

REPRESENTATIVE FOR PETITIONERS:

Milo E. Smith

REPRESENTATIVE FOR RESPONDENT:

Brian Cusmiano, Marilyn Meighen, Attorneys

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Phillip V. and Connie Fisher,	)	Petition No.:	53-005-12-1-4-00127
)		
Petitioners,	)	Parcel No.:	53-05-36-300-020.000-005
)		
v.	)	County:	Monroe
)		
Monroe County Assessor,	)	Township:	Bloomington City
)		
Respondent.	)	Assessment Year:	2012

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

June 9, 2014

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

In this assessment appeal, Petitioners contested the subject property's 2012 assessment. The Board finds that Petitioners failed to make a prima facie case that the 2012 assessment is incorrect.

PROCEDURAL HISTORY

1. The subject property is a convenience store located at 4405 E. 3rd Street, Bloomington, Indiana consisting of Parcel No. 53-05-36-300-020.000-005.
2. The Petitioners initiated the 2012 assessment appeal by filing a Form 130 on March 1, 2012. On May 8, 2013, the Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued its determination (Form 115) making no changes to the assessment of the property. The Petitioners then timely filed a Form 131 Petition for Review of Assessment for the parcel, petitioning the Board to conduct an administrative review of the 2012 assessment on the property.
3. Respondent filed a motion to have this matter transferred from small claims procedure to the plenary procedures set forth in 52 IAC 2. The Board granted the Respondent's motion on September 26, 2013.
4. Administrative Law Judge Elizabeth Rogers held the hearing on December 18, 2013. Neither she nor the Board inspected the property.
5. Ken Surface, Senior Vice President for Nexus Group and Level 3 Certified Assessor/Appraiser, appeared as a witness for the Respondent but did not testify. Ken Surface and Milo Smith were sworn as witnesses.
6. The Petitioners presented the following exhibits:
 - Petitioners Exhibit 1 -The subject Property Record Card
 - Petitioners Exhibit 2 - Comparable assessment data
 - Petitioners Exhibit 3 - Aerial maps
 - Petitioners Exhibit 4 - Anything obtained through discovery¹
 - Petitioners Exhibit 5 - IBTR ruling: *Karen A. Love and Terrence E. Kiwala v. Porter County Ass'r*, Petition No. 64-025-07-1-5-00008
7. The Respondent presented no exhibits.
8. The following items are also recognized as part of the record:

¹ Petitioners presented no Exhibit 4.

Board Exhibit 1 – Form 131 with attachments
Board Exhibit 2 – Notice of Hearing
Board Exhibit 3 – Hearing Sign-In sheet

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 year.” I.C. § 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 the Indiana Tax Court.” I.C. § 6-1.1-15-17.2(b).
11. Second, I.C. § 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 the assessment is correct.” The statute was amended on March 25, 2014, to include this language. This change has application to all appeals pending before the Board. *See P.L. 97-2014*.
12. In 2011, the subject property was assessed at \$297,500 for the land and \$207,000 for the improvements for a total assessed value of \$504,500. The 2012 assessment for the

subject property is \$297,500 for the land and \$226,700 for the improvements for a total assessment of \$524,200; an increase of 4% over the assessment for the previous year. The parties also agreed at the hearing that the Petitioners have the burden of proof.

Jurisdictional Framework

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. I.C. § 6-1.5-4-1(a). All such appeals are conducted under I.C. § 6-1.1-15. *See also* I.C. § 6-1.5-4-1(b); I.C. § 6-1.1-15-4.

Petitioners's Contentions

14. The Petitioners contend that the land on the subject property is assessed too high. In support of their position, Petitioners presented a graph of assessments of properties they assert are comparable to the subject property. These comparable properties average \$4.02 per square foot for the land as compared to the land on the subject property that is assessed at \$8.03 per square foot. *Smith testimony, Pet'r Ex. 2.*
15. Application of the 100% market factor to the subject property and not to the comparable properties near the subject property evidences an assessment process that is not uniform and equal. *Smith testimony, Pet'r Exs. 1,2.*
16. The comparable properties are zoned so that a convenience store could potentially be allowed on any of the comparable properties, so the subject property should be similarly assessed. *Smith testimony.*

Respondent's Contentions

17. The Petitioners have failed to make a prima facie case that the 2012 assessment of the property is incorrect.

18. Conclusory statements about an assessor’s methodology are not sufficient to adjust the assessed value of a property. It is necessary to provide objective and verifiable data such as sales, actual cost, or income information related to the property. Respondent also cited the following authorities in support of her argument: *Westfield v. Golf*, 859 N.E.2d 396, (Ind. Tax Ct. 2007), *O’Donnell v. Dep’t of Local Government Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006), and *Kooshtard Property VI, LLC. v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

Analysis

19. Real property is assessed for its “true tax value,” which is defined as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Three standard approaches are used to determine market value-in-use: the cost, sales-comparison, and income approaches. MANUAL at 2. Generally, any evidence relevant to a property’s true tax value as of the assessment date, including an appraisal prepared in accordance with generally recognized appraisal principles, may be offered in an assessment appeal. *Id.* at 3.
20. In a proceeding concerning property that is not residential, a party to an appeal may introduce evidence of the assessments of any relevant, comparable property. I.C. § 6-1.1-15-18. However, preference shall be given to comparable properties that are located in the same taxing district or within two (2) miles of a boundary of the taxing district. The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices. *Id.* I.C. § 6-1.1-15-18 does not automatically make evidence of other properties’ assessments probative. The party relying on those assessments must apply generally accepted appraisal and assessment practices to show that the properties are comparable to the property under appeal. I.C. § 6-1.1-15-18(c)(2). Conclusory statements that a property is “similar” or “comparable” to

another property do not suffice. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of other properties. *Id. at 471*. Similarly, one must explain how any differences between the other properties and the property under appeal affect the property's relative market value-in-use. *Id.*

21. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 478 (Ind. Tax Ct. 2003). *See also, Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230, 1234 (Ind. Tax Ct. 1998).
22. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). (“[I]t is the taxpayer’s duty to walk the Indiana Board ...through every element of the analysis.”)
23. Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell, Supra. See also, Long, Supra at 471.*
24. In support of its position, Petitioners offered a graph of ten properties they argue are comparable to the subject property. The subject property is .85 acres in size. The properties offered as comparable range in size from .31 acres to 6.74 acres and range in assessed value from \$54,300 to \$1,179,500. *Pet'r Ex. 2*. The properties offered as comparable were selected for their proximity to the subject property and because they are zoned similarly to the subject property. *Smith testimony*. Petitioners assert that each of the ten properties offered as comparable is assessed at an average of \$4.02 per square foot and the subject property is assessed at \$8.03 per square foot. *Smith argument, Pet'r Ex. 2*. Petitioners offer no information specific to the uses or descriptions of the comparable

properties or to recent sales of comparable properties to support their position. Five of the properties offered by Petitioners as comparable are located in a different neighborhood and township from the subject property. *Pet'r Ex. 3*. Petitioners simply argue that because the subject property is assessed at a higher rate than the assessments of the properties offered as comparable, then the assessment of the subject property is per se incorrect.

25. Petitioners argue that the 100% market factor should be removed from the subject property. *Smith testimony*. Petitioners argue that the market factor as applied to the subject property evidences an assessment process that is not uniform or equal, yet Petitioners offer no information specific to the use of descriptions of the comparable properties, or to recent sales of comparable properties to support their contention. Petitioners offer no information as to market factors applied to the properties presented as comparable to the subject property. Petitioners offer no information as to market factors applied to the subject property. Petitioners fail to address the fact that the Property Record Card indicates the assessor applied a 100% influence factor to the subject property that, like the market factor, can significantly affect the assessment of the subject property. *Pet. Ex. 2*. The information provided is insufficient for the Board to conclude that these properties are in fact comparable to the subject property or that the assessed value of the subject property is incorrect. Conclusory statements are of no probative value unless accompanied by some explanation relating them to the property's true tax value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1116 (Ind. Tax Ct. 1998).

26. Several Tax Court cases affirm that evidence of the failure of the assessor to adhere to strict application of the assessment guidelines is not enough for a taxpayer to prevail. Challenging methodology is not sufficient without probative evidence of a more accurate value. *P/A Builders and Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *Kooshtard Prop. LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005); *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006).

27. Accordingly, the Petitioners failed to establish a prima facie case that there is an error in the 2012 assessment of the subject property. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006), (stating that “when a taxpayer chooses to challenge an assessment, he or she must show that the assessor’s assessed value does not accurately reflect the property’s market value-in-use.”)
28. The Petitioners also offered the Indiana Board of Tax Review determination in the case of *Love and Kiwala v. Porter County Ass'r*, Petition No. 64-025-07-1-5-00008, in support of their argument that their convenience store was assessed too high. *Smith argument, Pet'r Ex. 5*. The taxpayers in *Love* presented a ratio study as evidence that seven properties sold in their taxing district were assessed lower than the taxpayer’s property’s sales-to-assessment ratio. *Id. at 5*. “Ratio study” is a generic term for sales-based studies designed to evaluate assessment performance. It is a study of the relationship between appraised or assessed values and market value-in-use as reflected by sales or other information. *50 IAC 27-2-10*. A ratio study or a value calibration analysis study is valid to the extent that the sample is sufficiently representative of the population. A study sample is representative when the distribution of ratios of properties in the sample reflects the distribution of ratios of properties in the population. *50 IAC 27-5-3(a)*. Petitioners in the instant case offered no sales-based studies of the subject property taxing district and offered no ratio study to support its argument. The facts of the *Love* case are readily distinguishable from the case at hand.
29. Where the party with the burden has not supported its claims with probative evidence, the opposing party’s duty to offer substantial evidence of the correct assessment is not triggered. *See 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

The Petitioners failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent. The assessment for 2012 will not be changed.

This Final Determination of the above captioned matter is issued on the date first 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 within forty-five (45) days of 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>.