

REPRESENTATIVE FOR PETITIONER:  
Bradley J. Adamsky, Attorney

REPRESENTATIVE FOR RESPONDENT:  
Frank J. Agostino, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Princess City Plaza, LLC,	)	Petition No.:	71-005-08-1-4-00947
	)		
Petitioner,	)	Parcel No.:	71-04-33-402-002.000-005
	)		
v.	)	County:	St. Joseph
	)		
St. Joseph County Assessor,	)	Township:	Clay
	)		
Respondent.	)	Assessment Year:	2008

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Appeal from the Final Determination of the  
St. Joseph County Property Tax Assessment Board of Appeals

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**May 15 , 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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**

**INTRODUCTION**

1. The Respondent had the burden to prove that the subject property's March 1, 2008, assessment was correct. Did the Respondent prove the 2008 assessment was correct?

## **PROCEDURAL HISTORY**

2. The Petitioner initiated its 2008 appeal with the St. Joseph County Assessor on December 21, 2009. On May 13, 2011, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. On June 27, 2011, the Petitioner timely filed a Form 131 petition with the Board.
3. On February 20, 2014, the Board's administrative law judge, Jennifer Bippus (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Certified appraiser Dennis Dillman, certified appraiser Douglas Edison, certified appraiser John Leader, and St. Joseph County Assessor Rosemary Mandrici were sworn and testified.
5. The Petitioner submitted the following exhibits: <sup>1</sup>  

Petitioner Exhibit 1:	Form 131 petition with attachments,
Petitioner Exhibit 4:	Income and expense reports (Federal Tax Form 8825),
Petitioner Exhibit 5:	Subject property record card,
Petitioner Exhibit 6:	Appraisal report for subject property performed by Douglas Edison and Dennis Dillman, with an effective date of January 1, 2011.
6. The Respondent submitted the following exhibit:  

Respondent Exhibit 1:	Retrospective appraisal of the subject property performed by John Leader, with an effective date of 2008-2010, and a copy of the subject property record card. <sup>2</sup>
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7. The following additional items are recognized as part of the record:  

Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Hearing notice, dated October 29, 2013,
Board Exhibit C:	Respondent's request for continuance, dated December 6, 2013,

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<sup>1</sup> Petitioner Exhibits 2 and 3 are listed on the Petitioner's cover sheet, but they were not submitted at the hearing.

<sup>2</sup> Mr. Adamsky initially objected to this exhibit, but ultimately withdrew his objection.

Board Exhibit D: Board's granting of continuance request, dated December 9, 2013,  
Board Exhibit E: Hearing notice, dated December 13, 2013,  
Board Exhibit F: Notice of Appearance for Frank Agostino,  
Board Exhibit G: Notice of Appearance for Bradley Adamsky,  
Board Exhibit H: Hearing sign-in sheet.

8. The subject property is an improved commercial property, commonly known as Princess City Plaza, located at 4312 Grape Road in Mishawaka.
9. The PTABOA determined that the March 1, 2008, assessment is \$1,933,100 for land and \$10,937,700 for improvements, for a total value of \$12,870,800.
10. The Petitioner requested a total assessment of \$7,000,000 at the hearing.

#### **JURISDICTIONAL FRAMEWORK**

11. The 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 Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **PETITIONER'S CONTENTIONS**

12. The subject property's assessment is too high. To prove this, the Petitioner submitted an appraisal performed by Douglas Edison and Dennis Dillman; both licensed certified appraisers in Indiana. The appraisal was performed in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) with Mr. Edison generally completing the appraisal and Mr. Dillman supervising him.<sup>3</sup> The subject property's

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<sup>3</sup> Mr. Edison is a certified residential appraiser. He is qualified to appraise properties such as the subject property with supervision, and in this case was supervised by Mr. Dillman. Mr. Dillman did acknowledge that he previously served on the PTABOA, but he had nothing to do with the subject property's assessment. Even though the Petitioner brought an appeal while Mr. Dillman served on the PTABOA, the Petitioner's appeal was tabled and not discussed further until Mr. Dillman and the PTABOA parted ways.

indicated value as of January 1, 2011, should be \$7,000,000. *Adamsky argument; Edison testimony; Dillman testimony; Pet'r Ex. 6.*

13. Mr. Edison developed all three approaches to value in his appraisal including the cost approach, the income approach and the sales comparison approach. Under the cost approach, Mr. Edison testified that he analyzed land sales in the district, and estimated a land value for the subject property at \$3,600,000. Mr. Edison testified that he used the Marshall & Swift cost tables and considered things such as the building's size, wall height, type and quality of construction, age, and physical condition when determining the value of the improvements. The appraisal was adjusted to reflect local market conditions. Based on the cost approach, Mr. Edison estimated the total value of the subject property at \$7,100,000. *Edison testimony; Pet'r Ex. 6 at 40-51.*
14. Next, Mr. Edison estimated the value of the subject property utilizing the income approach. Mr. Edison acknowledged that he had access to the Petitioner's audited accounting records and leases, although he had to estimate some of the leases' termination dates. He did not solely rely on property-specific income and expenses. He also analyzed local market-extracted figures. Therefore, his income analysis is a reconstructed approach based on local market expectations of the rent new tenants would pay. Mr. Edison points to the fact that a former tenant, Bed Bath & Beyond, vacated the subject property and moved to a place with lower rent is evidence that market rent is lower than actual rent. Using the income approach with an 11% capitalization rate, Mr. Edison estimated the subject property should be valued at \$6,900,000. *Edison testimony; Pet'r Ex. 6 at 66-99.*
15. Finally, Mr. Edison developed the sales-comparison approach. All of the comparable properties that were chosen were within the local market area. They were the "best representative of the overall market." Further, the properties were chosen on the standard of proximity, similarity, physical condition, and economic conditions, not just sales numbers. Under the sales-comparison approach, Mr. Edison concluded the subject property should be valued at \$7,400,000. *Edison testimony; Pet'r Ex. 6 at 54-65.*

16. While Mr. Edison and Mr. Dillman agree that the comparable sales used in their sales-comparison approach occurred outside the time frame required for the 2008 valuation date, the appraisal was completed for the purpose of appealing multiple years' assessments.<sup>4</sup> Mr. Dillman described the approach as "regression analysis" and stated that "if the market conditions have not changed in a period of time, an appraisal would be valid going forward or going backward." Thus, the value obtained under the sales-comparison approach would be valid for the 2008 valuation date because no substantial market changes occurred. *Edison testimony; Dillman testimony.*
  
17. According to Mr. Adamsky, the appraisal prepared by Mr. Edison is more probative than the appraisal presented by the Respondent. Mr. Edison used actual income and expense figures, making his value more credible. In the cost approach, Mr. Edison relied on local values rather than national costs as utilized by the Respondent's appraiser. Finally, both appraisals relied on sales that occurred after the valuation date, but the Respondent's appraiser selected sales outside the local market, while Mr. Edison chose local sales. *Adamsky argument.*

#### **RESPONDENT'S CONTENTIONS**

18. The Respondent offered a USPAP compliant appraisal performed by John Leader, a certified Indiana appraiser, with an effective date of "2008-2010." Although Mr. Leader has not appraised a similar shopping center before, he is well-qualified to appraise the subject property given he has appraised many other retail establishments. Utilizing the cost approach, Mr. Leader estimated the subject property should be valued at \$12,900,000. *Leader testimony; Resp't Ex. 1.*
  
19. In his appraisal, Mr. Leader developed all three approaches to value, but relied most heavily on the cost approach. Mr. Leader testified that the most difficult aspect of the appraisal was determining the land value. As pointed out by Mr. Leader, in 2008, there was a significant error in the land assessment; it was only assessed at approximately

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<sup>4</sup> Mr. Edison is referring to appeals for 2008, 2009, 2010, and 2011, however, the only year under appeal here is 2008.

\$1,900,000, while the correct value should have been approximately \$3,700,000. In order to develop the costs for the subject property, Mr. Leader acknowledged he utilized a national cost table. After taking the depreciated cost of the improvements into consideration and adding the value for the parking lot paving, Mr. Leader testified the cost approach indicates a value of \$12,916,103 for the subject property. *Leader testimony; Resp't Ex. 1* at 15-19.

20. In his appraisal, Mr. Leader also developed the sales-comparison approach, using both regional and national sales. More specifically, he “ran a significant number of sales on a regression analysis.” Utilizing the sales-comparison approach, Mr. Leader valued the subject property at \$13,044,456. *Leader testimony; Resp't Ex. 1* at 31-37.
21. Finally, Mr. Leader developed the income approach to value. According to Mr. Leader, the subject property is a high-performing lease property with no vacancy in 2008. Since he did not have access to the property’s leases, Mr. Leader used a form of direct capitalization. In doing so, he developed two capitalization rates. One was taken from analyzing about 25 sales, while the other was calculated using the “band-of-investment method.” These rates produced two values for the subject property under the income approach, \$15,919,283 and \$15,865,784 respectively. *Leader testimony; Resp't Ex. 1* at 22-30.
22. Mr. Leader claims his appraisal is superior to the Petitioner’s, pointing out several flaws in the Petitioner’s appraisal. First, the effective date for the Petitioner’s appraisal is outside the timeframe for a 2008 assessment. Further, the Petitioner’s cost estimates are so low that they are “off the wall.” And lastly the 11% capitalization rate is way too high. *Leader argument.*
23. Mr. Agostino argues that the subject property should be valued according to the lowest amount obtained under the three approaches to value, thus the subject property should be valued at \$12,900,000 according to the cost approach. *Agostino argument; Resp't Ex. 1.*

## BURDEN OF PROOF

24. 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. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof. *See Ind. Code* § 6-1.1-15-17.2.
25. Indiana 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).
26. Here, the assessment increased from \$12,253,100 in 2007 to \$12,870,800 in 2008, an increase of 5.04%. Both parties also agree that the assessed value increased by more than five percent (5%). Thus the Respondent has the burden of proving that the 2008 assessment is correct.

## ANALYSIS

27. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); MANUAL at 2. To show market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market-value-in-use appraisal prepared according to USPAP often will 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 for the property under appeal, sales

information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

28. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. See *O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2008 assessment was January 1, 2007. 50 IAC 21-3-3 (2008). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
29. In this case, the Respondent had the burden of proof. The Respondent presented a USPAP compliant appraisal prepared by John Leader that was dated December 19, 2013. It had an effective date of "2008–2010." *Resp't Ex. 1*. Mr. Leader valued the subject property using all three approaches to value: the cost approach, the income approach, and the sales comparison approach. He placed the most weight on the cost approach and valued the subject property at \$12,900,000. In his cost approach Mr. Leader used the square foot methodology with increased adjustments for building heights of twenty feet. He estimated the value for 2009, but not for 2008, because of some "land errors." Mr. Leader stated that this value could also suffice for 2008 because there was not much change in the market.
30. In his sales comparison approach to value, Mr. Leader did not view the local lease agreements for the subject property, but did look at the income and expense data acquired from the owner. In the regression analysis he used Loop Net sales that represented regional and national retail sales from 2008 through 2010. The building areas ranged from 6,400 square feet to 125,238 square feet. Mr. Leader adjusted these sales to the local market, and came up with a value of \$13,044,455 for the subject property under the sales comparison approach. Once again, the sales used in Mr. Leader's analysis were much smaller and the majority of the sales were from 2009 and 2010, with the exception of three from 2008.



31. Further, the income approach in the Respondent's appraisal was flawed. Mr. Leader relied on market rents of "similar" properties; however, the properties he relied on differed in size and in use when compared to the subject property. Mr. Leader did not go into detail about any adjustments made in his income approach to account for the differences that existed. Again, the major problem with Mr. Leader's income approach is that he did not relate his income approach to the valuation date of January 1, 2007.
32. Mr. Leader presented his appraisal information for the years of 2008 through 2010. He did not calculate specific values for 2008 but instead stated that the market was steady for all of the years included in his appraisal. He provided no support for his assumption. To elaborate on Mr. Leader's appraisal, there were multiple flaws. There was not enough information in the appraisal from 2008 to form a value of opinion for the March 1, 2008, assessment date. For instance, Mr. Leader stated that there was a problem with the land valuation through the assessor for the 2008 assessment and therefore used his 2009 calculation as his cost approach to value. However, he failed to explain how this information related to the relevant valuation date of January 1, 2007. Further, the sales used in the income and sales comparison approaches were mostly from 2009 and 2010. The local assessing officials were instructed to use sales of properties occurring between January 1, 2007, and December 31, 2008, in performing ratio studies for a March 1, 2008, assessment date. Mr. Leader's comparable sales information was more in line with 2009 and moving forward. The Respondent did not present a prima facie case that the 2008 assessment value should be \$12,900,000, or that the current assessment of \$12,870,800 is correct.
33. Because the Respondent failed to meet her burden of proof, the 2008 assessment must be reduced to the previous year's level of \$12,253,100. That, however, does not end the Board's inquiry. The Petitioner requested that the 2008 assessment be lowered to \$7,000,000. Thus, the Petitioner has the burden of proving that it is entitled to any additional reduction. The Board therefore turns to the Petitioner's evidence.

34. The Petitioner offered an appraisal performed by Mr. Edison and Mr. Dillman, both certified appraisers. Mr. Edison and Mr. Dillman performed the appraisal according to USPAP guidelines. The effective date of the appraisal is January 1, 2011. Both Mr. Edison and Mr. Dillman contend the appraisal applies to 2008 through 2011. Mr. Edison and Mr. Dillman utilized the cost, income and sales comparison approaches to value. The cost approach and the sales comparison approach both valued the subject property at \$7,100,000. The income approach valued the subject property at \$6,900,000.
35. The Petitioner's appraisal is flawed in various ways, but most importantly, the appraisal does not appear to reflect the market for the assessment date in question, March 1, 2008. The information used in the Petitioner's appraisal is from 2010 and 2011 and is too far removed from the valuation date of January 1, 2007. Further, the valuation date was never even mentioned in the appraisal. Although, Mr. Edison and Mr. Dillman claim that the appraisal incorporates 2008, the appraisal itself contains no such statement. Using income and expense data from 2010 and 2011 and sales from 2009 through 2011 without relating it back to 2008 falls short of what is required. Thus, the Petitioner did not meet its burden to reduce the property to \$7,000,000.
36. In a sense, the parties have agreed through their evidence that, whatever the value of the subject property was, it was the same in 2008, 2009, and 2010. Both parties seem to agree that the market was static for this time period. However, for this appeal the valuation date was January 1, 2007. Neither party's appraisal even mentions this date. And at the hearing, neither appraiser made any attempt to relate his respective value estimate to January 1, 2007. The appraisers only asserted through testimony that their retrospective value estimates applied to 2008 and forward. Because the valuation date in question here is January 1, 2007, neither appraiser offered probative evidence of the subject property's correct 2008 assessment.
37. In this appeal, neither party offered probative evidence of the value for March 1, 2008, or January 1, 2007. Consequently, because neither the Respondent nor the Petitioner met

the burden of proof, the assessment reverts back to the prior year, or March 1, 2007, assessment of \$12,253,100. *See* Ind. Code § 6-1.1-15-17.2(b) (2014).

#### SUMMARY OF FINAL DETERMINATION

38. Neither the Respondent nor the Petitioner offered substantial evidence that bore any relationship to the valuation date for a 2008 assessment, which was January 1, 2007. Therefore, neither party met their burden. Thus, Ind. Code § 6-1.1-15-17.2(b) provides that the March 1, 2008, assessment for the subject property must be returned to the previous year's level of \$12,253,100.

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

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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 of 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>>.