

REPRESENTATIVE FOR THE PETITIONER:

Angelo Orciuoli, Managing Partner of Interstate Ventures, LLC

REPRESENTATIVE FOR THE RESPONDENT:

Brian Mahern, Analyst for the Marion County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Interstate Ventures, LLC, -)	Petition No.: 49-601-18-1-4-00082-20
Angelo Orciuoli,)	
)	Parcel No.: 6006062
Petitioner,)	
)	
v.)	County: Marion
)	Township: Pike
Marion County Assessor,)	
)	
Respondent.)	Assessment Year: 2018

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

July 23, 2021

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:

INTRODUCTION

1. Did the Petitioner provide sufficient evidence to support a reduction in the 2018 assessment?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2018 assessment appeal with the Marion County Assessor on August 29, 2018. On December 13, 2019, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On April 29, 2021, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Angelo Orciuoli appeared *pro se* via telephone and was sworn.¹ Analyst Brian Mahern appeared for the Respondent via telephone and was sworn.
5. The Petitioner offered the following exhibits:
 - Petitioner Exhibit 1: Cover letter to the Board dated April 21, 2021,
 - Petitioner Exhibit 2: Petitioner's evidence summary letter dated April 21, 2021,
 - Petitioner Exhibit 3: Multiple listing sheet for 2110 West 38th Street, 4803 West 71st Street, 5980 West 71st Street, 5555-5587 West 73rd Street, 5300 Crawfordsville Road, and 9046 Crawfordsville Road,
 - Petitioner Exhibit 4: Multiple listing sheet for 4404 Georgetown Road, 720-722 North High School Road, 4007 North High School Road, 2660 Lafayette Road, 3500 Lafayette Road, and 5273-5307 Lakeview Parkway South Drive,
 - Petitioner Exhibit 5: Multiple listing sheet for 2600 West Michigan Street, 10 South Mickley Avenue, 432 North Raceway Road, 1941 West Saint Clair Street, 4025 Shore Drive, and 7108-7176 Waldemar Drive,
 - Petitioner Exhibit 6: Multiple listing sheet for 6355 Westhaven Drive.
6. The Respondent offered the following exhibit:
 - Respondent Exhibit 1: 2018 subject property record card,

¹ Emma Hensel was also on the call but was not sworn and did not testify.

- Respondent Exhibit 2: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),
- Respondent Exhibit 3: Multiple listing sheet for 6929 West 38th Street, 6330 West 71st Street, and 3851 Vincennes Road,
- Respondent Exhibit 4: Income approach market valuation analysis, Realtyrates.com Investor Survey 1st Quarter 2021 cap rates and 4th Quarter 2017 Surveyed Reserve Requirements, and “Lease Comps Details” for 250 South Meridian Street and 2113-2121 East 62nd Street,
- Respondent Exhibit 5: Restaurant Business article *How Golden Corral is Bucking the Buffet Collapse* by Jonathan Maze dated June 25, 2018,
- Respondent Exhibit 6: Summary of Respondent’s testimony.

7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) the digital recording of the hearing and these findings and conclusions.
8. The property under appeal is a Golden Corral restaurant located at 6102 West 38th Street in Indianapolis.
9. The PTABOA determined a total assessment of \$1,186,200 (land \$502,600 and improvements \$683,600).
10. On the Form 131, the Petitioner requested a total assessment of \$593,454 (land \$148,363 and improvements \$445,091).

PETITIONER’S CONTENTIONS

11. The subject property is over assessed. The Respondent erred in assessing the property by utilizing “exaggerated” square footage and “false information.”² On August 29, 2018, Mr. Orciuoli signed a Form 134 reducing the 2016, 2017, and 2018 assessments of the subject property based on Mr. Mahern “misleading” and “bullying” him. *Orciuoli argument (referencing Resp’t Ex. 1, 2.); Pet’r Ex. 2.*

² The parties testified numerous times that the size of the building is 10,669 square feet. But neither party presented any documentary evidence listing the exact measurements of the building.

12. The Petitioner offered sales information for 19 comparable commercial properties in Indianapolis. The sale prices ranged from \$100,000 to \$3,500,000 or \$3.14 to \$111.23 per square foot. The average sale price per square foot was \$56.79. Because the price per square foot was for land and improvements, the Petitioner “applied 25% for land and 75% for improvements.” According to this sales information, the subject property should have a land value of \$148,368.88 and an improvement value of \$445,091.63, for a total value of \$593,460.51. *Orciuoli testimony; Pet’r Ex. 2, 3, 4, 5, 6.*
13. The Respondent’s sales comparison analysis is flawed. The three purportedly comparable properties utilized are non-operating restaurants. The first sale, 6929 West 38th Street, was not an arm’s length transaction and is in a superior location. The second sale, 6330 West 71st Street, was also not an arm’s length transaction and is located six miles from the subject property. The third sale, 3851 Vincennes Road, is located ten miles from the subject property. *Orciuoli argument (referencing Resp’t Ex. 3).*
14. The Respondent’s income approach analysis is also flawed. The Respondent lists “asking rent not actual rent” for the two purportedly comparable leases. Additionally, these properties measure 1,082 square feet and 3,200 square feet, while the subject property is over 10,000 square feet. The Respondent lists the rent for the subject property at \$26 per square foot, but rent is only \$9 per square foot.³ Further, the calculation does not allow for any management expense or “other relevant expenses.” *Orciuoli argument (referencing Resp’t Ex. 4).*
15. The Golden Corral article presented by the Respondent is irrelevant. The author has written multiple articles on Golden Corral and his articles are supported by franchisors to promote the brand among potential franchisees. The article “does a good job” of explaining how Golden Corral is failing at a slower rate than other buffet style restaurants, but according to Mr. Orciuoli, Golden Corral Corporate is on the verge of bankruptcy. *Orciuoli argument (referencing Resp’t Ex. 5).*

³ The Petitioner also testified he is currently collecting zero in rent.

RESPONDENT'S CONTENTIONS

16. The subject property is correctly assessed. The restaurant was built in 2004 and is situated on 3.22 acres of land. It is located on West 38th Street, less than a mile from Interstate 465 and less than two miles from Interstate 65 North. The property was purchased by Interstate Ventures, LLC, on March 23, 2015, for \$1,375,000. *Mahern testimony; Resp't Ex. 1, 6.*
17. In 2016, the assessed value of the property was \$1,493,100 and the Petitioner appealed the assessment. The Petitioner and the Respondent held an informal hearing and the parties agreed to reduce the 2016, 2017, and 2018 assessments to \$1,186,200. The Respondent also measured and corrected the size of the property to 10,669 square feet.⁴ *Mahern testimony; Resp't Ex. 1, 2, 6.*
18. In support of the current assessment, the Respondent presented a sales comparison analysis. The Respondent selected three comparable restaurants that sold between April 28, 2017 and September 28, 2017. The three comparable restaurants are located along interstates like the subject property. The median sale price was \$126 per square foot. Applying the median sale price to the subject property's 10,669 square feet results in an indicated market value of \$1,344,300. This supports the current assessed value of \$1,186,200. *Mahern testimony; Resp't Ex. 3, 6.*
19. The Respondent also presented an income approach analysis.⁵ Mr. Mahern estimated market rent by identifying two leases in Indianapolis. He concluded a market rent of \$26 per square foot or potential gross income of \$277,394. Next, he deducted a 5% vacancy loss or \$13,870. He deducted operating expenses of 20% or \$52,705 and replacement

⁴ In response to questioning, Mr. Mahern explained the 13,470 square feet listed on the property record card could not be changed to 10,669 square feet because once the State certifies the county's assessed values, the Assessor's PVD computer software locks out users from changing any characteristics on the property record card. According to Mr. Mahern, the Assessor's office can only manually change the assessed value of the property. *Mahern testimony.*

⁵ Mr. Mahern stated, "the Petitioner did not provide any information to the county relative to the income and expenses associated with the property." *Mahern testimony.*

reserves of 3% or \$79,057 for a net operating income of \$131,762. *Mahern testimony; Resp't Ex. 4, 6.*

20. To determine the appropriate capitalization rate, Mr. Mahern used Realty/Rates.com. He used the 2017 restaurant capitalization rate of 11.4%. After capitalizing his projected net operating income, he concluded a value under the income approach of \$1,152,876. Again, this supports the current assessment. *Mahern testimony; Resp't Ex. 4, 6.*
21. In an attempt to understand “something” about the subject property, the Respondent submitted an article from Restaurant Business online. According to Mr. Mahern, the article “How Golden Corral is Bucking the Buffet Collapse” claims the Golden Corral brand restaurants are considerably more profitable than their direct competitors of buffet style restaurants. *Mahern testimony; Resp't Ex. 5, 6.*

BURDEN OF PROOF

22. 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. Ass'r*, 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). The burden-shifting statute creates two exceptions to that rule.
23. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
24. 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.” Under those circumstances, “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).

25. Here, the parties agree the assessed value of the subject property did not change from 2017 to 2018. In fact, the parties entered into a settlement agreement and agreed on a total valuation of \$1,186,200 for the 2016, 2017, and 2018 assessment years. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner

ANALYSIS

26. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
27. Regardless of the method used, a party must explain how the evidence relates to 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.

28. Here the parties agree they entered into a binding settlement agreement for the 2016, 2017, and 2018 assessment years. Mr. Orciuoli's argument that he was "misled" or "bullied" does not provide sufficient grounds for the Board to nullify a binding settlement agreement.
29. Settlement agreement aside, even if we consider the evidence presented, the Petitioner failed to make a case for reducing the 2018 assessment. In support of the argument that the property is over-assessed, the Petitioner prepared what amounts to an average price per square foot analysis. More specifically, the Petitioner relied on 19 commercial sales within Indianapolis. In making this argument, the Petitioner is essentially relying on a sales-comparison approach to establish the assessment should be lowered. *See* MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
30. To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in use. *Id.*
31. Here, the type of analysis required is lacking from the Petitioner's case. While the Petitioner pointed to 19 various commercial properties in Indianapolis, the Petitioner failed to offer sufficient evidence relating the specific features and amenities to the subject property. More importantly, the Petitioner made no attempt to make adjustments for any relevant differences between the properties. The Petitioner's evidentiary presentation therefore falls short of providing the level of analysis contemplated by *Long*.

32. Additionally, the Petitioner failed to offer any evidence that submitting sale prices and computing an average price per square foot comports with generally accepted appraisal principles. Thus, the Petitioner's analysis lacks probative value.
33. Finally, we note that the Petitioner made a number of other allegations regarding the conduct of Mr. Mahern and the Assessor during his appeal process. None of these allegations are relevant to the assessment of the property and we disregard them.
34. Where the 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).

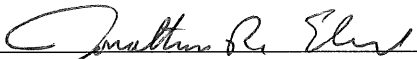
SUMMARY OF FINAL DETERMINATION

35. The Petitioner failed to make a prima facie case for reducing the 2018 assessment. The Board finds for the Respondent and orders no change to the assessment.

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

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>.