

REPRESENTATIVE FOR PETITIONER:
Ronald D. Clark, Managing Member,

REPRESENTATIVE FOR RESPONDENT:
Kelly Ewoldt, Montgomery County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Meadowood of Crawfordsville, LLC,)	Petition Nos.: 54-030-09-1-4-00116
)	54-030-10-1-4-00112
Petitioner,)	
)	Parcel No: 54-10-04-111-009.000-030
v.)	
)	
Montgomery County Assessor,)	County: Montgomery
)	
Respondent.)	Assessment Years: 2009 and 2010

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

December 5, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner's property was over-valued for the 2009 and 2010 assessment years.

PROCEDURAL HISTORY

2. The Petitioner, Meadowood of Crawfordsville, LLC (Meadowood), initiated its assessment appeals by filing Form 130 Petitions with the Montgomery County Property Tax Assessment Board of Appeals (the PTABOA) on June 2, 2010, for the 2009 assessment year, and on June 3, 2010, for the 2010 assessment year. The PTABOA issued its determinations on February 18, 2010, for both assessment years.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Ronald Clark, the Managing Member of Meadowood, filed Form 131 Petitions for Review of Assessment with the Board on March 30, 2011, petitioning the Board to conduct an administrative review of the Petitioner's property's 2009 and 2010 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on September 13, 2012, in Crawfordsville, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Ronald D. Clark, Managing Member, Meadowood

For the Respondent:

Kelly Ewoldt, Montgomery County Assessor
Brian Thomas, Expert Witness

6. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Opinion of value letter prepared by Dale Webster of Cornerstone Appraisal Group,
- Petitioner Exhibit 2 – Listing contract for the subject property, dated June 8, 2012.

7. The Respondent presented the following exhibits:

- Respondent Exhibit A – *Millennium Real Estate Investment, LLC v. Benton County Assessor*, Indiana Board of Tax Review, Petition Nos. 04-007-08-1-3-00007, 04-007-08-1-3-00007A, and 04-007-08-1-3-00007B, dated July 6, 2010,
- Respondent Exhibit B – *Vassil Marinov and Venetka Marinova v. Wabash Township Assessor (Tippecanoe County)*, Indiana Board of Tax Review, Petition No. 79-022-06-1-5-00001, dated October 15, 2008,
- Respondent Exhibit C – Opinion of value letter prepared by Dale Webster of Cornerstone Appraisal Group, and 2005 through 2008 operating statements for Corey Complex,
- Respondent Exhibit D – 2003 through 2008 income statements and operating statements for Meadowood prepared by Michael L. White, Appraisal Management Research Company,
- Respondent Exhibit E – Respondent’s Income approach analysis on the subject property,
- Respondent Exhibit F – LoopNet property listing for the subject property, February 1, 2008,
- Respondent Exhibit G – “Crawfordsville, IN Market Trends” dated September 13, 2012,
- Respondent Exhibit H – Property record card for the subject property.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notices of Hearing, dated August 1 and 3, 2012,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a 31,831 square foot commercial retail complex located at 1904-1936 Indianapolis Road, Crawfordsville, in Montgomery County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2009, the PTABOA determined the assessed value of the property to be \$146,100 for the land and \$650,500 for the improvements, for a total assessed value of \$796,500 and for 2010, the PTABOA determined the assessed value of the property to be \$146,100 for the land and \$639,500 for the improvements, for a total assessed value of \$785,600.
12. At the hearing, the Petitioner's representative requested a total assessed value of \$469,000 for both assessment years.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

14. The Petitioner's representative contends that the property under appeal was over-valued based on its income value. *Clark testimony*. In support of this contention, Mr. Clark submitted a two page opinion of value prepared by Dale Webster of Cornerstone Appraisal Group.¹ *Petitioner Exhibit 1*. In his opinion of value, Mr. Webster indicated he used the "income and expense figures that were provided," or \$121,083 for the property's income in 2008 and \$78,199 for the property's expenses, resulting in a net operating income of \$42,884. *Petitioner Exhibit 1*. Applying an overall rate of 9.134%, Mr. Webster estimated the property's value to be \$469,000. *Petitioner Exhibit 1*.
15. Mr. Clark further argues that the Petitioner's property has never been able to "cash flow" because of vacancies. *Clark testimony*. The Petitioner also had to reduce the rent to one-third on some buildings to keep tenants. *Id.* As a result of these issues, Mr. Clark testified, the bank has not renewed the mortgage on the property. *Id.* Mr. Clark argues that, because the Petitioner's property continues to experience cash flow and occupancy problems, the county's assessed values for 2009 and 2010 for the property are in excess of the property's market value. *Id.*
16. Finally, Mr. Clark contends that the Petitioner's property was assessed for more than its market value-in-use in 2009 and 2010, based on the property's listing price. *Clark testimony*. In support of this position, the Petitioner's representative submitted an amendment to listing contract. *Petitioner Exhibit 2*. According to Mr. Clark, the property under appeal was listed for sale on June 7, 2011, for \$659,000. *Id.* In response to questioning, however, Mr. Clark admitted that the property was originally listed for \$962,600 on February 1, 2008. *Clark testimony; See Respondent Exhibit F*. But, Mr. Clark contends, because the Petitioner did not receive any offers on the property, the property's assessed value should be reduced for 2009 and 2010. *Clark testimony*.

¹ Mr. Clark referred to the document prepared by Mr. Webster as an "appraisal." *Clark testimony; Petitioner Exhibit 1*.

RESPONDENT'S CONTENTIONS

17. The Respondent's witness, Mr. Thomas, contends that the property under appeal was not over-assessed for 2009 and 2010. *Thomas testimony*. In support of his contention, Mr. Thomas presented an income approach calculation based on the property's 2005 through 2008 income and expense statements. *Thomas testimony; Respondent Exhibit E*. According to Mr. Thomas, the assessor determined the total income by adding the Petitioner's rental income, utility reimbursement and miscellaneous income. *Id.* She then subtracted the property's actual expenses, excluding interest income and property taxes, to arrive at the net operating income. *Id.* The assessor then applied the same capitalization rate as used by the Petitioner's representative in his calculation of 9.134%, resulting in an estimated property value of \$907,380 for 2005, \$812,790 for 2006, \$909,460 for 2007 and \$883,620 for 2008.² *Id.* Based on the assessor's analysis, Mr. Thomas argues, the Petitioner's property was slightly undervalued for the 2009 and 2010 assessment years, rather than over-valued as the Petitioner's representative argues. *Thomas testimony*.
18. The Respondent's witness also argues that the Petitioner's property was not over-valued based on the property's sales and listing prices. *Thomas testimony; Respondent Exhibit F*. Mr. Thomas testified that the Petitioner's property sold on February 11, 2002, for \$1,160,000. *Thomas testimony; Respondent Exhibit H*. The property record card also shows that the property was purchased by Meadowood on April 13, 2006, for \$1,600,000. *Respondent Exhibit H*. In addition, Mr. Thomas submitted a listing sheet showing the Petitioner's property was offered for sale on February 1, 2008, for \$962,600, or \$30.24 per square foot. *Respondent Exhibit D*. In fact, Mr. Thomas contends, "LoopNet" shows that retail properties in Crawfordsville averaged slightly below \$55 per square foot between 2010 and 2011. *Thomas testimony; Respondent Exhibit G*. The property record

² Mr. Thomas argued that the assessor's income approach calculation is compliant with Uniform Standards of Professional Appraisal Practice (USPAP). *Thomas testimony*.

card shows that for 2009, the Petitioner's property was assessed at \$796,500 or \$25.02 per square foot and for 2010, the assessed value was \$785,600 or \$24.68 per square foot. *Respondent Exhibits F and H*. Thus, the Mr. Thomas concludes, the Petitioner's property was not over-valued for those assessment years. *Thomas testimony*.

19. Finally, Mr. Thomas argues, the Petitioner's opinion of value should be given little weight. *Thomas testimony*. According to Mr. Thomas, Mr. Webster did not remove the property taxes from his expenses which should have been done when valuing a property for property tax purposes. *Id*. Similarly, Ms. Ewoldt argues that by failing to thoroughly explain his calculation, Mr. Webster's value conclusion has little credibility. *Ewoldt testimony; citing Millennium Real Estate Investment, LLC v. Benton County Assessor*, Petition Nos. 04-007-08-1-3-00007, 04-007-08-1-3-00007A, and 04-007-08-1-3-00007B, dated July 6, 2010, and *Vassil Marinov and Venetka Marinova v. Wabash Township Assessor (Tippecanoe County)*, Petition No. 79-022-06-1-5-00001, dated October 15, 2008.

Burden of Proof

20. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here because the property's assessed value did not increase

³ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

more than 5% over its previous year's assessment, the Petitioner retains the burden of proof.

ANALYSIS

21. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI 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, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
22. 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. 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. But for March 1, 2010, the valuation date and assessment date were the same. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
23. The Petitioner's representative first contends that the property under appeal was over-valued based on the income approach to value. *Clark testimony*. "The income approach to value is based on the assumption that potential buyers will pay no more for the subject property ... than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property." MANUAL at 14. The income approach thus focuses on the intrinsic value of the property; rather than the

Petitioner's operation of the property because property-specific rents or expenses may reflect elements other than the value of the property "such as quality of management, skill of work force, competition and the like." *Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992). See also MANUAL at 5 ("[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data").

24. Here, the Petitioner's representative offered a two-page opinion of value prepared by Mr. Webster. *Clark testimony*. According to Mr. Webster's opinion of value, he applied the income approach and used the subject property's 2008 rent and expenses to estimate the property's value at \$469,000. *Clark testimony; Petitioner Exhibit 1*. The Petitioner's representative, however, provided no evidence to demonstrate whether the property's income and expenses were typical for comparable properties in the market. Thus, any low rent or high expenses may be attributable to the Petitioner's management of the property rather than the property's market value. See *Thorntown Telephone Company*, 588 N.E.2d at 619. See also, *Lake county Trust Co. No. 1163 v. State Board of Tax Commissioners*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). In fact, the opinion of value suggests that Mr. Webster failed to even confirm that the Petitioner's income and expense figures were accurate.⁴
25. The Petitioner's evidence also shows that Mr. Webster made a deduction for real estate taxes as an expense. *Petitioner Exhibit 1*. But when valuing property for ad valorem tax purposes, subtracting real estate taxes as an expense "distorts the final estimate of value." *Millennium Real Estate Investment, LLC v. Benton County Assessor*, Cause No. 49T10-1008-TA-42 (Ind. Tax Ct. Nov. 5, 2012).

⁴ "Based on the income and expense figures *that were provided*, the current market would value that income stream at about \$469,000." *Petitioner Exhibit 1* (emphasis added).

26. In addition, Mr. Webster failed to adequately support his choice of capitalization rates. A capitalization rate “reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rate of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters.” *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Here, Mr. Webster provided no explanation for his choice of 9.134% as the overall rate and the Petitioner’s representative failed to show that was the appropriate capitalization rate for a sale of commercial property in Crawfordsville.
27. Ultimately, the Petitioner’s representative failed to show that Mr. Webster’s income approach methodology conformed to the Uniform Standards of Professional Appraisal Practice (USPAP) or any other generally accepted standards. Consequently, the Petitioner’s income approach calculation lacks probative value in this case. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
28. The Petitioner’s representative also contends that the assessed value of the Petitioner’s property should be reduced for 2009 and 2010 because the Petitioner has been unable to sell the property for its June 7, 2011, listing price of \$659,000. *Clark testimony; Petitioner Exhibit 2*. However, the Petitioner’s representative admitted the Petitioner’s property was listed for \$962,600 prior to February 1, 2008. *Clark testimony; See Respondent Exhibit F*. “True tax value may be thought of as the ask price of property by its owner, because this value more clearly represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property.” MANUAL at 2. Thus, when reasonable marketing efforts

are made to sell a property at a given price for a long period of time and those efforts are unsuccessful, it can be inferred that the market value-in-use of a property is something less than its asking price. Here, the parties' evidence shows that the property under appeal was listed for sale on or around February 1, 2008, for \$962,600. For the March 1, 2009, assessment date, however, the property's assessed value was only \$796,500 and for the March 1, 2010, assessment date the property's assessed value was only \$785,600.

29. Mr. Clark argues that, because the property was listed through September 30, 2012, at \$659,000 and did not sell, the property's market value is lower than the property's 2009 and 2010 assessed values. *Clark testimony*. However, the fact the Petitioner could not sell the property for \$659,000 in 2011 or 2012 is not evidence that the property would not have sold in 2009 and 2010 for that price. Thus, the Petitioner's 2011 and 2012 listing price fails to show the property was over-assessed for the March 1, 2009, and March 1, 2010, assessment dates and the property's listing price in 2008 supports the property's assessed value.

30. Finally, to the extent that the Petitioner's contentions the property suffers from high vacancy or low rental rates can be seen as a claim for obsolescence, this argument also fails. It is not sufficient for the Petitioner's representative to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner's representative must explain how the purported causes of obsolescence cause the property to suffer an actual loss in value. *See Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003) ("All Indian has done in this case is provide the State Board with a laundry list of factors that may cause obsolescence to its improvements and then say 'as a result, we're entitled to a 70% obsolescence adjustment.' However, Indian needed to link one with the other by showing an actual loss in value.") Because, as the Board found above, the Petitioner's representative failed to sufficiently show the property's market value-in-use, the Petitioner has failed to raise a prima facie case that the subject property's 2009 and 2010 assessments were incorrect.

31. Where the Petitioner’s representative has not supported the Petitioner’s claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

32. The Petitioner failed to raise a prima facie case that its property was over-valued for the 2009 or 2010 assessment years. The Board finds in favor of the Respondent and holds that the property’s assessed values should not be changed.

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

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 under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.