Commercial Real Estate Assessed Values - Recent Indiana Tax Court Decisions Regarding the Effect of Market Forces

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Many owners of Indiana commercial real estate believe their assessments, and thus their property taxes, are inflated due to market forces and eroded property values. Such owners might be wise to consider two fairly recent decisions from the Indiana Tax Court. Both decisions, *Meijer Stores Limited Partnership v. Betty Smith, Wayne Twp. Assessor, et al.*, No. 49T10-0609-TA-89 and *Sue Ann Stinson, Washington Twp Assessor, et al. v. Trimas Fasteners, Inc.*, No 49T10-0702-TA-4, support a concept known as external obsolescence as justification for lowered assessments due to extrinsic market factors.

Copies of the *Meijer Stores* and *Trimas Fasteners* cases are found below along with a summary of decision highlights. The theme of both cases is that an assessment should depend upon property value as perceived in the market, rather than the perceived value to the owner.

<u>Basic Concepts Considered in Both Cases</u>

- <u>Market Value-in-Use</u>: Indiana real property is assessed based on its market value-in-use, which is the value of property for its current use as reflected by the utility received from the property by the owner or a similar user.

- Three generally accepted appraisal techniques may be used to calculate a property's market value-in-use (and, thus, to challenge the real property assessment upon which property tax rates are based).
  - <u>Cost Approach</u> – Estimates the value of the land as if vacant and then adds the depreciated cost of the improvements to arrive a total estimated value.
  - <u>Sales Comparison Approach</u> – Estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.
  - <u>Income Approach</u> – Used for income producing (i.e., rented) properties, and converts an estimate of expected rent into value through a capitalization calculation.

- <u>External Obsolescence</u> is the diminishment of a property's desirability and usefulness brought on by economic/market factors. Examples include:
  - Oversupply in the market of the type of space provided
  - Light or noise pollution
  - Crime
  - Inharmonious land use

Meijer Stores

- The Concept of external obsolescence was considered in Meijer's appraisal, which was based upon the Sales Comparison Approach: The appraiser considered the sale of several similar "big-box" stores, all of which were more in line with his appraisal than with the far greater assessed value.

- The appraiser explained this variation by citing a "significant, but temporary, amount of external obsolescence *due to the limited number of potential buyers and an oversupply of such properties in the market*".

- The appraiser also stated that this sort of extrinsic obsolescence occurs immediately in the big-box retail market upon completion of construction.

- The assessor argued that the factors causing the obsolescence in big-box properties could not possibly have affected Meijer, because Meijer's store had never been closed and offered for resale. In other words, the assessor argued Meijer had never linked its claimed external obsolescence factor (i.e., the glut of available big-box properties) to its property.

- The Tax Court disagreed with the assessor, and ruled that there is no *per se* relationship between a property's age and the presence of external obsolescence, because *obsolescence is a market based concept*. The overall desirability of a property within the market is the determining factor.

- It didn't matter to the Tax Court that Meijer wasn't closing its store and selling in the midst of a big-box property glut to a "secondary user" such as Big Lots, Burlington Coat Factory or Hobby Lobby. What did matter was the price for which Meijer could sell the property *if* it desired to do so, even if no such desire existed.

Trimas Fasteners

- The appraisals tendered by Trimas (the owner) and the assessor were vastly different. The clear difference was that the appraiser accounted for external obsolescence while the assessor did not.

- The Tax Court agreed that external obsolescence was present due to a loss of manufacturing jobs in Indiana and a resulting saturation in the market for manufacturing facilities. Trimas' appraiser noted an oversupply and lack of demand, and a resulting drop in list prices to remain competitive with other sellers.

- Trimas was, in fact, using its building during the relevant time period, and the assessor argued that the comparable sales used in Trimas' appraisal were improper because those buildings were vacant and, thus, not representative of the "market value-in-use" to owners who enjoyed their building through use or income-producing leases. The assessor said a vacant property's value is just "sticks and bricks" while the value of occupied buildings should be "over and above that".

- The Tax Court disagreed, saying "the Assessor misunderstands the concept of market value-in-use on its most basic level." The Court continued by saying that "generally speaking, market value-in-use, as determined by objectively verifiable market data, is the value of a property *for* its use, not the value *of* its use."

For more information about these cases, or how they might be useful in efforts to achieve a lowered assessment for property tax purposes, please contact Matt Adolay of Wooden & McLaughlin, LLP.

View Our Website For More Information

Below are links to these court decisions if you'd like to view them in their entirety:

- *Meijer Stores*
- *Trimas Fasteners*

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