

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

**Petitions:** 45-035-13-1-3-00001  
45-035-13-1-3-00002  
**Petitioner:** M-B Venture, LLC  
**Respondent:** Lake County Assessor  
**Parcels:** 45-11-33-177-002.000-035  
45-11-33-176-002.000-035  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

**Procedural History**

1. M-B Venture, LLC (“Petitioner”) appealed its 2013 property tax assessments on June 7, 2014. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) failed to hold a hearing within 180 days. Petitioner then filed Form 131 petitions with the Board on January 27, 2015.
2. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on April 25, 2016. Neither the ALJ nor the Board inspected the property.
4. Tax Representative Abe Rivera was sworn and testified for Petitioner. (Mr. Rivera admitted he was employed on a contingency basis.) Hearing Officer Robert Metz was sworn and testified for Respondent.

**Facts**

5. Parcel 45-11-33-176-002.000-035 (“Parcel 176”) is a multi-tenant industrial facility located at 9544 North Industrial Drive in St. John.
6. Parcel 45-11-33-177-002.000-035 (“Parcel 177”) is a multi-tenant industrial facility located at 9601-9605 Industrial Drive in St. John.

7. The assessed values for 2013 are as follows:

Parcel	Land	Improvements	Total
45-11-33-176-002.000-035	\$351,100	\$1,005,600	\$1,356,700
45-11-33-177-002.000-035	\$127,900	\$ 340,700	\$ 468,600

8. Petitioner requested the following values:

Parcel	Land	Improvements	Total
45-11-33-176-002.000-035	\$351,100	\$551,900	\$903,000
45-11-33-177-002.000-035	\$127,900	\$227,200	\$355,100

**Record**

9. The official record contains the following:

- a. A digital recording of the hearing
- b. Exhibits:

For Parcel 177:

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|-----------------------|---|
| Petitioner Exhibit 1: | Appraisal by Don Scheidt & Co., Inc.                |
| Petitioner Exhibit 2: | Bureau of Labor Statistics Appraisal Trend Analysis |
| Petitioner Exhibit 3: | Letter of Evidence Submission                       |
| Petitioner Exhibit 4: | Form 131 petition                                   |
| Respondent Exhibit 1: | Property record card (“PRC”)                        |
| Respondent Exhibit 2: | IncomeWorks Evaluation Report                       |
| Respondent Exhibit 3: | Comparable sales 1-3                                |
| Respondent Exhibit 4: | Comparable sales 4-6                                |
| Respondent Exhibit 5: | Summary explanation of comparable sales             |

For Parcel 176:

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|-----------------------|---|
| Petitioner Exhibit 1: | Appraisal by Don Scheidt & Co., Inc.                |
| Petitioner Exhibit 2: | Bureau of Labor Statistics Appraisal Trend Analysis |
| Petitioner Exhibit 3: | Lake County GIS photo of the subject property       |
| Petitioner Exhibit 4: | Letter of Evidence Submission                       |
| Petitioner Exhibit 5: | Form 131 petition                                   |
| Respondent Exhibit 1: | PRC   |
| Respondent Exhibit 2: | IncomeWorks Evaluation Report                       |

Respondent Exhibit 3:	Comparable sales 1-3
Respondent Exhibit 4:	Comparable sales 4-6
Respondent Exhibit 5:	Summary explanation of comparable sales
Board Exhibit A:	Form 131 Petitions
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

### **Objections**

10. Mr. Metz objected to the appraisals offered by Petitioner because Petitioner was not the intended user and because Mr. Rivera lacks authority to use them. According to Mr. Metz, the appraiser told him the appraisals cannot be used in any administrative proceedings. Further, Mr. Metz argued that the appraisals provide “as is” values of the leased fee interest, not market values-in-use. On the other hand, Mr. Rivera contends the bank provided the appraisals to his client so he has the authority to use them. Further, Mr. Rivera argues that when a property is 100% leased, appraising the leased fee interest is the only real way to do it.
11. Respondent’s objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner’s appraisals over Respondent’s objection.

### **Burden**

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 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 Ind. Code § 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. The total assessed value for Parcel 176 decreased from \$1,408,600 for 2012 to \$1,356,700 for 2013. And the total assessed value for Parcel 177 increased from \$461,000 for 2012 to \$468,600 for 2013, which is far less than 5%. Consequently, Petitioner has the burden for both properties.

### **Contentions**

16. Summary of Petitioner’s case:

For parcel 177:

- a. Petitioner presented an appraisal prepared by Don R. Scheidt, a certified Indiana appraiser, and Kevin Ramsey, appraiser trainee. The appraiser certified that the appraisal was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The appraiser determined the value of the parcel was \$350,000 as of November 22, 2011. *Rivera testimony; Pet’r Ex. 1.*
- b. The appraiser reconstructed the operating statement for the leased fee and determined the market value of the leased fee interest, which is the type of transfer that would have to be made considering the property is encumbered with tenants. Based on the income approach, the appraiser determined a value of \$330,000. *Rivera testimony; Pet’r Ex. 1.*
- c. The appraiser also developed the sales comparison approach. The appraiser found five comparable sales in the industrial market. Using the sales comparison approach, the appraiser determined a value of \$400,000. *Rivera testimony; Pet’r Ex. 1.*
- d. The appraiser considered the income approach the strongest indicator in his analysis because properties like the subject property are owned by an investor and leased to tenants. The appraiser stated that income, vacancy, expenses, and the capitalization rate were derived from the market. With the income approach, the appraiser determined a value of \$330,000. *Rivera testimony; Pet’r Ex. 1.*
- e. In his final reconciliation, the appraiser gave the greatest weight to the income approach and arrived at a value of \$350,000. *Rivera testimony; Pet’r Ex. 1.*
- f. Mr. Rivera trended the appraised value to March 1, 2013. He used the Producer Price Index specifically for the lessors of manufacturing and industrial buildings. After trending, Mr. Rivera determined a valuation of \$355,100 as of March 1, 2013. That is the value Petitioner requests. *Rivera testimony; Pet’r Ex. 2.*

For parcel 176:

- g. Petitioner presented another appraisal prepared by Mr. Scheidt and Mr. Ramsey. The appraiser certified the appraisal was prepared in conformance with USPAP. The appraiser determined the value of the parcel was \$890,000 as of November 22, 2011. *Rivera testimony; Pet'r Ex. 1.*
- h. The property is a multi-tenant flex building with 1.1 acres of surplus land. The surplus land is land held for future development or expansion. The appraiser valued the surplus land separately using the sales comparison approach. Sales indicated the value of the surplus land was \$140,000. *Rivera testimony; Pet'r Ex. 1.*
- i. The appraiser performed an income analysis, reconstructing the operating statement, and determined a valuation of \$720,000. Adding the \$140,000 value of the surplus land results in a total value of \$860,000. *Rivera testimony; Pet'r Ex. 1.*
- j. The appraiser also developed the sales comparison approach to value. The appraiser found five comparable sales in the industrial market. Using this approach, the appraiser determined a value of \$800,000. Including the value of the surplus land, the value is \$940,000 based on the sales approach. *Rivera testimony; Pet'r Ex. 1.*
- k. The appraiser reconciled those values to a final valuation of \$890,000. *Rivera testimony; Pet'r Ex. 1.*
- l. Mr. Rivera trended the appraised value to the March 1, 2013. He used the Producer Price Index specifically for the lessors of manufacturing and industrial buildings. Mr. Rivera determined a valuation of \$903,000 as of March 1, 2013. That is the value Petitioner requests. *Rivera testimony; Pet'r Ex. 2.*

17. Summary of the Respondent's case:

For parcel 177:

- a. Respondent offered an IncomeWorks Evaluation Report. He testified that such reports have been used by the Assessor's office and have been found to be "somewhat" accurate in the past. IncomeWorks uses local market sales data. Based on rent at \$5.09 per square foot, a vacancy rate at 7.00%, expenses at \$0.68 per square foot, and a 9.00% capitalization rate, the IncomeWorks valuation is \$429,700. According to Mr. Metz, this valuation is "rather close" to the assessed value. *Metz testimony; Resp't Ex. 2.*
- b. Respondent presented six sales of industrial properties in the market area. Respondent offered a summary explanation noting a few similarities between the comparable properties and the subject property. The exhibits show that the sale prices for the comparables range from \$262,500 to \$1,751,203. The exhibits show

that the comparable sales range from \$50.00 per square foot to \$77.21 per square foot. Although the exhibits show the comparable sale dates range from March 2008, to November 2014, Mr. Metz acknowledged that the comparables were not adjusted for time. *Metz testimony; Resp't Exs. 3-5.*

For parcel 176:

- c. Respondent offered an IncomeWorks Evaluation Report. Based on rent at \$6.27 per square foot, a vacancy rate at 7.00%, expenses at \$0.75 per square foot, and a 9.00% capitalization rate, the IncomeWorks valuation is \$1,030,165. *Metz testimony; Resp't Ex. 2.*
- d. Respondent presented six sales of industrial properties in the market area. Respondent offered a summary explanation noting a few similarities between the comparable properties and the subject property. The exhibits show that the sale prices for the comparables range from \$262,500 to \$1,751,203. The exhibits show that the comparable sales range from \$50.00 per square foot to \$77.21 per square foot. Although the exhibits show the comparable sale dates range from March 2008, to November 2014, Mr. Metz acknowledged that the comparables were not adjusted for time. *Metz testimony; Resp't Exs. 3-5.*

### Analysis

18. Petitioner failed to make a case for a reduction in the assessed value. The Board reached this decision for the following reasons:
  - a. Real property is assessed based on its "true tax value," which means "the 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." 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). A party's evidence in an assessment appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property IV*, 836 N.E.2d at 506; *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).
  - b. Regardless of the type of evidence a party offers, it must explain how that 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* The valuation date for the assessment at issue in this appeal was March 1, 2013. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP and in accordance with generally recognized appraisal principles. *O'Donnell*, 854 N.E.2d at 94; *Kooshtard Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here, Petitioner offered USPAP compliant appraisals prepared by a licensed general appraiser. He estimated the subject properties' values at \$350,000 and \$890,000 respectively as of November 22, 2011.
- d. But the appraisals of the subject property have an important limitation. They both state:

“It should be noted that the value conclusion located herein is lower than the assessed value of the subject. Since the Assessor’s intent is to reflect market value for its current use, it is possible the subject’s assessed value could be decreased in the future. **However, this report is not intended for that use and should not be used for any tax appeal process.** Such a decrease could generate lower real estate taxes, which could then positively impact market value.”

*Pet’r Ex. 1 for each parcel (emphasis added).*

- e. The statement that the appraisal report “is not intended for and should not be used for any tax appeal” is clear and unambiguous. No other probative evidence was offered about this limitation. While both sides argued about whether the appraisals could be considered in these assessment appeals for other reasons, neither side even addressed this specific limitation, which we determine to be the most significant point. This limitation is the reason we determine these appraisals entirely lack probative value for these assessment appeals.<sup>1</sup>
- f. And Petitioner presented no other evidence that would establish the market values-in-use of the subject properties. Consequently, Petitioner failed to make a case for a reduction in values.

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<sup>1</sup> The Board does not hold that every bank appraisal with an express disclaimer prohibiting its use for other purposes (such as a tax appeal) will lack probative value. Rather, the Board will not accept at face value an appraisal where the opinion of value is expressly contingent on no change in the real estate taxes. Perhaps some probative value could have been salvaged from these appraisals, but the Board will not make Mr. Rivera’s case for his client.

- g. 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. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).<sup>2</sup>

### CONCLUSION

19. Petitioner failed to establish a case for a reduction in the assessed values. The Board finds for the Respondent.

### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed values will not be changed.

ISSUED: August 23, 2016

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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

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<sup>2</sup> Even though the Assessor had no duty to support the existing assessments with substantial evidence in this particular instance, he attempted to do so by offering what purport to be valuations based on an income approach. If the Board were to give this evidence any credibility, those Income Works Valuation Reports indicate values for both parcels that are lower than the disputed assessments—\$1,356,700 compared to \$1,030,165 and \$468,600 compared to \$429,700. The income approach is, of course, a generally accepted way to value property. But in this instance the values generated by Income Works simply have no credibility. For example, the numbers used for rent, vacancy rate, expenses, and the capitalization rate are unsubstantiated conclusions. Furthermore, the record contains no evidence that generally accepted appraisal principles were followed in developing the income approach for the subject property. (The Assessor also offered data related to several “comparable” sales. The Assessor failed to offer a meaningful comparative analysis or explain what value the “comparable” sales supposedly prove.) Ultimately, we make no reduction to the assessed values because none of the evidence offered by the Assessor has any probative value and the record does not establish that the Assessor clearly conceded to the lower values that are indicated by his evidence.



**- 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>>.