

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

**Petitions:** 71-007-12-1-4-00001  
71-007-13-1-4-00001  
**Petitioner:** JSK Investments, Inc.  
**Respondent:** St. Joseph County  
**Parcel:** 71-03-25-152-005.000-007  
**Assessment Years:** 2012 and 2013

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated its 2012 and 2013 assessment appeals with the St. Joseph County Assessor on November 30, 2012, and December 3, 2013, respectively.
2. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) failed to hold a hearing within 180 days, as required by Ind. Code § 6-1.1-15-1(k).
3. The Petitioner filed Petitions for Review of Assessment (Form 131s) with the Board on April 14, 2014. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed). For both years, the Petitioner elected the Board’s small claims procedures.
4. The Board issued notices of hearing on September 24, 2015.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board’s consolidated administrative hearing on November 24, 2015. She did not inspect the property.
6. Anant Patel appeared *pro se* and was sworn as a witness.<sup>1</sup> Attorney Frank Agostino appeared for the Respondent. Daniel Boecher was sworn as a witness for the Petitioner. St. Joseph County Assessor Rosemary Mandrici was sworn as witness for the Respondent.

**Facts**

7. The property under appeal is classified as “commercial family apartments” located at 118 Rhodes Street in South Bend.

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<sup>1</sup> Mr. Patel signed the Form 131s as “officer” for JSK Investments, Inc.

8. For 2012, the subject property record card indicates a total assessment of \$507,800 (land \$70,000 and improvements \$437,800).
9. For 2013, the subject property record card indicates a total assessment of \$514,900 (land \$70,000 and improvements \$444,900).
10. For both years, the Petitioner requested a total assessment of \$185,703 (land \$14,823 and improvements \$170,880).

### **Record**

11. The official record for this matter is made up of the following:
  - a) Petitions for Review of Assessment (Form 131s) with attachments,

- b) A digital recording of the hearing,

- c) Exhibits:

Petitioner Exhibit 1:	“Assessed valuation comparison for 247 N. Dixieway and 118 Rhodes” with Geographic Information System (GIS) reports for properties utilized in the comparison,
Petitioner Exhibit 2:	American Institute of Architects (AIA) Document G702, signed November 29, 2011.

Respondent Exhibit A:	2012 subject property record card,
Respondent Exhibit B:	2013 subject property record card.

Board Exhibit A:	Form 131s with attachments,
Board Exhibit B:	Notices of hearing, dated September 24, 2015,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance by Frank J. Agostino.

- d) These Findings and Conclusions.

### **Contentions**

12. Summary of the Petitioner’s case:
  - a) The property’s 2012 and 2013 assessments are too high. The cost to construct the subject property was roughly \$174,640. However, this amount is an estimate because the subject property’s construction costs were combined with another property owned by the Petitioner. The Petitioner “could not remember” if the property was complete as of March 1, 2012, but it was complete as of March 1, 2013. *Patel argument; Boecher testimony; Pet’r Ex. 2.*

- b) The Petitioner also offered an analysis of “comparables from the market” using their “most current assessments” to prove the property’s land assessments were excessive. The subject property’s land assessment is currently \$70,000 for 0.16 acres of land. This assessment equates to \$437,500 per acre. The average assessed value per acre of the “six unrelated parcels” in the Petitioner’s analysis equates to \$92,649.<sup>2</sup> Five of the six properties utilized in the analysis are located on Dixieway, while the remaining property is located on Willow Drive. Applying the “average assessed value per acre” to the subject property would result in a land assessment of \$14,823. *Boecher testimony; Pet’r Ex. 1.*
- c) The Petitioner also analyzed the assessment of a five-unit apartment complex. This property has a “total improvement assessment of \$53,400.” As such, the assessed value per unit equates to \$10,680. Given the subject property is “newer,” a per-unit assessment “of twice that or \$21,360” would be acceptable. Applying this amount to the subject property’s eight units, would yield an improvement assessment of \$170,880. *Boecher testimony; Pet’r Ex. 1.*

13. Summary of the Respondent’s case:

- a) The property is assessed correctly. The assessments accurately reflect the market value-in-use of the property for each year. The 2012 assessment was based on 94% completion as of March 1, 2012. The 2013 assessment was based on 100% completion as of March 1, 2013. *Agostino argument; Mandrici testimony; Resp’t Ex. A, B.*
- b) Assessments are determined utilizing the cost tables provided by the Department of Local Government Finance (DLGF), the size and use of the structure, and the land value. In 2012, there was a general reassessment, and all land was evaluated and readjusted that year. The DLGF issued new cost tables for 2013, however, no adjustment for land was included that year. There are different land classifications, uses and valuations for commercial land such as the subject property. *Mandrici testimony.*
- c) The “comparable data” presented by the Petitioner appears to be from 2014 and 2015. Further, the Petitioner has “arbitrarily determined values by just averaging properties that are not comparable.” *Agostino argument (referencing Pet’r Ex. 1).*

### **Burden of Proof**

14. 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 as amended by P.L. 97-2014 creates two exceptions to that rule.

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<sup>2</sup> The “unrelated parcels” include a pawn shop, a doctor’s office, a retail store, a fast-food restaurant, a three-story office building, and a five-unit apartment complex.

15. 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.”<sup>3</sup> 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).
16. 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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
17. Here, the parties agree that the assessed value of the property did not increase by more than 5% from 2011 to 2012. In fact, the assessment decreased from \$634,400 in 2011 to \$507,800 in 2012. The ALJ made a preliminary determination that the Petitioner has the burden of proof for 2012, and the Board adopts the ALJ’s ruling.
18. The burden for the 2013 assessment year will depend on the Board’s findings for 2012.

### **Analysis**

19. The Petitioner failed to make a prima facie case for reducing the 2012 or 2013 assessments.
  - a) 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 or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

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<sup>3</sup> The Respondent stated the subject property was assessed at 94% complete for the March 1, 2012, assessment. The Respondent also stated the property was assessed at 100% complete for the March 1, 2013, assessment. Neither party offered any argument about whether the property was the “same” for purposes of Ind. Code § 6-1.1-15-17.2(a). In fact, the Petitioner stated he “could not remember” if the property was complete as of March 1, 2012. As such, the Board will not raise this issue *sua sponte*.

- b) 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 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2013 assessment, the valuation date was March 1, 2013. *Id.*
- c) Here, the Petitioner offered the same evidence and argument for both 2012 and 2013. To support its argument that the assessment should be reduced, the Petitioner first offered an "AIA document" purporting to indicate the property's construction cost as of November 29, 2011. According to this document, it appears the combined construction cost for the subject property and another property, located at 247 Dixieway North, was \$436,600. The Petitioner contends that \$174,640 is applicable to the subject property.
- d) While this evidence may have some probative value, it is not enough to make a case for reducing the assessment. First, it is not entirely clear that the structure was 100% complete as of the date on the document. On one hand, Mr. Patel testified that the \$436,600 represented 100% of budgeted costs. On the other hand, Mr. Patel articulated he "could not remember" if the building was complete as of March 1, 2012.<sup>4</sup> Thus, it is not clear whether construction continued after the date indicated on this document.
- e) Further, even if the document does represent 100% of the construction costs, the Board finds a lack of credible evidence as to how that cost should be divided between the subject property and the property located at 247 Dixieway North. While Mr. Patel suggested that 40% was applicable to the subject property, that amount appears to be, at best, a guess or an estimate. The Petitioner failed to offer any documentary evidence to substantiate his claim. Thus, the Petitioner's evidence fails to prove any change is required.
- f) The Petitioner also offered a comparison to other assessments. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).
- g) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *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

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<sup>4</sup> According to the Respondent, the property was assessed at 94% complete as of March 1, 2012.

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.*

- h) Here, the Petitioner failed to provide any of the required analysis. For the land assessment comparison, the Petitioner chose parcels of various sizes, between 0.16 acres and 1.36 acres, with no adjustments made to account for the differences in size. The Petitioner failed to prove how the purportedly comparable properties are comparable to the subject property, and the Petitioner failed to account for any differences. Further, the Petitioner failed to show how simply averaging the values of “unrelated” parcels comports with generally accepted appraisal principles.
- i) Similarly, the Petitioner’s attempt to derive a value for the structure lacks probative value. Here, the Petitioner utilized only one purportedly comparable property, a five-unit apartment building. The Petitioner did not compare the purportedly comparable five-unit apartment to the subject property. Further, the Petitioner failed to provide any adjustments to account for the difference in the number of units, or for any other differences for that matter. Again, the Petitioner failed to offer any evidence to support his assumption that the subject property should be valued at twice the cost per unit when compared to the purported comparable.
- j) Further, even if the Petitioner was able to prove that the methodologies used complied with generally accepted appraisal principles, he used the most current assessments for the purported comparables in the analysis without any adjustments relating back to the relevant valuation dates. Consequently, for all the reasons discussed, the Petitioner’s analysis lacks probative value.
- k) The Petitioner failed to make a prima facie case that the 2012 and 2013 assessments are incorrect. Where the Petitioners have not supported their 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).

### **Conclusion**

20. The Board find for the Respondent.

## Final Determination

In accordance with these findings and conclusions, the 2012 and 2013 assessment will not be changed.

ISSUED: February 22, 2016

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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 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>>.