

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

**Petition:** 10-039-18-1-4-01301-18  
**Petitioner:** 291 Lambert, LLC  
**Respondent:** Clark County Assessor  
**Parcel:** 10-42-03-600-167.000-039  
**Assessment Year:** 2018

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

**PROCEDURAL HISTORY**

1. 291 Lambert, LLC (“Lambert”) contested the 2018 assessment on its property located at 5202 Highway 62, Jeffersonville. On November 1, 2018, the Clark County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property at \$1,741,800 for 2018. Lambert timely filed its Form 131 appeal with the Board.
2. On May 15, 2019, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the subject property.
3. Certified tax representative Milo Smith represented Lambert. Attorney Ayn Engle represented the Assessor. Smith and Ken Surface, senior vice president of Nexus Group, were sworn as witnesses.

**RECORD**

4. The official record contains the following exhibits submitted by the parties:

Petitioner Exhibit 1:	Property Record Card (“PRC”) for subject property
Petitioner Exhibit 2:	Neighborhood 10104010 property assessments
Petitioner Exhibit 3:	Assessments of convenience markets with gasoline in Clark County
Petitioner Exhibit 4:	Analyses of neighboring commercial assessments
Petitioner Exhibit 5:	<i>Bushmann LLC v. Clark County Ass’r</i> , Pet. No. 10-039-14-1-4-00590-16, et al. (IBTR January 5, 2017)
Petitioner Exhibit 6:	<i>Peters v. Boone County Ass’r</i> , slip op. 49T10-1207-TA-42 (Ind. Tax Ct. May 14, 2015)
Petitioner Exhibit 7:	2016 Clark County ratio study
Petitioner Exhibit 8:	2017 Clark County ratio study

Petitioner Exhibit 9: 2018 Clark County ratio study  
Petitioner Exhibit 10: Requested assessment for subject property

Respondent Exhibit A: Form 130 Notice  
Respondent Exhibit B: Form 115 Notice  
Respondent Exhibit C: Form 131 Petition  
Respondent Exhibit D: PRC for subject property  
Respondent Exhibit E: Photograph of subject property  
Respondent Exhibit F: Photograph and satellite imagery of subject property  
Respondent Exhibit G: Sales Disclosure Form for subject property  
Respondent Exhibit H: Power of Attorney  
Respondent Exhibit I: PRCs for properties in Petitioner's Exhibit 2  
Respondent Exhibit J: PRCs for properties in Petitioner's Exhibit 3  
Respondent Exhibit K: PRCs for other Clark County convenience stores  
Respondent Exhibit L: PRCs for properties in Petitioner's Exhibit 4

5. The official record for this matter includes the following: (1) all pleadings and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

#### **OBJECTIONS**

6. Lambert objected to the admission of Respondent Exhibit I because the Assessor failed to exchange it prior to hearing. Lambert also objected because the Assessor had not included the second page of the PRCs with the exhibit. The Assessor argued that he gathered the PRCs after reviewing the property list Lambert provided him the day of the evidence exchange deadline. The Assessor also pointed out that Lambert included both pages of the PRCs as part of Petitioner Exhibit 2.
7. For his part, the Assessor objected to Petitioner Exhibits 2 and 3 because Lambert failed to exchange the documents before the hearing. Lambert admitted that it did not exchange the individual PRCs for the properties included in the exhibits, but maintained that it timely exchanged a worksheet identifying the properties with its original discovery submission. Lambert further argued that the contested documents were public records pulled from the Assessor's website and available to the Assessor and his counsel. Our ALJ took both parties' objections under advisement.
8. In our small claims rules, if requested at least ten business days prior to hearing, our procedural rules require parties to exchange copies of documentary evidence at least five business days before a hearing. 52 IAC 3-1-5(d). This requirement allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues. The Board may exclude evidence or testimony based on a party's failure to comply with a timely exchange request. 52 IAC 3-1-5(f). Here, however, there is no indication that either party timely requested an exchange of evidence. Consequently, we overrule the objections.

9. The Assessor also objected to Lambert’s argument comparing the subject property to the property at issue in *Peters v. Boone County Ass’r*, slip op. 49T10-1207-TA-42 (Ind. Tax Ct. May 14, 2015) because Smith is a certified tax representative, not an attorney. While Smith’s arguments may have approached the line into practicing law, we do not believe that he crossed it. We therefore overrule the objection.

#### **BURDEN OF PROOF**

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d).
11. Here, the assessment increased by less than 5% from 2017 to 2018. Lambert stipulated that it therefore bears the burden of proof.

#### **SUMMARY OF CONTENTIONS**

12. **Lambert’s case:**
  - a. The subject property is a 1.29-acre parcel with a convenience store and gas station. Lambert provided information for 21 properties located within the subject’s assessment neighborhood. Lambert calculated each properties’ assessed value per square foot, which were all significantly lower than the subject’s assessment of \$605/SF. Additionally, the property located at 4812 Highway 62 sold on December 31, 2015 for \$161,521/acre. And the four related properties located at 5015 Highway 62 sold as part of one transaction in June 2017 for a combined price of \$79,531/acre. *Smith testimony; Pet’r Ex. 2.*
  - b. Lambert also searched Clark County for convenience markets with gasoline, which is how the Assessor classified the subject (Property Class 450). This search produced six properties. They had a median base land rate of only \$125,000/acre. And the market factors applied to their improvement values ranged from 1.00 to 1.56. Lambert then calculated each property’s assessed value per square foot by dividing its total assessed value by the total square footage of its improvements. This produced values ranging from \$95/SF to \$233/SF and a median value of \$194/SF. *Smith testimony; Pet’r Ex. 3.*
  - c. In addition, Lambert presented information from five properties located in the immediate vicinity of the subject that do not share the same property classification as the subject. They had a median land base rate of \$75,000/acre, while the subject’s is \$1,000,000/acre. Lambert described the five properties as being very similar in

- nature—they are similar in size, and have the same zoning, level topography, static neighborhood growth, and flood hazard characteristics. *Smith testimony; Pet'r Ex. 4.*
- d. Lambert also discussed the Board's Final Determination in *Bushmann LLC v. Clark County Ass'r*, Pet. No. 10-039-14-1-4-00590-16, et al. (IBTR January 5, 2017), which addressed the 2014 and 2015 assessments for the subject property. Lambert highlighted the Board's decision not to accept the subject property's December 17, 2015 sale price of \$3,175,000 due to concerns about the long-term lease in place at the time of sale. Lambert further pointed out the Board's concerns regarding the \$1 million land assessment being over 10 times higher than the other commercial properties at the same intersection. Three years later, the subject's assessment is still 10 times higher than the assessments for the five surrounding properties Lambert reviewed. *Smith testimony; Pet'r Ex. 5.*
- e. Additionally, Lambert submitted a copy of *Peters v. Boone County Ass'r*, slip op. 49T10-1207-TA-42 (Ind. Tax Ct. May 14, 2015). In that case, the Indiana Tax Court stated that the primary method for determining a property's market value-in-use is the cost approach, and that the Indiana General Assembly has promulgated a series of guidelines that explain in detail how property is to be valued under this approach. The Court further stated that land base rates are set in a county's land order, reflecting recent sales prices from similar land. The Court also specified that when an assessor assesses land and improvements pursuant to the guidelines, the assessment is presumed accurate. Lambert ultimately argued that no reasonable person could find that the subject property should be assessed 10 times higher than like commercial properties located at the same intersection. *Smith testimony; Pet'r Ex. 6.*
- f. Lambert also presented a series of exhibits regarding the 2016, 2017, and 2018 Clark County ratio studies. The ratio studies provided information on the total number of commercial properties sold in Utica Township. In 2016, there were no sales of improved commercial properties and two sales of unimproved commercial properties. In 2017, there were zero sales of improved commercial properties and four sales of unimproved commercial properties, which were all sold as part of a single transaction involving four parcels located at 5015 Highway 62. The 2018 ratio study again shows the sale of the four unimproved parcels located at 5015 Highway 62, along with one sale of an improved commercial property in Utica Township. Lambert argued the base land rates should not have been increased above the \$75,000/acre based on these three ratio studies. And they were not—they are still assessed at \$75,000/acre. *Smith testimony; Pet'r Exs. 7, 8, 9.*
- g. Lambert claimed that its base land rate should be the same \$75,000/acre, which would result in a land assessment of \$96,800 for the subject. Regarding the improvements, Lambert argued that the Assessor erred in applying a 2.1859 market factor to the value of its 2,880 square foot building. Removing that factor would result in a value of \$304,500 for the subject building, and an assessed value for all of

the improvements of only \$380,700. Based on those valuations, Lambert ultimately requested a total assessment of \$477,500. *Smith testimony; Pet'r Ex. 10.*

13. **The Assessor's case:**

- a. Surface is a level III certified assessor/appraiser employed by Nexus Group. He provides consulting services to the Clark County Assessor's Office through Nexus. Surface described the subject property as having multiple amenities, including being located on a corner lot along a highway in a heavy traffic area. The subject sold for \$3,175,000 on December 17, 2015. However, Surface did not use that value in his assessment determination due to the likelihood that the sales price included the value of personal property and other non-realty components. *Surface testimony; Resp. Exs. D, E, F, G.*
- b. Surface researched the sales included in Lambert's three analyses. He criticized the analysis contained in Petitioner Exhibit 2 for including properties that are not located on corner lots and are not convenience stores. Surface also took issue with Lambert's analysis in Petitioner Exhibit 3 because it relies on dissimilar properties such as a bank and a boarded up convenience store, as well as several multi-parcel properties for which Lambert only included information from one of the parcels. Additionally, Surface pointed out that Petitioner Exhibit 4 contained no convenience stores at all and therefore no comparable properties. Surface also asserted that the ratio studies Lambert submitted were not an appropriate mechanism for valuing a single property. Surface further testified that Lambert's presentation lacked the requisite use of comparable properties and appropriate adjustments, and did not present a market value-in-use for the subject. *Surface testimony; Resp. Exs. I, J, K, L.*
- c. In *Centra Credit Union v. Clark County Ass'r*, Pet. No. 10-009-12-1-4-00041, et al. (IBTR October 27, 2015), the Board cited to a DLGF memorandum concerning the application of market factor adjustments that states:

Cost information provides an initial value estimate based on the cost to build a property, from which the assessor then applies market factors or other adjustments in order to arrive at the appropriate value.

Here, the Assessor did just that—he used the market factors to bring the cost approach in line with market value-in-use. *Surface testimony.*

**ANALYSIS**

14. Lambert failed to make a prima facie case for reducing the property's 2018 assessment. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011

REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he 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.” MANUAL at 2.

- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2018, the valuation date was January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).
- c. Lambert contends the property’s 2018 assessment should be \$477,500, but its evidence and arguments are little more than an attempt to substitute its own judgments regarding the correct land base rate and market factor to apply under the DLGF’s Guidelines. Even if the Assessor made errors in selecting the land base rate or market factor, arguments attacking his application of the Guidelines are insufficient to rebut the presumption that the assessment is correct. *See Eckerling*, 841 N.E.2d at 678 (stating that to successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.”).
- d. To the extent that any of Lambert’s information regarding the three sets of properties it analyzed were an attempt at an assessment comparison approach under Indiana Code § 6-1.1-15-18 or an attempt to make a uniform and equal argument, it still came up short.
- e. To effectively use an assessment comparison approach, parties must show the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- f. Here, Lambert’s evidentiary presentation was insufficient to demonstrate that any of the properties are truly comparable to the subject. Again, a proponent needs to give specific reasons explaining why they believe 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 the two properties. *Id.* at 470. While all of the properties may share some similarities to the subject based on their location or property classification, Lambert failed to discuss their characteristics in sufficient detail. And Lambert failed to explain why it was unnecessary to make adjustments to account for the many apparent differences between the properties and the subject as required by *Long*.<sup>1</sup> Furthermore, none of Lambert’s analyses produced valuations that actually support its proposed land value of \$96,800, its proposed improvement value of \$380,700, or a total assessment of \$477,500.
- g. With regard to a uniform and equal argument, the Tax Court has explained that Indiana’s current assessment system no longer focuses on how assessment regulations were applied, but rather on whether assessments reflect the external benchmark of market value-in-use. *Westfield Golf Practice Center, LLC v. Washington Twp. Ass’r*, 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One method of proving a lack of uniformity and equality under our current system is to offer ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at 399 n.3. When used to measure uniformity of assessments or to apply equalization adjustments, the DLGF’s rules require statistical analyses to be performed. *See* 50 IAC 27-4-1; 50 IAC 27-4-5; *see also*, *Thorsness v. Porter Cnty. Ass’r*, 3 N.E. 3d 49, 53-54 (Ind. Tax Ct. in 2014) (interpreting predecessors to current regulations).
- h. The taxpayer in *Westfield Golf* lost its uniformity-and-equality claim because it focused solely on the base rate used to assess its driving range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Westfield Golf*, 859 N.E.2d at 399. Lambert’s evidentiary presentation suffers from the same problem—it focused almost exclusively on challenging the land base rate used to assess its property, while failing to produce any probative market-based evidence regarding the value of its property or that of any of the other properties it discussed. Consequently, Lambert could not offer any meaningful statistical analysis regarding the ratios between sales and assessments. And the Clark County ratio studies it submitted did little more than summarize the number of sales of improved and unimproved commercial properties during 2016, 2017, and 2018.

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<sup>1</sup> We note that the two sales cited in Lambert’s first analysis (4812 Highway 62 and the four related properties located at 5015 Highway 62) suffer from the same fundamental problems.

- i. Finally, we will address Lambert’s arguments regarding our Final Determination in *Bushmann LLC v. Clark County Ass’r*. That decision involved a valuation dispute for this same property for the 2014 and 2015 assessment years, but it has no bearing on the outcome of this case. As the Tax Court has explained, “each tax year—and each appeal process— stands alone.” *Fisher v. Carroll Cnty Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017).
- j. While we still harbor concerns about the subject’s assessment being so much higher than the assessments for the five surrounding properties, Lambert offered no probative market-based evidence to demonstrate the subject’s correct market value-in-use for 2018. Consequently, it failed to make a prima facie case for a lower assessment. Where a petitioner has not supported his claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property’s 2018 assessment.

ISSUED: August 13, 2019

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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 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>>.