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

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| **Petition Nos.:** | **79-026-12-1-4-00002** |
| | **79-026-13-1-4-00006**[1] |
| **Petitioner:** | **State Street Corner LLC** |
| **Respondent:** | **Tippecanoe County Assessor** |
| **Parcel No.:** | **79-07-19-286-011.000-026** |
| **Assessment Years:** | **2012 & 2013** |

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

### Procedural History

1. State Street Corner LLC ("Petitioner") filed Form 130 petitions with the Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA") for the 2012 and 2013 assessment years on November 13, 2012, and September 17, 2013, respectively.

2. The PTABOA upheld the 2012 assessment on January 10, 2014, and the 2013 assessment on September 19, 2014.

3. Petitioner timely filed Form 131 petitions, electing to have its appeals heard under the Board's small claims procedures. Eric Grossman, the Tippecanoe County Assessor ("Respondent"), did not elect to have the proceeding removed from the small claims procedures.

4. Dalene McMillen, the Administrative Law Judge ("ALJ") appointed by the Board, held a hearing on July 21, 2015. Neither the ALJ nor the Board inspected the property.

5. Milo Smith, tax representative, and Belinda Graber, certified appraiser, were sworn as witnesses for Petitioner. Eric Grossman, the Tippecanoe County Assessor, and Max Campbell, the Tippecanoe County Project Manager, were sworn as witnesses for Respondent.[2]

[1] Pet. 79-026-11-1-4-00013 was also initially filed as part of this appeal but was withdrawn at the hearing.
[2] Christopher Coakes of the Tippecanoe County Assessor's appeals office was sworn as a witness but did not testify. Matthew Salsbery, attorney for Tippecanoe County, was in attendance to observe the hearing.

## Facts

6. The property under appeal is a one-story general retail building located at 304 West State Street in Lafayette.

7. The PTABOA determined the following assessments for the parcel under appeal:

| Years | Land | Improvements | Total |
|---|---|---|---|
| **2012** | **-0-** | **$692,200** | **$692,200** |
| **2013** | **-0-** | **$753,200** | **$753,200** |

## Record

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

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1 – Rental real estate income and expenses of a partnership or an S corporation – Form 8825 for 2010-2012
Petitioner Exhibit 2 – 2010 subject property record card ("PRC")
Petitioner Exhibit 3 – Petitioner's income & expenses analysis for 2010-2014,
Petitioner Exhibit 4 – Petitioner's CoStar lease comp summary

Respondent Exhibit 1 – 2011 IncomeWorks Evaluation Report
Respondent Exhibit 2 – 2011 subject PRC
Respondent Exhibit 3 – 2012 IncomeWorks Evaluation Report
Respondent Exhibit 4 – 2012 subject PRC
Respondent Exhibit 5 – 2013 IncomeWorks evaluation report
Respondent Exhibit 6 – 2013 subject PRC
Respondent Exhibit 7 – Assessor's assessment equitability analysis
Respondent Exhibit 8 – Assessor's CoStar data
Respondent Exhibit 9 – Assessor's bar graphs and spreadsheet showing 2009-2013 net operating income average per square foot

Board Exhibit A – Form 131 petitions with attachments
Board Exhibit B – Notices of hearing
Board Exhibit C – Hearing sign-in sheets

c. These Findings and Conclusions.

## Burden of Proof

9. 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.

10. 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).

11. 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 IC 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).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. Because the assessed value increased by less than 5% between 2011 ($674,100) and 2012 ($692,200), Petitioner had the burden of proving that the 2012 assessment was incorrect. The burden with regard to the 2013 assessed value depends on the resolution of the 2012 matter and will be addressed in turn.

## Summary of Parties' Contentions

14. Petitioner's case:

    a. Ms. Graber presented Petitioner's income approach to value. Mr. Smith provided her with income statements from Petitioner's tax returns for 2011 and 2012. Taking the information contained therein, Ms Graber constructed income statements showing gross income and actual expenses for the years at issue. *Smith & Graber testimony; Pet'r Ex. 1 & 3.*

b. Petitioner also presented a lease comparison summary using CoStar. In her CoStar search, Ms. Graber used only closed properties as opposed to both active and closed properties, which she believes Respondent to have used. The properties Ms. Graber used were classified as either 'modified gross" properties or "triple net" properties. She indicated that the subject property leased as a net income property and that comparable rents in the area ranged from $8.00 to $22.00 per square foot. *Graber testimony; Pet'r Ex. 4*.

c. Petitioner argues that the subject property's current 2012 and 2013 assessments should be reduced to the 2011 assessment level of $674,100. *Smith testimony.*

15. Respondent's case:

a. Respondent used IncomeWorks to compute the value using the income approach. IncomeWorks predicts rents, vacancies, expenses, and rates of capitalizations from aggregate data. It also allows the county to store independent rent studies and national CoStar rent studies. Respondent concluded from the aggregate data that the 2012 and 2013 assessments are fair and accurate. *Grossman testimony; Resp't Ex. 3 & 5.*

b. Mr. Campbell testified he conducted a rent and assessment equitability analysis using CoStar data and aggregate data. From the data, he measured the subject property against properties located within a quarter-mile. The comparable retail properties would typically be competing for the same type of tenants as the subject property. The county used 2010 through 2013 data to determine the four year average rent was $15.08 per square foot. The study also showed the four year average assessed value per square foot was $143.90, while the subject property's average assessed value per square foot was $136.33. Thus, Respondent contends the equitability analysis supports the 2012 and 2013 assessments. *Campbell testimony; Resp't Ex. 7-9.*

c. Respondent claims Petitioner's Exhibit 4 CoStar analysis shows a property at 360 Brown Street. The property is shown as a triple net lease at $8.00 per square foot. According to Respondent, 360 Brown Street is inferior to the subject property because it is located behind State Road 26, it is difficult to access, and typically commands less rent. Respondent also pointed out that other triple net lease properties on Petitioner's exhibit that are comparable to the subject property show rents ranging from $14.00 to $20.00 per square foot. *Grossman testimony.*

## Analysis

16. 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." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

17. 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. 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). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

18. In this case, Petitioner offered the subject property's income and expenses for 2012 and 2013. The Petitioner also offered Ms. Graber's CoStar lease comparison summary showing properties in the area rented from $8.00 per square foot to $22.00 per square foot.

19. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also necessary to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property are out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expenses helps protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013).

20. Here, Petitioner failed to compare the subject property's income and expenses to the same kind of data from comparable properties in the market. Similarly, Petitioner failed to demonstrate that the CoStar national rental rates were based on properties similar or

comparable to the subject property. Furthermore, the record lacks evidence that the Petitioner's methods comply with generally accepted appraisal principles.

21. Accordingly, the Board concludes Petitioner failed to make a prima facie case that the assessed value for 2012 is incorrect. Because the Petitioner failed to prove the incorrectness of the assessment at issue, Respondent's duty to prove the correctness of the assessments with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003). Consequently, the Board orders no change for 2012.

22. Because the assessed value increased by more than 5% between 2012 ($692,200) and 2013 ($753,200), Respondent has the burden of proof for the 2013 assessment year.

23. Respondent used data collected by IncomeWorks to determine the 2013 assessed value. While Respondent asserted that IncomeWorks uses data from properties that are similar in age, condition, design, quality, amenities, and have similar locations, Respondent failed to relate the properties' specific features and characteristics to the subject property. Specific reasons must be provided as to why a proponent believes a property is comparable. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of two properties.

24. Respondent also failed to specifically explain how the capitalization rate it used was derived. 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 Hometown Assay's, L.P. v. Maley,* 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005).

25. As part of making a prima facie case, "it is the taxpayer's duty to walk the [Board] through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (*quoting Clark v. Dep't of Local Go's Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002). This requirement applies equally to an assessor bearing the burden. Here, the record contains no substantial basis for any of the factors discussed herein and there is no evidence that the report at issue was prepared according to generally accepted appraisal principles.

26. Respondent's income approach did not provide probative evidence of the subject property's market value-in-use for the 2013 assessment. Further, Respondent failed to walk the Board through every element of the income approach analysis as required by *Long,* and did not demonstrate that it conforms to generally accepted appraisal and assessment principles. IncomeWorks may be a valid tool for delivering a calculation of value, but Respondent failed to prove it. Furthermore, a party introducing a report produced by such a software tool must also show that the underlying data used by the

software are reliable to the conclusion to constitute probative evidence of a property's market value-in-use.

27. Because Respondent failed to offer probative evidence to show market value-in-use, he failed to make a prima facie case that the 2013 assessed value is correct. Therefore, Petitioner is entitled to have the assessment level returned to the 2012 amount. However, Petitioner requested that the 2013 value be assessed at a level lower than the 2012 level. As discussed above, Petitioner failed to make a prima facie case for any lower value.

## Conclusion

28. For 2012, Petitioner failed to make a prima facie case that the 2012 assessed value is incorrect. For 2013, Respondent failed to make a prima facie case that the 2013 assessed value is correct and Petitioner failed to make a case that it should be lower than the 2012 assessed value.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the Board finds that the assessed value should be $692,200 for both 2012 and 2013.

ISSUED: December 18, 2015

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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

## 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 <u>within forty-five (45) days</u> 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**.**