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

**Petition:** **03-005-12-1-3-10023-15**
**Petitioner:** **CPC Associates, Inc.**
**Respondent:** **Bartholomew County Assessor**
**Parcel:** **03-96-18-140-000.300-005**
**Assessment Year:** **2012**

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 its 2012 assessment appeal with the Bartholomew County Assessor on January 11, 2013. On January 15, 2015, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.

2. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board and elected the Board's small claims procedures.

3. Administrative Law Judge (ALJ) Patti Kindler held the Board's hearing on May 22, 2018. She did not inspect the property.

4. Certified tax representative Milo E. Smith appeared for the Petitioner. County Assessor Lew Wilson and local government representative Virginia Whipple appeared for the Respondent. Appraiser York Pollert was a witness for the Respondent. All of them were sworn.

5. The property under appeal is a manufacturing facility with paved parking, fencing, and a pole barn situated on 6.92 acres. The property is located at 2860 North National Road in Columbus.

6. The PTABOA determined the total assessment is $972,000 (land $207,600 and improvements $764,400).

7. The Petitioner requested the total assessment revert back to the 2011 total assessment of $607,500.

8. The official record for this matter includes the following:

    a. A digital recording of the hearing,

b. Exhibits:

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| Petitioner Exhibit 1: | 2011 subject property record card, |
| Petitioner Exhibit 2: | 2012 subject property record card, |
| Petitioner Exhibit 3: | 2013 subject property record card, |
| Petitioner Exhibit 4: | REAL PROPERTY ASSESSMENT GUIDELINES, Appendix F, |
| Petitioner Exhibit 5: | Indiana Code § 6-1.1-4-4.4, |
| Petitioner Exhibit 6: | Census 2000 Brief entitled "Structural and Occupancy Characteristics of Housing: 2000," dated November 2003, |
| Petitioner Exhibit 7: | Aerial map of the property's neighborhood including seven property record cards for various properties identified on the map, |
| Petitioner Exhibit 8: | Purdue Farmland Value Survey for "Indiana land values" from 2005 to 2017, |
| Petitioner Exhibit 9: | Department of Local Government Finance (DLGF) document entitled "Agricultural Land Base Rates for the Assessment Dates: March 1, 2008 – 2014." |
| | |
| Respondent Exhibit A: | Curricula Vitae for Virginia Whipple and York Pollert, |
| Respondent Exhibit B: | "Statement of Professionalism," |
| Respondent Exhibit C: | 2011 subject property record card, |
| Respondent Exhibit D: | 2012 subject property record card, |
| Respondent Exhibit E: | Aerial map of the subject property, |
| Respondent Exhibit F: | Appraisal report of the subject property prepared by Jason King, MAI, with an effective date of March 1, 2012, |
| Respondent Exhibit G: | 2014 sales disclosure form for the subject property, |
| Respondent Exhibit H: | "Consumer Price Index Data from 1913 to 2018," |
| Respondent Exhibit I: | Property record card for the adjoining parcel included in the appraisal report, |
| Respondent Exhibit J: | Commercial Appraisal Review of the subject property completed by York Pollert, MAI, dated May 22, 2018, |
| Respondent Exhibit K: | Respondent's reconciliation of values. |

c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) these findings and conclusions.

## Contentions

9. Summary of the Petitioner's case:

a. The subject property is assessed too high. The assessment increased by 60% between 2011 and 2012. The increase was the result of a "50% vacancy factor" being improperly removed. There is no evidence the property "was ever 100% occupied in 2012." According to the Guidelines, obsolescence should be reevaluated on an annual basis. Here, the obsolescence was removed without any evaluation. If any of the underlying

parcel characteristics are changed, the assessor has the burden to prove the assessment is correct. *Smith argument; Pet'r Ex. 1, 2, 3, 4, 5, 6.*

b. The Respondent presented a flawed appraisal. The appraiser failed to separate the property's land and improvement values according the Uniform Standards of Professional Appraisal Practice (USPAP). As a result, there is no way of knowing what value the appraiser attributed to the land, "but it appears to be approximately $2,000,000." The appraiser, however, failed to take into consideration how industrial land is priced in Columbus. The Petitioner presented property record cards indicating commercial land in Columbus is assessed at a rate of $10.00 per square foot while industrial land is valued at $30,000 an acre. Accordingly, the property's land should be assessed at "no more than $30,000 an acre." *Smith testimony (referencing Resp't Ex. F, J); Pet'r Ex. 7, 8, 9.*

c. The Respondent's appraisal is also flawed for the following reasons:

- The appraiser failed to perform an interior inspection of the property and therefore was unable to determine if obsolescence was warranted for this "older building."
- Without an interior inspection, the appraiser could not accurately determine the percentage of vacancy to apply.
- The appraisal erroneously includes an adjoining parcel that is not under appeal.
- The purportedly comparable sales are all located in "superior industrial corridors."

*Smith argument (referencing Resp't Ex. F, J).*

d. The 2014 sale of the subject property should not be taken into consideration. Not only was the sale two-and-a-half years removed from the relevant valuation date, but it also included an adjoining parcel that is not under appeal. *Smith argument (referencing Resp't Ex. G).*

10. Summary of the Respondent's case:

a. The 2012 assessment increased because the PTABOA "knew the property was not 50% vacant." Accordingly, the "50% vacancy factor" was removed. Even with the increase in the assessment, the property is still under assessed. *Whipple argument; Resp't Ex. C, D.*

b. In support of his position, the Respondent offered a USPAP compliant appraisal prepared by Jason King, MAI, of Don Scheidt & Company. Mr. King performed the retroactive appraisal on October 27, 2017, but is currently no longer employed by Don Scheidt & Company. In his place, York Pollert, also an MAI appraiser with Don Scheidt & Company, testified to the content of the appraisal. Mr. Pollert performed a review of the appraisal so he "felt fairly comfortable" discussing it. *Pollert testimony; Resp't Ex. F, J.*

c. According to Mr. Pollert, Mr. King valued the property as of March 1, 2012, for $2,650,000. In valuing the property, Mr. King relied on the sales comparison approach to value, but also utilized the income approach as a "test of reasonableness." In developing his sales comparison approach, Mr. King identified three comparable properties, two located in Columbus and one in Elkhart. These properties ranged from 122,000 to 205,000 square feet. Mr. King made adjustments to account for differences such as date of sale, location, access and visibility, economy of scale, quality and appeal, age and condition, and functional utility. After adjustments were made, the comparable sales ranged from $17.69 to $18.10 per square foot. Ultimately, Mr. King relied on a value of $17.85 per square foot in determining the subject property's market value-in-use. *Pollert testimony; Resp't Ex. F.*

d. In his appraisal report, Mr. King stated he did not have sufficient information to develop a "full value indication" using the income approach so he performed a "test of reasonableness." According to Mr. Pollert, Mr. King developed his income approach by "working backwards from his reconciled sales value of $2,650,000." He reconstructed an operating statement using capitalization rates from investor surveys and applied typical market vacancy and collection losses to arrive at a rent range of $3.13 to $3.47 per square foot. Mr. King also examined five lease rates for Bartholomew County, the three highest leases derived from the subject property. The Bartholomew County leases ranged from $1.65 to $4.37 per square foot while the subject property leases ranged from $2.99 to $4.37 per square foot. Mr. King surmised "the market rent range for the subject property is estimated at $3.13 per square foot (based on the five data points) and $3.44 per square foot (the average rent paid at the subject property.)" Accordingly, the income approach is supportive of the value derived from the sales comparison approach and "not supportive of the assessed value." *Pollert testimony; Resp't Ex. F.*

e. Mr. Pollert performed a review of Mr. King's appraisal in accordance with the USPAP "Standards 3 and 4" to determine if the "appraisal under review was developed with credible opinions and conclusions." Mr. Pollert found "a few issues" with the appraisal that did not impact the final reconciliation of value. But, Mr. Pollert determined Mr. King's appraisal miscalculated the property's size by 559 square feet. Thus, Mr. Pollert argued that based on the square footage change, the appraised price should be reduced to $2,640,000, rounded. Finally, in his review, Mr. Pollert concluded that the appraisal report included a well-developed sales approach with reasonable adjustments and the appraiser's lease information was supportive of the sales comparison approach. *Pollert testimony; Resp't Ex. F, J.*

f. The appraisal does include another vacant parcel that is not under appeal. This parcel adjoins the subject parcel and makes up a "small corner of the property." According to the property record card, this "small piece of property" was valued at $32,900 in 2012. *Whipple testimony; Resp't Ex. F, I.*

g. The subject property and the adjoining parcel both sold on October 31, 2014, for $3,650,000. This sale was an "open-market sale" without "personal property or inventory." According to the sales disclosure, the property leased for $370,000 annually

with triple net leases. Relying on the Consumer Price Index (CPI), the Respondent was able to "time-adjust" the sale back to the relevant valuation date. The Respondent determined the CPI for March 1, 2012, was 229.392, while the October 2014 CPI was 237.433, amounting to a difference of -8.041. Accordingly, the time-adjusted sales price of the subject property equated to $3,356,540. *Whipple testimony; Resp't Ex. G, I.*

h. The appraisal and the property's adjusted sale price both indicate the property's current assessment is too low. The Respondent requests the value to be "changed to $2,640,000." *Whipple testimony; Resp't Ex. J, K.*

**Burden of Proof**

11. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 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). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

12. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

13. 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." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for 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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

14. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2011 to 2012. In fact, the total assessment increased from $607,500 in 2011 to $972,000 in 2012. The Respondent conceded that the burden rests with him. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.[1]

[1] Mr. Smith also argued that according to Ind. Code § 6-1.1-4-4.4(b) the Respondent has the burden of proof in this appeal. This argument is moot because the Respondent conceded the assessment increased by more than 5% from 2011 to 2012.

## Analysis

15. Real property is assessed based on its 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). 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, but other evidence is permitted to prove an accurate valuation. 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.

16. Regardless of the method used, a party must explain how the evidence relates to 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. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

17. The burden was on the Respondent to prove the current assessment is correct. In an effort to prove that, the Respondent offered a USPAP compliant appraisal prepared by Jason King, MAI. Mr. King developed the sales comparison approach and the income capitalization approach as a "test of reasonableness" to determine the market value-in-use to be $2,650,000 as of March 1, 2012. In support of the appraisal, the Respondent also offered a review appraisal prepared by York Pollert, MAI. According to Mr. York's review appraisal, the subject property and adjoining parcel should be valued at $2,640,000 as of March 1, 2012.

18. The Board has previously held an appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers,* 805 N.E.2d at 479. Here, the Petitioner argued the appraisal is flawed for various reasons. The majority of the Petitioner's arguments attack the method in which the appraiser established his final estimate of value, i.e. selection of comparable properties, amount of obsolescence applied, and percentage of vacancy. Selecting comparable properties, adjusting for obsolescence, and making adjustments to account for differences such as vacancy are all things appraisers normally do. The Board recognizes that process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a "correct" or "incorrect" answer. The Petitioner failed to offer any evidence of specific errors that would have led to a different value conclusion. Consequently, the Petitioner's argument that the appraisal is flawed for these reasons is unpersuasive. While the appraisal is not perfect, the Petitioner failed to impeach it or rebut it with these arguments. The Petitioner does, however, point out one flaw the Board must examine more closely. The appraiser valued two parcels, one of which is not under appeal.

19. The overriding purpose of real property assessment in Indiana is to determine the market value-in-use of the entire property. Indeed, the Manual defines true tax value as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2. Further, "[t]rue tax

value may be considered as the price that would induce the owner to sell the real property, and the price at which the buyer would purchase the real property for a continuation of use of the property for its current use." *Id.* The Respondent's appraisal values the entire property, that is to say both the 6.92 acre lot under appeal and the adjoining .36 acre vacant lot that is not under appeal. The Board cannot ignore relevant valuation evidence. *See* 50 IAC 2.4-1-1(c) (stating that "the validity of the assessment shall be evaluated on the basis of *all relevant evidence presented*. Whether an assessment is correct shall be determined on the basis of whether, in light of the relevant evidence, it reflects the property's 'True Tax Value.'"(emphasis added)).

20. Even though the appraiser did not deduct the value of the parcel not under appeal, the Board must consider how the property is used. *See Cedar Lake Conf. Ass'n v. Lake Co. Prop. Tax Assessment Bd.,* 887 N.E.2d 205, 208 (Ind. Tax Ct. 2008) (explaining that analysis should be based on how property is used and not just on the existence of separate parcel numbers). Therefore, all of the evidence presented in this case must be weighed to determine whether it is more realistic to regard the two properties as a single economic unit or as two separate parcels.

21. Assessors separately assess and tax each parcel listed on the tax rolls. But where the owners and the market view related parcels as one property, we ultimately care about the value of the entire property—not its individual components. That is intrinsic to the definition of true tax value, which looks to the utility that an owner, or similar user, receives from a property. Thus, one cannot divorce the value of any individual parcel from the market value-in-use of the property as a whole. Saying that one parcel is over- or under-assessed inspires little confidence that the property's overall assessment is wrong. Here, the Respondent presented evidence the entire 7.28 acre property was sold by the Petitioner in 2014. While the Board will not consider the sale of the property as probative evidence as to the market value-in-use because it is too far removed from the relevant valuation date, the Board must consider the fact the Petitioner sold both lots together. According to the property record cards the Petitioner also acquired the two lots together. It seems clear based on the evidence the Petitioner used both lots together and together the lots formed one economic unit. Additionally, the Petitioners failed to rebut the presumption the two parcels form a single economic unit. *See Charles E. Koziarz v. Marshall Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. Nos. 50-017-12-1-5-00012, et al. (May 22, 2014). For these reasons, we find the appraisal persuasive evidence of the entire 7.28 acre property's market value-in-use. That does not end our inquiry because the Petitioner presented its own valuation evidence.

22. The Petitioner presented evidence of purportedly comparable properties' land assessments relying solely on a land base rate per acre. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1). The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.2d 150 (Ind. Tax

Ct. 2014). In other words, the proponent must provide the type of analysis that Long contemplates for the sales comparison approach. *Id.; see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).

23. The Petitioner's evidence included property record cards for seven purportedly comparable properties in the area "indicating that commercial land in Columbus is assessed at a rate of $10.00 per square foot while industrial land is valued at $30,000 an acre." Simply because a property is in the same neighboring area does not mean it is comparable. The lot size, topography, visibility, traffic count, location, age, size of improvements, quality of construction, conditions and amenities all play a role in the value of the property. *See, Long*, 821 N.E.2d at 470-71. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Id*. 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.* The Petitioner failed to offer any meaningful testimony relating each property's specific features and characteristics to the subject property. The type of analysis and related adjustments required for a probative comparison are lacking.

24. The Petitioner also argued the Respondent failed to follow the Guidelines in assessing the subject property. In support of this, the Petitioner mainly focuses on the methodology used to assess the property, or primarily the removal of the "50% vacancy factor." To successfully make a case, the Petitioner needed to offer probative evidence regarding the actual market value-in-use of the subject property. *O'Donnell*, 854 N.E.2d at 90, 95; *Eckerling*, 841 N.E. 2d at 764, 768. In other words, the Petitioner needed to present market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. Here, the Petitioner failed to present any market evidence to rebut the Respondent prima facie case.

## Conclusion

25. The Respondent had the burden of proof and established a prima facie case that the total assessment of the entire 7.28 acre property should be increased to $2,640,000. The Petitioner attempted to rebut the Respondent's case but failed.

## Final Determination

In accordance with the above findings and conclusions, the 2012 assessment the entire 7.28 acre property must be increased to $2,640,000.

ISSUED: August 20, 2018

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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>.