

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

Petitions: 45-030-10-1-4-00542-16
45-030-11-1-4-00543-16
45-030-12-1-4-00546-16
45-030-13-1-4-00544-16
45-030-14-1-4-00547-16
Petitioner: Merrillville Lakes DE, LLC
Respondent: Lake County Assessor
Parcel: 45-12-20-476-008.000-030
Assessment Years: 2010-2014

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

Procedural History

1. Petitioner initiated the 2010 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on July 25, 2011, the 2011 appeal on July 9, 2012, the 2012 appeal on February 13, 2013, the 2013 appeal on June 10, 2014, and the 2014 appeal on June 1, 2015. For all years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
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 May 8, 2017. Neither the ALJ nor the Board inspected the property.
4. The following people were sworn as witnesses:

For Petitioner: Dirk Abe Rivera, tax representative
Adam Vince, appraiser
George Novogroder, owner

For Respondent: Jerome Prince, Lake County Assessor
Robert Metz, Lake County Hearing Officer
Joseph James, Lake County Hearing Officer
Nicole Ooms, Ross Township Deputy Assessor

Facts

- 5. The subject property is an apartment complex located at 8500 Grant Street in Merrillville.
- 6. The assessments for the years at issue are as follows:

Year	Land	Improvements	Total
2010	\$609,600	\$6,490,400	\$7,100,000
2011	\$609,600	\$17,290,400	\$17,900,000
2012	\$609,600	\$21,390,400	\$22,000,000
2013	\$609,600	\$27,890,400	\$28,500,000
2014	\$609,600	\$32,890,400	\$33,500,000

- 7. Petitioner requested the following values:

Year	Total
2010	\$4,315,000
2011	\$11,659,000
2012	\$15,430,000
2013	\$17,786,000
2014	\$18,049,800

Record

- 8. The official record contains the following:
 - a. A digital recording of the hearing
 - b. Exhibits:

Petitioner Exhibit 1: Form 131 petitions for 2010, 2011, 2012, 2013, and 2014
Petitioner Exhibit 2: Request to amend the Form 131 petitions

Petitioner Exhibit 3:	Dale Kleszynski Appraisal
Petitioner Exhibit 4:	Letter from Dale Kleszynski dated April 18, 2017
Petitioner Exhibit 5:	Comparable sales analysis
Petitioner Exhibit 6:	Tax bills for the years at issue
Petitioner Exhibit 7:	Adam Vince Appraisal
Petitioner Exhibit 8:	Trended 2013 construction cost for 2014 using the Consumer Price Index ("CPI")
Petitioner Exhibit 9:	Tax asset detail for 1/1/15-12/31/15
Petitioner Exhibit 10:	Merrillville Lakes construction costs
Petitioner Exhibit 11:	Final certificates of occupancy
Petitioner Exhibit 12:	Property record cards for 2010, 2011, 2012, 2013, & 2014
Respondent Exhibit 1:	Dale Kleszynski Appraisal
Respondent Exhibit 2:	Letter from Dale J. Kleszynski dated April 18, 2017
Respondent Exhibit 3:	Sales disclosure form
Respondent Exhibit 4:	CoStar sale report
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

9. Petitioner objected to Respondent Exhibit 1, the Dale Kleszynski Appraisal, because Mr. Kleszynski used Petitioner's actual income and expenses which were confidential. Petitioner feels that the use of that confidential information is inappropriate because Respondent did not ask Petitioner's permission. The ALJ took the objection under advisement.
10. Indiana Code § 6-1.1-4-39 states, "All information related to earnings, income, profits, losses, or expenditures that is provided to the assessor under this section is confidential under IC 6-1.1-35-9 to the same extent as information related to earnings, income, profits, losses, or expenditures of personal property is confidential under IC 6-1.1-35-9."
11. However, Indiana Code § 6-1.1-35-9 states, "Confidential information may be disclosed during the course of a judicial proceeding in which the regularity of an assessment is questioned." Furthermore, Petitioner's appraiser also included the subject property's actual income and expenses in his appraisal. Consequently, the objection is overruled.

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. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. The assessed value increased from \$590,900 in 2009 to \$7,100,000 in 2010, which is an increase in excess of 5%. However, there was a change in improvements as Petitioner constructed an apartment building on the property. Petitioner, therefore, has the burden of proof for 2010. Assigning the burden for the other years at issue would ordinarily depend on the final determinations for each respective preceding year. However, in a case like this, where both sides offer appraisals from qualified experts, the question of who has the burden is largely theoretical. Therefore, the Board must weigh the evidence to determine what most persuasively shows the true tax value for each year under appeal.

Summary of Parties' Contentions

17. Petitioner's case:
 - a. Petitioner contends that the subject property is over-assessed. The subject property is a residential property consisting of more than four rental units which residents occupy for periods of 30 days or more. Petitioner contends that, under the Indiana Code, the

- true tax value of such a property is the lowest value as determined by applying the three approaches to value which are the cost approach, the sales comparison approach, and the income capitalization approach. *Rivera testimony.*
- b. Petitioner submitted an appraisal prepared by Adam Vince, a certified MAI appraiser. Mr. Vince prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) and developed all three approaches to value. *Vince testimony; Pet’r Ex. 7.*
 - c. For the cost approach, Mr. Vince developed a land value based on sales of vacant land. After adjusting the sales for differences, he determined a land value of \$17,500 per acre, or a total of \$350,000 for the 20 acre parcel. He contends that there was no price appreciation from 2010 to 2014 and that the land should be valued the same for all of the years at issue. *Rivera testimony; Pet’r Ex. 7.*
 - d. In developing a cost for the improvements, Mr. Vince used the actual construction costs that Petitioner supplied. In his opinion, using the actual costs is preferable to using averages from a national survey. As a result, he estimated the cost of improvements to be \$3,965,290. Adding the value of the land resulted in a rounded value of \$4,315,000 for 2010. *Rivera testimony; Vince testimony; Pet’r Exs. 7, 9, & 10.*
 - e. For the sales comparison approach, Mr. Vince considered five sales in the surrounding or competing area. The methodology he used was to first estimate the 2013 year based on 356 units. Mr. Vince then worked backward by subtracting the rental shortfalls, which are based on the subject’s operating statements, and the difference in construction costs from year to year. He then added an entrepreneurial incentive amount for each year and arrived at a value of \$5,472,053 for 2010. *Vince testimony; Pet’r Ex. 7.*
 - f. For the income capitalization approach, Mr. Vince removed the real estate tax amount from the expenses. He then determined that 7.5% was an appropriate capitalization rate and loaded it with an effective tax rate of 2.46%. The resulting loaded capitalization rate was 9.96% which, when applied to the net operating income (“NOI”) of \$508,258, resulted in a rounded value of \$5,104,000. *Vince testimony; Pet’r Ex. 7.*
 - g. Because the cost approach yielded the lowest value as determined by developing each of the three approaches, Mr. Vince’s estimated value for 2010 was \$4,315,000. *Vince testimony; Pet’r Ex. 7.*
 - h. For 2011, Mr. Vince again developed all three approaches to value. The cost approach was based on Petitioner’s actual costs less a slight allowance for depreciation. The resulting value of the improvements was \$11,309,000. Adding that

- amount to the land value of \$350,000 resulted in a value of \$11,659,000 for 2011. *Rivera testimony; Pet'r Ex. 7.*
- i. Mr. Vince used the same methodology for the sales comparison approach that he used for 2010. As a result, he arrived at a value of \$13,981,004 for 2011. *Rivera testimony; Vince testimony; Pet'r Ex.7.*
 - j. Mr. Vince used the same methodology for the income capitalization approach that he used for 2010 and applied a loaded capitalization rate of 10%. As a result, he arrived at a rounded value of \$12,835,000 for 2011. *Rivera testimony; Pet'r Ex. 7.*
 - k. Because the cost approach yielded the lowest value as determined by developing each of the three approaches, Mr. Vince's estimated value for 2011 was \$11,659,000. *Vince testimony; Pet'r Ex. 7.*
 - l. For 2012, using the same methodologies for the three approaches to value resulted in a cost value of \$15,430,000, a sales comparison value of \$22,407,713, and an income capitalization value of \$19,816,500. Because the cost approach yielded the lowest value as determined by developing each of the three approaches, Mr. Vince's estimated value for 2012 was \$15,430,000. *Rivera testimony; Pet'r Ex. 7.*
 - m. For 2013, using the same methodologies for the three approaches to value resulted in a cost value of \$17,786,000, a sales comparison value of \$25,810,000, and an income capitalization value of \$29,766,500. Because the cost approach yielded the lowest value as determined by developing each of the three approaches, Mr. Vince's estimated value for 2013 was \$17,786,000. *Rivera testimony; Pet'r Ex. 7.*
 - n. For 2014, Petitioner started with a value of \$17,786,000 as determined by the cost approach for 2013 because that was the lowest of the three values for that year. Petitioner then applied a CPI factor of 1.48% which resulted in a value of \$18,049,800 for 2014. *Rivera testimony; Pet'r Ex. 8.*
 - o. In response to Respondent's contention that indirect costs were not included in the cost approach, Mr. Vince explained that if one were using cost tables, one would generally add indirect costs. In this instance, however, the owner employed subcontractors who included their indirect costs in their bids for the project. Consequently, the indirect costs are included in the value as determined by the cost approach. Petitioner further contends that the costs are typical and reasonable for this type of project. *Vince testimony; Novogroder testimony.*
 - p. Petitioner contends that the entire Kleszynski appraisal is unreliable and should be afforded little weight. Petitioner bases this contention on the following reasons:
 - Confidential information was provided to a third party by Respondent.

- The Indiana Code is clear that the type of property at issue should be valued using the lowest of the three approaches, but Mr. Kleszynski disregarded the cost approach.
- Mr. Kleszynski's valuation was based only on an exterior inspection and an inspection of the public areas. While he did not actually see the finish of the individual units, he concluded that the quality of the construction was good. Actually, the buildings are of average construction that can be observed in the photographs included in the Vince appraisal.
- Mr. Kleszynski's floor plan descriptions are incorrect. The listing of the units was taken from CoStar which, Petitioner contends, can sometimes be unreliable. Mr. Kleszynski shows the number of 1 bedroom/1 bath units at 87 when, in fact, the actual total is 121. He also shows the number of the largest units at 32 when there are actually only 12 units of that size. Petitioner contends that if you deflate the number of one bedroom units, you are inflating the income from the larger units which will skew the income approach values for future years.
- Mr. Kleszynski's income approach is not representative of an analysis for property tax purposes. To arrive at the correct assessed value, the actual tax expense should be removed and the effective tax rate should be added to the capitalization rate. Petitioner contends that Mr. Kleszynski could have calculated the effective tax rate from information contained in his appraisal, but he did not.
- Mr. Kleszynski's purportedly comparable properties are not truly comparable. An analysis of the properties at current rents shows the subject at \$775 per month or \$1.03 per square foot for the smallest unit. Every one of the comparable properties is higher with the exception of comparable #3, which consists of student housing and is a completely different type of rental property.
- Mr. Kleszynski made no location adjustment to the comparable properties nor did he consider the economic conditions surrounding the properties.
- One of the comparable properties is located in southern Indiana and is described as being constructed in 1974 when it was actually built in 2009-2012. It is also situated on a lake.
- Mr. Kleszynski's rate per unit fluctuates severely. For 2010, the rate is \$60,000. For 2011, the rate increases to \$90,000. For 2012, the rate is \$65,000. Petitioner contends that such inconsistencies do not make sense.
- For 2013, Mr. Kleszynski used comparable sales #4, #5, #6, and #7. Three of those sales are beyond the valuation date for 2013. Petitioner contends Mr. Kleszynski could have used the same sales he used for the 2012 value. Petitioner contends that it is unclear why Mr. Kleszynski chose to use new sales when he had sufficient sales from the relevant time period.
- For 2014, Mr. Kleszynski used sale #8, among others. Sale #8, which is next door to the subject property, occurred in September of 2013. It is unclear why he used that sale for 2014 but not for 2013.

- Finally, Mr. Kleszynski was not present to answer questions about his appraisal.

Rivera testimony; Resp't Ex. 1; Pet'r Ex. 5.

18. Respondent's case:

- a. Respondent contends that the subject property is assessed correctly. Petitioner submitted an appraisal prepared by Dale Kleszynski, a certified MAI appraiser. Mr. Kleszynski prepared the appraisal in conformance with USPAP and developed two approaches to value, the sales comparison approach and the income capitalization approach. *Ooms testimony; Resp't Ex. 1.*
- b. According to Mr. Kleszynski, several issues caused the cost approach to be unreliable. Those issues included the inability to verify the stage of completion of each building, the extent to which certain underground improvements were in place on various dates, changes in materials used in the construction, and the extent to which the interior units were complete. Another issue was that the property was gradually leased as construction was completed to the stabilization point over a period of years. The subject therefore consisted of an income producing property once leasing began. As the property became more and more stabilized, the cost approach became more irrelevant because a purchaser would be interested only in the economic return rather than the cost to construct. Lastly, the cost approach was not applied because actual plans, specifications, and contractor statements were not available. *Resp't' Ex. 2.*
- c. For his sales comparison approach, Mr. Kleszynski used four purportedly comparable sales. He adjusted the sale prices downward and determined a value of \$60,000 per unit for the 85 units completed. He then added \$7,000 per unit for the 271 units yet to be built. The resulting value was \$7,000,000 for 2010. *Ooms testimony; Resp't Ex. 1.*
- d. For the income approach, Mr. Kleszynski used Petitioner's actual NOI and applied an 8.65% capitalization rate derived from the band of investment technique. Kleszynski calculated a value of \$5,338,994 and added the contributory value of the excess land. His estimated value using the income approach was \$7,235,000 for 2010. *Ooms testimony; Resp't Ex. 1.*
- e. Mr. Kleszynski afforded the greatest weight to the sales comparison approach and afforded the income capitalization approach supportive consideration in formulating his final value conclusion. As a result, he arrived at a reconciled value of \$7,000,000 for 2010. *Ooms testimony; Resp't Ex. 1.*

- f. Applying the same methodology for the subsequent assessment dates, Mr. Kleszynski determined values of \$17,900,000 for 2011, \$22,000,000 for 2012, \$28,500,000 for 2013, and \$33,500,000 for 2014. *Ooms testimony; Resp't Ex. 1.*
- g. Respondent also notes that the property sold for \$40 million in 2015. While the sale is out of the relevant time frame, he contends that it is representative of the value trending forward. *Ooms testimony; Resp't Exs. 3 & 4.*
- h. Respondent contends there are certain flaws in the Vince appraisal including:
- There are no soft or indirect costs included in Petitioner's cost approach.
 - The roofing cost was not accounted for from 2010 to 2011.
 - The State of Indiana is not listed as an intended user.
 - The comparable sales may not be similar to the subject as far as zoning and permitted uses are concerned and are not comparable to a multi-family development. In fact, sale #1 is classified as residential land, sale #2 is classified as wildlife/forest except for one acre, and sales #3, #4, and #5 are classified as agricultural land.

Metz testimony; Ooms testimony; Pet'r Ex. 7.

ANALYSIS

19. Petitioner established a prima facie case that the property was over-assessed for each year. Respondent offered evidence in an attempt to rebut Petitioner's case. However, the weight of the evidence supports Petitioner's cost value for 2010 through 2013, and Petitioner's value for 2014 as determined by trending the 2013 cost value forward by applying the appropriate CPI factor. The Board reached that 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." 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.

- b. 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 each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
- c. Nevertheless, a specific statute applies to the valuation of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39(a) provides in part that the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of 30 days or more and that has more than four rental units is the lowest valuation as determined under the cost approach, the sales comparison approach, and the income valuation approach. Petitioner emphasized the importance of this statute, while Respondent simply ignored it altogether.

2010

- a. An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, Petitioner presented a USPAP compliant appraisal prepared by certified MAI appraiser Adam Vince. Mr. Vince developed the three approaches to value and estimated the value of the property to be \$4,315,000 for 2010.
- b. Respondent also presented a USPAP compliant appraisal that was prepared by certified MAI appraiser Dale Kleszynski. Mr. Kleszynski valued the property at \$7,000,000 for 2010.
- c. The Board must weigh the evidence presented. Additionally, the values at issue must be determined under the rule specified in Indiana Code § 6-1.1-4-39(a) which allows the lowest value indicated by the cost approach, the sales comparison approach, or the income capitalization approach. Respondent failed to offer any substantial argument or authority for determining the assessments in question without reference to this statute. Consequently, Respondent's case has little or no persuasive weight.
- d. Here, the lowest value presented by Petitioner for 2010 was \$4,315,000 as determined under the cost approach. In his analysis, Mr. Vince developed a land value based on the sale of five comparable properties in the local market. He determined that the price per acre was the best unit of comparison and arrived at an amount of \$17,500 per acre or a total of \$350,000 for the land. He noted that there was no price appreciation from 2010 to 2014 and, as a result, the land value would be the same for all years. He then added the actual construction costs obtained from the owner for each year to the land value to arrive at his value. The Board finds Petitioner's evidence sufficient to warrant a reduction in the property's assessed value.

- e. In addition, Mr. Vince performed a sales comparison approach and an income capitalization approach. But the values derived from these approaches, \$5,472,053 and \$5,104,000, respectively, were higher than the value based on the cost approach.
- f. The Board now moves to Respondent's appraisal. Mr. Kleszynski developed only two approaches, the sales comparison approach and the income approach. Under the sales comparison approach, Mr. Kleszynski considered four comparable properties. He did not quantify any adjustments to the properties. He merely characterized the adjustments as downward, but they were seemingly significant because he determined a value of \$60,000 per unit when the unadjusted unit values ranged from \$92,696 to \$118,055. The magnitude of the adjustments without specific explanation suggests a weakness in the comparable sales data.
- g. In his income approach, Mr. Kleszynski used the actual income and expenses. However, 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 10. The income approach thus focuses on the intrinsic value of the property, not upon a petitioner's operation of the property. See *Thorntown Telephone Company, Inc. v. State Bd. of Tax Comm'rs*, 588 N.E.2d 613, 610 (Ind. Tax Ct. 1992). Because Mr. Kleszynski provided no evidence to demonstrate that the property's income and expenses were typical for comparable properties in the market, any low income or high expense levels may be attributed to Petitioner's management of the property as opposed to the property's market value. See *Lake County Trust Co. No 1163 v. State Bd. of Tax Comm'rs*, 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). Mr. Kleszynski also included actual real estate taxes as an expense rather than deducting them and applying the effective tax rate, thereby potentially skewing the final value.
- h. Most significantly, in spite of the specific terms in Ind. Code § 6-1.1-4-39(a), Mr. Kleszynski did not develop the cost approach. He indicated in his report that the inability to verify the stage of completion for each building, the extent to which certain underground improvements were in place, any changes in materials used, and the extent to which the interior of the units were complete, caused the cost approach to be weakened as an analytical tool. He further indicated that, as the property became more stabilized through occupancy, the cost of the project became less relevant. Because Mr. Kleszynski's conclusion regarding the cost approach was based on access to data, which Respondent could have obtained, and not solely

on the relative reliability of the cost approach, we find the omission of the cost approach as a significant flaw in Respondent's case.¹

- i. After weighing the evidence, the Board is more persuaded by Mr. Vince's appraisal. The Board, therefore determines the 2010 assessment should be changed to the lowest of the three values developed by Mr. Vince which is \$4,315,000.

2011-2013

- a. For the same reasons that the Board found Mr. Vince's appraisal more persuasive for 2010, the Board also finds his appraisal more persuasive for 2011, 2012, and 2013. As a result, the assessments for those years should be changed to \$11,659,000, \$15,430,000, and \$17,786,000 respectively.

2014

- a. Mr. Vince did not include a value for 2014 in his appraisal. Instead, Petitioner calculated the 2014 value by taking the 2013 value of \$17,786,000 as determined by the cost approach in Mr. Vince's appraisal and trending it to 2014 using a CPI factor of 1.48%. In the past, the Board has found that an appraiser's application of a CPI factor may be a valid method to arrive at a proposed value. The resulting calculation yielded a 2014 value of \$18,049,800. On the other hand, Respondent once again only developed two approaches to value for 2014. Consequently, the Board finds Petitioner's evidence more persuasive for 2014.
- b. Respondent also presented a sales disclosure form for the subject property which sold on December 7, 2015, for \$40,000,000. Respondent claims that while the sale is outside of the relevant time frame, it nonetheless shows the value of the property going forward.² However, because Ind. Code § 6-1.1-4-39(a) controls in this case, the Board finds this sale price irrelevant. The sale, therefore, is not probative evidence of value for any of the years at issue.

CONCLUSION

20. Petitioner raised a prima facie case that the property was over-assessed for all of the years at issue. While Respondent presented evidence in an attempt to rebut or impeach Petitioner's evidence, the Board nonetheless finds Petitioner's evidence more persuasive. Consequently, the assessed values should be changed to \$4,315,000 for 2010,

¹ While the Board realizes that Respondent created some doubt as to the reliability of the cost approach in this case, Respondent offered no expert testimony or other evidence to show that Petitioner's application of the cost approach somehow yielded an inaccurate result.

² While the box indicating "Exchange for other real property ('Trade')" was checked on the sales disclosure form presented as Respondent Exhibit 3, there is no evidence contained in the record describing such other real property or how its inclusion in the transaction might affect the sale price.

\$11,659,000 for 2011, \$15,430,000 for 2012, \$17,786,000 for 2013, and \$18,049,800 for 2014.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the assessed values for the years at issue must be changed.

ISSUED: August 7, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 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>>.