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

Petition Numbers:	Parcel Numbers:
08-007-09-1-3-00001	08-06-19-044-026.000-007
08-007-09-1-3-00001A	08-06-19-044-028.000-007
08-007-09-1-3-00003	08-06-19-001-001.000-007
08-007-09-1-3-00004	08-06-19-001-014.000-007
08-007-09-1-3-00006	08-06-19-044-023.000-007
08-007-09-1-3-00007	08-06-19-044-024.000-007
08-007-09-1-3-00008	08-06-19-044-025.000-007
08-007-09-1-3-00009	08-06-19-044-027.000-007
08-007-09-1-3-10000	08-06-19-044-001.000-007
08-007-09-1-3-10001	08-06-19-044-002.000-007
08-007-09-1-3-10002	08-06-19-044-003.000-007
08-007-09-1-3-10003	08-06-19-044-004.000-007
08-007-09-1-3-10004	08-06-19-044-005.000-007
08-007-09-1-3-10005	08-06-19-044-006.000-007
08-007-09-1-3-10006	08-06-19-044-007.000-007
08-007-09-1-3-10007	08-06-19-044-008.000-007
08-007-09-1-3-10008	08-06-19-044-009.000-007
08-007-09-1-3-10009	08-06-19-044-010.000-007
08-007-09-1-3-10010	08-06-19-044-011.000-007
08-007-09-1-3-10011	08-06-19-044-012.000-007
08-007-09-1-3-10012	08-06-19-044-013.000-007
08-007-09-1-3-10013	08-06-19-044-014.000-007
08-007-09-1-3-10014	08-06-19-044-015.000-007
08-007-09-1-3-10015	08-06-19-044-016.000-007
08-007-09-1-3-10016	08-06-19-044-017.000-007
08-007-09-1-3-10017	08-06-19-044-018.000-007
08-007-09-1-3-10018	08-06-19-044-019.000-007
08-007-09-1-3-10019	08-06-19-044-020.000-007
08-007-09-1-3-10020	08-06-19-044-021.000-007
08-007-09-1-3-10021	08-06-19-044-022.000-007
08-006-09-1-3-00001	08-06-19-000-184.000-006
08-006-09-1-3-00001A	08-06-19-000-185.000-006
08-006-09-1-3-00001B	08-06-19-000-186.000-006
08-006-09-1-3-00001C	08-06-19-000-187.000-006
08-006-09-1-3-00001D	08-06-19-000-188.000-006

08-006-09-1-3-00001E	08-06-19-000-189.000-006
08-006-09-1-3-00001F	08-06-19-000-190.000-006
08-006-09-1-3-00001G	08-06-19-000-191.000-006
08-006-09-1-3-00001H	08-06-19-000-192.000-006
08-006-09-1-3-00001I	08-06-19-000-193.000-006
08-006-09-1-3-00001J	08-06-19-000-194.000-006
08-006-09-1-3-00001K	08-06-19-000-195.000-006
08-006-09-1-3-00001L	08-06-19-000-196.000-006
08-006-09-1-3-00001M	08-06-19-000-197.000-006
08-006-09-1-3-00001N	08-06-19-000-198.000-006
08-006-09-1-3-00001O	08-06-19-000-199.000-006
08-006-09-1-3-00001P	08-06-19-000-200.000-006
08-006-09-1-3-00001Q	08-06-19-000-201.000-006
08-007-09-1-3-00001R	08-06-19-000-183.000-006
08-007-09-1-3-00001S	08-06-19-000-182.000-006
08-006-09-1-3-00001T	08-06-19-000-181.000-006
08-006-09-1-3-00001U	08-06-19-000-180.000-006
08-006-09-1-3-00002	08-06-19-000-204.000-006

Petitioner: **Delphi Industrial Park, LLC**
Respondent: **Carroll County Assessor**
Assessment Year: **2009**

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

Procedural History

1. Delphi Industrial Park, LLC (Delphi Industrial), initiated an assessment appeal of the 53 parcels identified above with the Carroll County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 5, 2010.[1]

2. The PTABOA issued notices of its decisions on August 5, 2010, for Petition No. 08-007-09-1-3-00001; on September 3, 2010, for Petition Nos. 08-006-09-1-3-00001, 08-006-09-1-3-00002, 08-007-09-1-3-00003, 08-007-09-1-3-00004, 08-007-09-1-3-00006, 08-007-09-1-3-00007, 08-007-09-1-3-00008, and 08-007-09-1-3-00009; and on October 6, 2010, for Petition Nos. 08-007-09-1-3-10000, 08-007-09-1-3-10001, 08-007-09-1-3-10002, 08-007-09-1-3-10003, 08-007-09-1-3-10004, 08-007-09-1-3-10005, 08-007-09-1-3-10006, 08-007-09-1-3-10007, 08-007-09-1-3-10008, 08-007-09-1-3-10009, 08-007-09-1-3-

[1] The Petitioner's evidence shows that as of the March 1, 2009, assessment date that Gerber Delphi, LLC, was the owner of the 53 properties under appeal. The Respondent did not contest Delphi Industrial's standing to appeal the assessments. The Board therefore will address the Petitioner's claims on their merits.

10010, 08-007-09-1-3-10011, 08-007-09-1-3-10012, 08-007-09-1-3-10013, 08-007-09-1-3-10014, 08-007-09-1-3-10015, 08-007-09-1-3-10016, 08-007-09-1-3-10017, 08-007-09-1-3-10018, 08-007-09-1-3-10019, 08-007-09-1-3-10020, and 08-006-09-1-3-10021.

3. The Petitioner filed its Form 131 petitions with the Board on September 13, 2010.[2] The Petitioner elected to have its cases heard according to the Board's small claims procedures.

4. The Board issued notices of hearing to the parties dated January 10, 2011.

5. The Board held an administrative hearing on all 53 parcels on February 22, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

6. The following persons were present and sworn in at hearing:[3]

   a. For Petitioner: L. Dowall Dellinger, Attorney and Manager of Delphi Industrial Park, LLC

   b. For Respondent:[4] Neda K. Duff, Carroll County Assessor
   Tonya Haygood, Carroll County Deputy Assessor
   Brian Thomas, Ad Valorem Solutions

Facts

7. The subject property is comprised of 53 contiguous properties.[5] 51 of the properties are vacant land. Parcel No. 08-06-19-044-026.000-007 and Parcel No. 08-06-19-044-028.000-007 are improved properties with a 154,880 square foot manufacturing building, elevated tank, two canopies and three utility storage buildings. The property is located at 1514 West Washington Street, Delphi, Deer Creek Township, in Carroll County.

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[2] For Petition Nos. 08-007-09-1-3-10000, 08-007-09-1-3-10001, 08-007-09-1-3-10002, 08-007-09-1-3-10003, 08-007-09-1-3-10004, 08-007-09-1-3-10005, 08-007-09-1-3-10006, 08-007-09-1-3-10007, 08-007-09-1-3-10008, 08-007-09-1-3-10009, 08-007-09-1-3-10010, 08-007-09-1-3-10011, 08-007-09-1-3-10012, 08-007-09-1-3-10013, 08-007-09-1-3-10014, 08-007-09-1-3-10015, 08-007-09-1-3-10016, 08-007-09-1-3-10017, 08-007-09-1-3-10018, 08-007-09-1-3-10019, 08-007-09-1-3-10020, and 08-006-09-1-3-10021, the PTABOA's Notifications of Final Assessment Determinations were issued after the Petitioner had filed its Form131 petitions to the Board. However, the Form 115s show the PTABOA conducted a hearing on all 53 parcels on July 29, 2010, and the Respondent did not raise any objection to hearing these Petitions. The Board, therefore, rules on all 53 Petitions in this Final Determination.

[3] A court reporter was present at the hearing to transcribe the proceedings. Judge McMillen noted for the record that pursuant to 50 IAC 17-6-2(c), an official copy of the transcript must be submitted to the Board at no expense to the Board.

[4] Ms. Lauren Criswell, Carroll County Deputy Assessor, was present but not sworn in to give testimony.

[5] The Board refers to the 53 parcels together as "the property" because the parcels were sold as a single property and the evidence presented by the parties treat the 53 parcels as a single property.

8. The ALJ did not conduct an on-site inspection of the 53 parcels under appeal.

9. For 2009, the PTABOA determined the assessed values of the Petitioner's parcels to be as follows:

    1. Parcel No. 08-06-19-044-026.000-007, $14,400 for the land and $20,800 for the improvements, for a total assessed value of $35,200.
    2. Parcel No. 08-06-19-044-028.000-007, $84,100 for the land and $173,400 for the improvements, for a total assessed value of $257,500.
    3. Parcel No. 08-06-19-001-001.000-007, $1,300 for the land.
    4. Parcel No. 08-06-19-001-014.000-007, $3,600 for the land.
    5. Parcel No. 08-06-19-044-023.000-007, $4,700 for the land.
    6. Parcel No. 08-06-19-044-024.000-007, $6,600 for the land.
    7. Parcel No. 08-06-19-044-025.000-007, $2,500 for the land.
    8. Parcel No. 08-06-19-044-027.000-007, $81,600 for the land.
    9. Parcel No. 08-06-19-044-001.000-007, $6,600 for the land.
    10. Parcel No. 08-06-19-044-002.000-007, $6,600 for the land.
    11. Parcel No. 08-06-19-044-003.000-007, $6,600 for the land.
    12. Parcel No. 08-06-19-044-004.000-007, $6,600 for the land.
    13. Parcel No. 08-06-19-044-005.000-007, $6,600 for the land.
    14. Parcel No. 08-06-19-044-006.000-007, $6,600 for the land.
    15. Parcel No. 08-06-19-044-007.000-007, $6,600 for the land.
    16. Parcel No. 08-06-19-044-008.000-007, $6,600 for the land.
    17. Parcel No. 08-06-19-044-009.000-007, $6,600 for the land.
    18. Parcel No. 08-06-19-044-010.000-007, $6,600 for the land.
    19. Parcel No. 08-06-19-044-011.000-007, $6,600 for the land.
    20. Parcel No. 08-06-19-044-012.000-007, $6,600 for the land.
    21. Parcel No. 08-06-19-044-013.000-007, $6,600 for the land.
    22. Parcel No. 08-06-19-044-014.000-007, $6,600 for the land
    23. Parcel No. 08-06-19-044-015.000-007, $6,600 for the land.
    24. Parcel No. 08-06-19-044-016.000-007, $6,600 for the land.
    25. Parcel No. 08-06-19-044-017.000-007, $6,600 for the land.
    26. Parcel No. 08-06-19-044-018.000-007, $6,600 for the land.
    27. Parcel No. 08-06-19-044-019.000-007, $6,600 for the land.
    28. Parcel No. 08-06-19-044-020.000-007, $6,600 for the land.
    29. Parcel No. 08-06-19-044-021.000-007, $6,600 for the land.
    30. Parcel No. 08-06-19-044-022.000-007, $6,600 for the land.
    31. Parcel No. 08-06-19-000-184.000-006, $2,800 for the land.
    32. Parcel No. 08-06-19-000-185.000-006, $2,800 for the land.
    33. Parcel No. 08-06-19-000-186.000-006, $2,800 for the land.
    34. Parcel No. 08-06-19-000-187.000-006, $2,800 for the land.
    35. Parcel No. 08-06-19-000-188.000-006, $2,800 for the land.
    36. Parcel No. 08-06-19-000-189.000-006, $2,800 for the land.
    37. Parcel No. 08-06-19-000-190.000-006, $2,800 for the land.

38. Parcel No. 08-06-19-000-191.000-006, $2,800 for the land.
39. Parcel No. 08-06-19-000-192.000-006, $2,800 for the land.
40. Parcel No. 08-06-19-000-193.000-006, $2,800 for the land.
41. Parcel No. 08-06-19-000-194.000-006, $2,800 for the land.
42. Parcel No. 08-06-19-000-195.000-006, $2,800 for the land.
43. Parcel No. 08-06-19-000-196.000-006, $2,800 for the land.
44. Parcel No. 08-06-19-000-197.000-006, $2,800 for the land.
45. Parcel No. 08-06-19-000-198.000-006, $2,800 for the land.
46. Parcel No. 08-06-19-000-199.000-006, $2,800 for the land.
47. Parcel No. 08-06-19-000-200.000-006, $2,800 for the land.
48. Parcel No. 08-06-19-000-201.000-006, $2,800 for the land.
49. Parcel No. 08-06-19-000-183.000-006, $2,800 for the land.
50. Parcel No. 08-06-19-000-182.000-006, $2,800 for the land.
51. Parcel No. 08-06-19-000-181.000-006, $2,800 for the land.
52. Parcel No. 08-06-19-000-180.000-006, $2,800 for the land.
53. Parcel No. 08-06-19-000-204.000-006, $6,600 for the land.

The total assessed value of the 53 parcels together is $606,400 as determined by the PTABOA.

10. For 2009, the Petitioner's representative contends that all 53 parcels under appeal have no value because of environmental contamination on the property.

Issue

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

    a. The Petitioner's representative contends that the subject property is worthless because leaking underground storage tanks contaminated the property. *Dellinger argument.* According to Mr. Dellinger, there were two locations on the property identified by the Indiana Department of Environmental Management (IDEM) where heating fuel in buried tanks had spilled. *Dellinger testimony.* IDEM issued a work order demanding the property be cleaned up. *Id.* Mr. Dellinger testified that Gerber Delphi, LLC (Gerber), had stopped production at the facility several years before any environmental issue presented itself. *Id.*

    b. Mr. Dellinger contends that Gerber hired a series of environmental engineers to estimate the cost of the clean up. *Dellinger testimony.* According to Mr. Dellinger, because Gerber's initial estimates were so expensive, they entered into negotiations with Delphi Industrial to clean up the site. *Id.* However, Mr. Dellinger testified, Delphi Industrial eventually agreed to purchase the property. *Id.*

c. Mr. Dellinger testified that Delphi Industrial initially agreed to purchase the property under appeal from Gerber on September 23, 2009, for $1,000,000 less any cost of remediation. *Dellinger testimony; Petitioner Exhibit 1.* The purchase agreement states that "in no event shall the Purchase Price be less than $0.00." *Petitioner Exhibit 1.* The agreement also provided sixty days for the parties to agree to the scope, nature and timing of the clean up. *Id.* If the parties could not agree on the remedial activities, the agreement would automatically terminate. *Id.* Further, the agreement provided Delphi Industrial a 120 day window to study and inspect the property. *Id.* The Petitioner could terminate the agreement for any reason during that period. *Id.* Once the parties closed on the property, however, the Petitioner assumed all responsibility for and indemnified Gerber against any damages related to the environmental conditions on the property. *Id.*

d. During its investigation of the property, Mr. Dellinger testified, Delphi Industrial found heavy fuel contamination in the soil and limestone between the two buildings on the property. *Dellinger testimony.* The Petitioner also found volatile organic compounds that had spilled and contaminated a 25 sq. ft. area of a concrete pad.[6] *Id.* As a result of its findings, Mr. Dellinger testified, Delphi Industrial renegotiated the purchase agreement with Gerber for the subject property. *Id.* On December 11, 2009, the parties entered into a "Second Amendment to the Purchase and Sale Agreement" whereby the seller agreed that the buyer shall receive a credit for the environmental remediation cost "such that the Purchase Price shall be $0.00."[7] *Id.* In addition, Gerber paid Delphi Industrial $400,000 to take the liability of the property. *Dellinger testimony; Petitioner Exhibits 1 and 2.* Mr. Dellinger argues that although Delphi Industrial did not purchase the property until later that year, the environmental contamination problems rendering the property valueless would have been present on the March 1, 2009, assessment date. *Dellinger testimony.*

e. Mr. Dellinger testified that from July 30, 2009, to December 17, 2010, Delphi Industrial spent $261,642.82 to clean up the property. *Dellinger testimony.* In support of this contention, Mr. Dellinger submitted a transaction detail report identifying the payments made to various entities for the remediation. *Petitioner Exhibit 6.* According to Mr. Dellinger, IDEM has estimated that the property will need continuous monitoring for a period of three years, which is expected to cost an additional $60,000. *Dellinger testimony.* Mr. Dellinger testified there is also some additional concrete that needs to be removed and disposed of that will cost approximately $10,000. *Id.*

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[6] Volatile Organic Compounds are solvents used in manufacturing processes.

[7] To further illustrate that Delphi Industrial did not pay for the subject property Mr. Dellinger submitted the sales disclosure forms showing the sales price on the property as zero. *Petitioner Exhibit 4.*

f. Mr. Dellinger testified that even after the property is cleaned up, the property will be restricted by the covenants in the deed. *Dellinger testimony.* In support of this contention, the Petitioner's representative submitted the Special Warranty Deed for the property. *Petitioner Exhibit 3.* According to Mr. Dellinger, no one will ever be allowed to pull potable water from the property and the property is restricted to industrial use. *Dellinger testimony.* In addition, the property remains restricted by Gerber until such time as IDEM issues a no further action letter on the property. *Id.*

g. Finally, the Petitioner's representative contends that as of March 1, 2009, the buildings were vacant. *Dellinger testimony.* According to Mr. Dellinger, the office area was gutted and approximately 75% of the manufacturing building's roof leaked. *Id.* Mr. Dellinger admitted that 35,000 sq. ft. of the building was useable as storage space, but he argues no one was interested in renting the space because of the IDEM clean up order. *Id.*

h. Because of the environmental conditions on the property, the dilapidated condition of the buildings and the deed restrictions limiting the use of the property, Mr. Dellinger concludes that the property had no value at the time of the March 1, 2009, assessment. *Dellinger argument.*

12. Summary of the Respondent's contentions in support of the properties' assessments:

a. The Respondent's representative argues that the assessed value of the Petitioner's property should be raised by the Board. *Thomas argument.* Mr. Thomas argues that the PTABOA applied an obsolescence adjustment to the buildings and a negative influence factor to the land without any "ascertainable" information, resulting in the PTABOA lowering the property's assessed value to $606,400 for all 53 parcels.[8] *Id.* The Respondent's representative argues that the Board should void the PTABOA's decision and return the property's assessed value to its original assessment totaling $1,139,400. *Id.; Respondent Exhibits B and I.*

b. Further, the Respondent's representative argues that the Petitioner's purchase price supports the property's original assessed value. *Thomas testimony.* Mr. Thomas argues that the sales disclosures stated that the sales price of the 53 parcels was $1,000,000, although the sales disclosure reported that the "remediation credit to buyer exceeded the sales price…" *Thomas testimony; Respondent Exhibit D.* In addition, Mr. Thomas argues, the Petitioner's Second

[8] The Form 115s on the properties at issue in this appeal show that the PTABOA only changed the assessments of the improved parcels. *Board Exhibit A.* For Parcel No. 08-06-19-044-026.000-007, the PTABOA applied an 80% functional obsolescence adjustment to the buildings and an additional 71% influence factor to the land. *Id.* For Parcel No. 08-06-19-044-028.000-007, the PTABOA applied an 80% functional obsolescence to the buildings and an additional 63% influence factor to the land. *Id.*

Amendment to the Purchase and Sale Agreement states that the Petitioner received a $400,000 credit from the seller. *Thomas testimony; Respondent Exhibit B; Petitioner Exhibits 1 and 2.* Citing the definition of a credit as "a deduction from an amount otherwise due," Mr. Thomas argues that the purchase agreement and addendum show that the Petitioner's property should be valued from $1,000,000 to $1,400,000. *Thomas testimony; Respondent Exhibits B and E.* Thus, Mr. Thomas concludes, the county's original assessment of $1,139,400 for the 53 parcels is a fair and accurate value for the property. *Thomas testimony.*

c. The Respondent's representative similarly argues that the unencumbered value of the 53 parcels shows that the county's original assessed values are correct. *Thomas testimony.* According to Mr. Thomas, the International Association of Assessing Officers (IAAO) Standard on the Valuation of Properties Affected by Environmental Contamination states that when valuing contaminated property, remediation costs should not be subtracted on a dollar to dollar basis because it overstates the decline in a property's unencumbered value. *Thomas testimony; Respondent Exhibit B and G.* Mr. Thomas testified that he removed the negative influence factors from the land and obsolescence depreciation from the buildings, which he assumed were made to the improved parcels for the contaminated state of the property, and determined the unencumbered value of parcels under appeal totaled $1,885,400. *Thomas testimony; Respondent Exhibit B and H.* Further, Mr. Thomas testified that if he assumed the remediation would cost approximately one million dollars, he would assume the impact on the property's value would range from $400,000 to $800,000. *Thomas testimony; Respondent Exhibit B.* Based on his assumptions, Mr. Thomas concluded that the property's market value-in-use would range from $1,085,400 to $1,485,400 and therefore he argues the county's original assessed value was correct. *Id.*

d. Finally, the Respondent's representative argues that the parcel improved with the smaller building, Parcel No. 08-06-19-044-026.000-007, was properly valued by the county at $150,900. *Thomas testimony.* In support of his contention, Mr. Thomas submitted a newspaper article that appeared in the Carroll County Comet. *Respondent Exhibit F.* According to the article, two separate appraisals were conducted on the parcel; the first appraisal estimated the value of the property to be $150,000 as is, or $330,000 if the owners remodeled the building; and the second appraisal estimated the value of the property to be $340,000. *Thomas testimony; Petitioner Exhibit F.* The article further stated that the owners priced the building for sale at $220,000 as is, or $406,945 if remodeled. *Id.* Thus, Mr. Thomas argues, based on the appraised values of Parcel No. 08-06-19-044-026.000-007 reported in the newspaper article, the county's original assessment of $150,900, prior to the PTABOA's change in the assessment, was the proper market value-in-use of that parcel. *Thomas testimony.; Respondent Exhibit B.*

Record

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

    a. The Form 131 petition and related attachments.

    b. The digital recording of the hearing.

    c. Exhibits:

Petitioner Exhibit 1 – Purchase and Sales Agreement, dated September 23, 2009, and Second Amendment to Purchase and Sales Agreement, dated December 11, 2009, **(confidential)**
Petitioner Exhibit 2 – Sellers and Buyer's closing statements, dated December 11, 2009, **(confidential)**
Petitioner Exhibit 3 – Special Warranty Deed, dated December 10, 2009,
Petitioner Exhibit 4 – Sales Disclosure Forms for the 53 parcels under appeal, dated December 11, 2009,
Petitioner Exhibit 5 – Notifications of Final Assessment Determinations – Form 115 for the 53 parcels under appeal,
Petitioner Exhibit 6 – Delphi Industrial Park, LLC, Custom Transaction Detail Report for June 1, 2009, through February 14, 2011,

Respondent Exhibit A – Respondent's exhibit list,
Respondent Exhibit B – Summary of the Respondent's contentions,
Respondent Exhibit C – Aerial map of the subject property,
Respondent Exhibit D – Sales Disclosure Forms for the 53 parcels under appeal, dated December 11, 2009,
Respondent Exhibit E – Merriam-Webster Dictionary definition of "credit,"
Respondent Exhibit F – Carroll County Comet newspaper article "City council seeks public comments before purchase," dated April 7, 2010,
Respondent Exhibit G – *Standard on the Valuation of Properties Affected by Environmental Contamination* published by International Association of Assessing Officers (IAAO), dated July 2001,
Respondent Exhibit H – Respondent's calculation of the Petitioner's property's unencumbered value,
Respondent Exhibit I – Respondent's original 2009 assessed values for the Petitioner's property,

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. 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.

15. The Petitioner failed to raise a prima facie case for a reduction in the assessed value of its property. 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 traditionally have 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 Township Assessor, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A 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 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

c. Regardless of the method used to rebut an assessment's presumption of accuracy, 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. Department of Local Government Finance,* 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). For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3.

d. The Petitioner's representative argues that the property is over-valued based on its purchase of the property. In support of this contention, the Petitioner offered the "Purchase and Sale Agreement" executed on September 23, 2009, and the "Second Amendment to the Purchase and Sale Agreement" executed on December 11, 2009. The sale of the subject property is often the best evidence of the property's value. *See Hubler Realty, Inc. v. Hendricks Cty Ass'r,* 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). However, a sale does not necessarily indicate the market value of a property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10.

e. The Manual defines "market value" as "the most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably." MANUAL at 10. According to the Manual, implicit in this definition is a "consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: the buyer and seller are typically motivated; both parties are well informed or advised and act in what they consider their best interests; a reasonable time is allowed for exposure in the open market; payment is made in terms of cash or in terms of financial arrangements comparable thereto; [and] the price is unaffected by special financing or concessions." *Id.; see also Second National Bank of Richmond v. State,* 366 N.E.2d 694, 696 (Ind. Ct. App. 1977) ("'Fair market value' is what a

willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell").

f. Here, there is no evidence that the property was advertised to the public for a reasonable amount of time or that there was open and competitive bidding for the property. *See* MANUAL at 10. Further, the evidence suggests that the seller may have had insufficient knowledge or expertise to determine its property's true value. The Petitioner's representative testified that Gerber had received estimates from other remedial firms that were way too high. According to Mr. Dellinger "[Gerber] had gotten into a series of environmental engineers that quite frankly had overpriced what the work was. I think they saw them as a big… as a large manufacturer who could afford an expensive clean up and so they did everything they can to make the clean up expensive. We met with [Gerber] and expressed our ability to greatly reduce that clean up expense." Thus, the seller had been told how expensive it would be to remediate the contamination by firms whose only interest in the property was in getting the most profit out of the remediation work. There is no evidence that there were any other market participants to provide more information to the seller about the true value of the property.

g. The Petitioner, however, was in the business of cleaning up environmental contamination and arguably had far more knowledge and information about the cost of the remedial work and its impact on the value of the subject property. Therefore, the Petitioner was able to negotiate an agreement whereby the property owner paid the Petitioner $400,000 to take the property when ultimately the Petitioner's remedial costs totaled approximately $260,000 with perhaps another $70,000 in costs in order to get a "No Further Action" letter from IDEM. Thus, not only did the Petitioner get the property free, it made a profit on the remediation. While the Petitioner arguably negotiated a good deal for itself, the Board cannot find that the purchase agreement represented the property's market value-in-use absent evidence that the property was widely offered for sale and the property owner had all the information it needed to make an informed decision on the sale of its property.

h. More importantly, in the "Purchase and Sale Agreement," the Petitioner agreed to take responsibility for and indemnify, defend and hold the property owner harmless "against, any and all liens, damages (including, without limitation, consequential damages), losses, liabilities, obligations, settlement payments, penalties, claims, judgments, suits, proceedings, costs, disbursements and expenses, of any kind or of any nature whatsoever (including, but not limited to, reasonable attorneys' fees), which may at any time be imposed upon, incurred by or asserted against Seller and or the Property, and arise directly or indirectly from or out of (A) the past, present or future presence, Release or threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of the Property, regardless of whether or not caused by or within the control of Buyer or

Seller; (B) the past, present or future violation of Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Buyer or Seller; and (C) any matters within the scope of the Environmental Remediation Activities." The "Purchase and Sale Agreement" stated, however, "that, in no event shall Buyer assume or take any responsibility for, or indemnify, defend and hold Seller harmless from and against any liens, damages (including without limitation, consequential damages), losses, liabilities, obligations, settlement payments, penalties, claims, judgments, suits, proceedings, costs, disbursements and expenses, of any kind or of any nature whatsoever (including, but not limited to, reasonable attorneys' fees), which arise from or out of any Government Action." In the "Second Amendment to Purchase and Sale Agreement," the Petitioner's exception to liability covered only "Civil Penalties" rather than any "Government Action." Thus, arguably, the Petitioner's indemnification of Gerber was broadened in the Second Amendment and therefore more valuable consideration than in the "Purchase and Sale Agreement."[9]

i. The Petitioners' agreement to take responsibility for the contamination caused by the acts or omissions of Gerber during its ownership of the property has significant value. In fact, the Petitioner's witness referred to the transaction repeatedly as a "liability transaction." In essence, as part of the consideration for its purchase of the property, the Petitioner assumed the seller's liability for the contamination. When the Petitioner agreed only to take responsibility for cleaning up the contamination, the parties valued the property at $1,000,000 less any remedial costs.[10] When the Petitioner agreed to assume responsibility for and hold Gerber harmless against any Governmental Action except for Civil Penalties, the parties "re-valued" the property to have $0 value and, in fact, Gerber paid $400,000 to transfer its liability to the Petitioner. Thus, even if the evidence had shown that the property was offered for sale on the open market for a reasonable amount of time, the property's purchase price would not be probative of the property's value because it included a transfer of liability as part of the consideration. There is no evidence in the record of the property's value if Gerber had retained all liability for the contamination it had caused.[11]

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[9] In both agreements, the seller agreed to indemnify, defend and hold the Petitioner harmless against any third party claim related to the release of hazardous materials affecting off-site properties that occurred during Gerber's ownership of the property.

[10] The Board notes that if it accepted the parties' initial "Purchase and Sale Agreement" as some evidence of the property's value, the agreement supports the property's current assessed value. The September 23, 3009, agreement valued the property at $1,000,000 less the costs of remediation. The Petitioner's witness testified that it expected to spend approximately $340,000 to clean up the property sufficient to obtain a "No Further Action" letter from IDEM. Thus, subtracting the Petitioner's expected clean up costs from the original $1,000,000 sale price results in a value of approximately $660,000. The 53 parcels together are assessed for $606,400 for the March 1, 2009, assessment.

[11] The Petitioner's representative also argues the buildings were vacant and have serious deferred maintenance issues. However nothing in the record quantifies how much those conditions reduce the property's market value-in-use. Because the Petitioner failed to establish what a more accurate valuation of the buildings might be, the Petitioner failed to raise a prima facie case that its property was over-valued based on the condition of the buildings. *See Meridian Towers,* 805 N.E.2d at 478.

j. Because there is no evidence that the property was offered on the open market or that all parties had sufficient information to make informed decisions and because part of the consideration for the transfer of the property was a transfer of liability from the seller to the buyer for the seller's acts and omissions in contaminating the property, the Board finds that the Petitioner's December 11, 2009, purchase of the 53 parcels at issue in this appeal is not probative of the property's market value-in-use. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

k. In this appeal, however, the Respondent argued that the Board should void the PTABOA's determination and raise the assessed value of the 53 parcels to the county's original total assessment of $1,139,400. Pursuant to Indiana Code § 6-1.1-15-4(a), after receiving a petition for review, "the Indiana board shall conduct a hearing at its earliest opportunity." According to statute, "the Indiana board may correct any errors that may have been made and adjust the assessment or exemption in accordance with the correction." *Id.* In *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs,* 684 N.E.2d 1189 (Ind. Tax Ct. 1997), the Tax Court held that "when a taxpayer petitions the State Board for review, the State Board is given the power 'to assess the property in question, correcting any errors which may have been made.'" According to the Court, "[t]his power gives the State Board the plenary authority to reassess the property at a value higher than the one appealed by correcting errors in the original assessment." 684 N.E.2d at 1194. While the Board no longer "assesses" properties, its power to weigh the evidence presented and "correct any errors that may have been made and adjust the assessment … in accordance with the correction," likewise provides the Board the authority to increase the assessed value of property where the evidence shows the assessment is in error and the value of the property is in excess of its assessed value. The Indiana Tax Court recently affirmed this authority in *Hubler Realty Co. v. Hendricks County Ass'r.,* 938 N.E.2d 311 (Ind. Tax Ct. 2010). In that case, Judge Fisher noted that "when a taxpayer elects to challenge its assessment, it assumes a certain degree of risk, as resolution of a property tax appeal may lead to an increase in assessment." 938 N.E.2d at 315.

l. The Respondent's representative, however, merely contends that the PTABOA reduced the assessed values of the Petitioner's 53 parcels based on no "ascertainable" standards. But the Respondent presented no evidence that the parcels' assessed values as determined by the PTABOA do not represent the parcels' market values-in-use. The Board has often said that a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct.

2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). The Board finds this applies to a Respondent seeking to change an assessment as well. Thus, the Board will not make the change the Respondent's representative seeks absent a showing that the value sought by the assessor better represents the market value-in-use of the Petitioner's 53 parcels.

m. To the extent that the Respondent presented some market value evidence for the parcel with the smaller building, Parcel No. 08-06-19-044-026.000-007, the Board finds that the evidence was insufficient to support a change in that parcel's assessed value. Here, the Respondent's witness presented a newspaper article that reported that the city sought public opinion on its plan to purchase "nearly four acres and building, which was formerly part of the Gerber-Globe Valve factory." The article reported that two separate appraisals were conducted on the parcel valuing the property at $150,000 as is, or $330,000 if the owners remodeled the building; and valuing the property at $340,000, respectively. There is no evidence in the record, however, as to who prepared the appraisals, how the values of the property were determined by the appraisers and whether the appraisals were prepared according to USPAP standards. Moreover, there is no evidence of the date of the appraisals. In fact, the article is dated April 7, 2010, suggesting that the appraisals were prepared and valued the property more than two years after the January 1, 2008, valuation date for the March 1, 2009, assessment. *See Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (a party who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of the proper valuation date). Thus the Respondent's evidence is insufficient to raise the assessed value of Parcel No. 08-06-19-044-026.000-007.

Conclusion

16. The Petitioner failed to establish a prima facie case for a reduction in the assessed values of the 53 parcels at issue in this appeal. The Respondent also failed to establish a prima facie case for increasing the assessments. Accordingly, the Board sustains the PTABOA's determinations on the assessed values of the 53 parcels on appeal.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the 53 parcels at issue in this appeal should not be changed.

ISSUED: ___________________________________

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Chairman,
Indiana Board of Tax Review

____
Commissioner,
Indiana Board of Tax Review

____
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**.**