. Respondent offered the following exhibits:

Respondent Exhibit R1 – Form 130 petition,  
Respondent Exhibit R2 – Form 131 petition,  
Respondent Exhibit R3 – 2012 property record card (“PRC”),  
Respondent Exhibit R4 – 2011 PRC,  
Respondent Exhibit R5 – Aerial map for the subject parcel,  
Respondent Exhibit R6 – Aerial map for parcel 1023698,  
Respondent Exhibit R7 – Aerial map for the subject parcel,  
Respondent Exhibit R8 – Aerial map with zoning for the subject parcel,  
Respondent Exhibit R9 – Aerial map showing zoning boundaries,  
Respondent Exhibit R10 – Aerial map showing zoning classifications,

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<sup>1</sup> Gabe Deaton and Melissa Tetrick of the Marion County Assessor’s Office were sworn but did not testify.

Respondent Exhibit R11 – Aerial map showing zoning classifications,  
Respondent Exhibit R12 – Aerial map showing zoning boundaries,  
Respondent Exhibit R13 – Aerial map for parcel 1075987,  
Respondent Exhibit R14 – Aerial map showing zoning for parcel 1075987,  
Respondent Exhibit R15 – PRC for 609 Russell Avenue (i.e. parcel 1075987),  
Respondent Exhibit R16 – Photographs of the subject property,  
Respondent Exhibit R17 – Assessor’s sales comparison grid,  
Respondent Exhibit R18 – Photographs of the subject property,  
Respondent Exhibit R19 – Aerial map for 42 West South Street,  
Respondent Exhibit R20 – Photographs of 42 West South Street,  
Respondent Exhibit R21 – Sales disclosure form for 42 West South Street,  
Respondent Exhibit R22 – Aerial map for 716 Russell Avenue,  
Respondent Exhibit R23 – Photographs of 716 Russell Avenue,  
Respondent Exhibit R24 – Sales disclosure form for 716 Russell Avenue,  
Respondent Exhibit R25 – Aerial map for 912 South Meridian,  
Respondent Exhibit R26 – Photographs of 912 South Meridian,  
Respondent Exhibit R27 – Sales disclosure form for 910 South Meridian Street,  
Respondent Exhibit R28 – Aerial map for 122 East Maryland Street,  
Respondent Exhibit R29 – Photographs and aerial map for 122 East Maryland Street,  
Respondent Exhibit R30 – Indiana Real Estate Data (“IRED”) sheet for 122 East Maryland Street,  
Respondent Exhibit R31 – Sales disclosure form for 122 East Maryland Street,  
Respondent Exhibit R32 – Definition for Central Business District 2 (“CBD2”),  
Respondent Exhibit R33 – Definition for RC Regional Center (Secondary District),  
Respondent Exhibit R34 – Qualification of George T. Spenos,  
Respondent Exhibit R35 – History of Property Valuation Changes.

7. The following additional items are part of the record:
  - Board Exhibit A – Form 131 petition with attachments,
  - Board Exhibit B – Hearing notice,
  - Board Exhibit C – Hearing sign-in sheet.
8. The assessed value for 2011 is \$58,200 for the land and \$7,400 for the improvements, for a total of \$65,600.
9. The assessed value for 2012 is \$194,000 for the land and \$2,000 for the improvements, for a total of \$196,000.
10. At the hearing, Petitioners requested a total assessment of \$90,000.

## **OBJECTION**

11. Respondent objected to Petitioners' Exhibits P1 and P2 because Petitioners failed to provide the exhibits at least five business days prior to the hearing as required by 52 IAC 2-7-1 (b)(1). Failure to comply with the requirement can be grounds to exclude evidence under 52 IAC 2-7-1(f). Petitioners admitted they did not timely provide the exhibits. Therefore, Respondent's objection is sustained and the exhibits are excluded. The Board notes, however, that its final determination would not be any different if these exhibits were admitted.

## **BURDEN OF PROOF**

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). A burden-shifting statute creates two exceptions to that rule.
13. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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(b).
14. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if

the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. The parties agreed that the assessment increased by more than 5% between 2011 and 2012 and that Respondent has the burden of proof.

#### **SUMMARY OF RESPONDENT’S CASE**

17. Respondent presented a sales comparison grid that purportedly compares four properties to the subject property. To support each purported comparable property, Respondent presented aerial maps, photographs, and sales disclosure forms. He made adjustments for time and site location.
18. The purportedly comparable properties are as follows:
  - a. Comparable #1 is located at 42 West South Street, approximately two blocks north of the subject. It sold on August 5, 2010, for \$150,000. After applying a positive 5% net adjustment, it has an adjusted sale price of \$157,500.
  - b. Comparable #2 is located at 716 Russell Avenue, approximately one block south of the subject. It sold on September 22, 2009, for \$250,000. After applying a negative 35% net adjustment, it has an adjusted sale price of \$162,500.
  - c. Comparable #3 is located at 910-912 South Meridian Street, approximately four blocks south of the subject. It sold on July 31, 2008, for \$175,000. After applying a negative 20% net adjustment, it has an adjusted sale price of \$140,000.

- d. Comparable #4 is located at 122 East Maryland Street, approximately seven blocks northeast of the subject. It sold on October 15, 2013, for \$172,500. After applying a negative 15% net adjustment, it has an adjusted sale price of \$146,625.

*Spenos testimony; Resp't Ex. R17.*

19. Respondent presented two aerial maps, photographs, and a PRC for 609 Russell Avenue. According to Respondent, Petitioners cited this property on their Form 130 petition claiming it is adjacent to the subject property and was valued at \$9.29 per square foot, which is less than the subject property's assessed value per square foot. Respondent claims 609 Russell Avenue is not comparable to the subject property because they are zoned differently. 609 Russell Avenue is zoned as industrial use/commercial. The subject property is zoned as commercial property located in the center of downtown. Thus, the subject property and 609 Russell Avenue are not comparable. *Spenos testimony; Resp't Ex. R8, R13-R16 & R32-R33.*
20. The comparable properties' adjusted sale prices ranged from \$140,000 to \$162,500. Respondent conceded that, based on its sales comparison grid, the assessment should be reduced to \$160,000 for the year of 2012. *Spenos testimony; Resp't Ex. R17-R31.*

#### **SUMMARY OF PETITIONER'S CASE**

21. Petitioners purchased the subject parking lot in 1995 at a time when the area was less desirable and taxes were more affordable. According to Petitioners, the subject area has improved, but the assessments have increased at a disproportionate rate. For example, between 2010 and 2011, the subject property's assessed value increased by approximately 15%. Furthermore, between 2011 and 2012, the assessed value increased by approximately 300%. Such increases make operating a small business in the area very difficult. *Alexander testimony: citing Resp't Ex. 3.*

22. Petitioners contend one reason for the extreme increases in assessed values in the area is due to the city's tax increment finance ("TIF") commitments. Petitioners contend these TIF commitments involve developments that are funded by dramatic increases in property taxes. *Alexander testimony.*
23. Petitioners testified that in 2014, a 64,000 square foot industrial/retail building with surface parking located at 915 South Meridian Street sold for \$600,000, or \$9.35 per square foot. The subject property is assessed at \$196,000, or \$30.00 per square foot. Petitioners argue that this comparable property demonstrates that the subject property is overvalued. *Alexander testimony.*
24. Petitioners also pointed to 609 Russell Avenue in their Form 130 petition as being comparable to their property. According to Petitioners, the county has incorrectly shown the zoning on 609 Russell Avenue as I3URC, which is an industrial classification. Petitioners claim that the comparable property is actually zoned CBD2, the same as the subject property. While the subject property and 609 Russell Avenue are zoned the same, the comparable property's assessed value at \$9.29 per square foot is significantly lower than the subject property. *Alexander testimony; Board Ex. A.*
25. Petitioners contend that Respondent's comparable sales should be given no weight. According to Petitioners, Respondent's comparables are located downtown in what is referred to as the "Mile Square," which is the city's core. In the city's core there are skyscrapers, high-rise buildings, and other higher-valued properties. Petitioners argue that even though the subject property is located outside of the Mile Square, the county is assessing it similar to properties located within the Mile Square. *Alexander testimony.*
26. Petitioners stated they believe their property value has increased between 2011 and 2012, but that the value should be \$90,000. *Alexander testimony.*

## Analysis

27. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005) Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id; see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
28. Regardless of the method used to prove a property’s true tax value, 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. Dep’t of Local Gov’t Fin.*, 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). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
29. As stated above, Respondent had the burden of proving that the subject property’s total assessment of \$196,000 is correct. Respondent testified that the assessment was overstated and should be reduced to \$160,000 for the year of 2012.
30. Respondent offered a sales comparison grid to. In doing so, Respondent essentially relied on a sales comparison approach to establish the market value-in-use. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on “sales of comparable improved



properties and adjust the selling prices to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466, 469.

31. To effectively use the sales-comparison approach as evidence in a property tax appeal, 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 sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
32. In the analysis, Respondent presented evidence of four sales located near the subject property. While he attempted to account for differences between the subject property and the purportedly comparable properties by making various adjustments, he failed to support the percentages he used in making those adjustments which ranged from a positive 5% adjustment to a negative 35% adjustment. Thus, he did not provide the level of comparison contemplated by *Long*.
33. Initially, Respondent's analysis does not appear to differ significantly from one made by a certified appraiser in an appraisal report. But in order to be probative of market value-in-use, an appraisal must conform to generally accepted appraisal principles and Uniform Standards of Professional Appraisal Practice. Here, there is no indication that Respondent's sales comparison grid meets those standards and thus is not enough to prove the market value-in-use of the subject property.
34. Because Respondent did not offer sufficient evidence to show the market value-in-use of the subject property, Respondent failed to make a prima facie case that the 2012 assessment was correct. Therefore, Petitioners are entitled to have their assessment returned to the 2011 level of \$65,600. But, Petitioners specifically testified that they believe their property's value has increased between 2011 and 2012 to a value of \$90,000.

Thus, even though Petitioners presented no documentary evidence for the record to support that amount, the Board accepts Petitioners' concession.

#### SUMMARY OF FINAL DETERMINATION

35. Respondent had the burden of proving the 2012 assessment was correct. Respondent failed to make a prima facie case, thus the assessment would normally be reduced to the previous year's amount of \$65,600. Nevertheless, Petitioners conceded that the assessed value should be \$90,000. Thus, the Board orders the subject property's 2012 assessed value be changed to \$90,000.

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

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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

#### - 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>>.