

REPRESENTATIVE FOR PETITIONER:

Vicki L. Norman, Baker & Daniels, LLP

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, PC

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Kerasotes Showplace Theatres, LLC )	Petitioner No.:	27-023-06-1-4-00825
)	Parcel No:	270336402001102023
Petitioner, )		
)		
v. )	County:	Grant
)		
Grant County Assessor, )	Township:	Pleasant
)		
Respondent )	Assessment Year:	2006

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

I dissent.

I do not believe that Kerasotes offered sufficient evidence to justify reducing the \$7,821,000 assessment to \$4,200,000. The subject property twice sold for amounts close to its assessment. While Kerasotes raised general concerns about sale-leaseback transactions, it offered little evidence to show that those concerns affected the sales in this case.

In September 2005, Kerasotes entered into a sale-leaseback with Realty Income Corporation and its subsidiary, Crest Net Lease, Inc. (“Crest Net”). Crest Net paid \$200,000,000 to buy a portfolio of 17 theaters, which it concurrently leased back to Kerasotes. Crest Net allocated \$7,821,836 to the sale of the subject property. In May 2008, Crest Net sold the subject property to EDB Properties, LLC for \$7,679,620. While no one trended the 2008 sale to January 1, 2005, it does give credence to the allocation of value in the 2005 sale.

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). Kerasotes did not own the property on the March 1, 2006, assessment date or thereafter; Crest Net, and later, EDB, owned the property and leased it to Kerasotes. Thus, while Kerasotes’s apparent contractual liability for property taxes<sup>1</sup> gives it standing to bring this appeal, the property’s market value-in-use is measured by its utility to Crest Net or a similar user. To my mind, that utility is reflected by the amounts that Crest Net and EDB paid for the property. And Kerasotes introduced no real evidence to convince me otherwise. Argument by Kerasotes’s counsel is not evidence, it is merely argument.

I am also unmoved by Kerasotes’s argument that the Board should disregard the September 2005 sale to Crest Net because the property was not placed on an open market. Mr. Lady, Kerasotes’s appraiser, testified that the sale was typical of how sale-leasebacks were conducted at that time. Therefore, it represents the norm for that type of transaction and is good evidence. *See Lake County Assessor v. United States Steel Corp.*, 901 N.E.2d 85 (Ind. Tax Ct. 2009) (where bankruptcy sales were shown to be the norm, then they were good evidence.).

I would set the assessment at \$7,450,000, the amount estimated by Leo Lichtenberg, the Assessor’s appraiser. Unlike Kerasotes’s appraisers, Lichtenberg relied heavily on the price that Crest Net paid for the subject property.

This is a very close case. I hope that the Assessor appeals to the Tax Court so that we can have some guidance on the issues presented.

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Terry G. Duga, Commissioner

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<sup>1</sup> I say “apparent” because nobody introduced a copy of the lease.