

REPRESENTATIVE FOR PETITIONER: Kahlil Barnard, *Pro Se*

REPRESENTATIVE FOR RESPONDENT: Virginia Whipple, Local Government
Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MP Investments XII LLC,)	Petition:	03-005-15-1-4-00501-16
)		
Petitioner,)	Parcel:	03-96-20-140-000.103-005
)		
v.)	County:	Bartholomew
)		
Bartholomew County Assessor,)	Assessment Year:	2015
)		
Respondent.)		

February 28, 2018

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. MP Investments argued that the 2015 assessment of the subject property should be reduced to \$1.2 million, the price it paid for the subject property on February 6, 2015. We find that sale to be reliable evidence of value and order the subject property's assessment reduced to \$1.2 million.

PROCEDURAL HISTORY

2. MP Investments XII (“MP Investments”) filed a notice for review with the Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2015 assessment year. The subject property’s original assessment was:

Year	Land	Improvements	Total
2015	\$1,301,600	\$590,500	\$1,892,100

3. The PTABOA did not issue a determination within 180 days and MP Investments filed a direct appeal to the Board. It chose to opt out of small claims proceedings. On November 30, 2017, our designated administrative law judge, Timothy Schuster (“ALJ”) held a hearing. Neither he nor the board inspected the property.
4. Kahlil Barnard, the managing partner of MP Investments XII LLC, appeared *pro se*. Virginia Whipple represented Lew Wilson, the Bartholomew County Assessor, as a local government representative under 52 IAC 1-1-3.5.
5. The following exhibits were submitted:

Petitioner’s Ex. A:	Appraisal report prepared by Denise Klivansky of Don R. Scheidt & Co., Inc.
Respondent’s Ex. A:	Lew Wilson and Virginia Whipple credentials,
Respondent’s Ex. B:	Statement of Professionalism from Lew Wilson and Ginny Whipple,
Respondent’s Ex. C:	Subject property record card from 2014,
Respondent’s Ex. D:	Subject property record card from 2015,
Respondent’s Ex. E:	Aerial photograph of the subject property from 2014,
Respondent’s Ex. F:	Aerial photography of the subject property from 2017,
Respondent’s Ex. G:	2014 stipulation agreement between Bartholomew County Assessor and CPB Foods, LLC,
Respondent’s Ex. H:	<i>Mac’s Convenience Stores, LLC v. Johnson County Assessor</i> (IBTR decided July 25, 2012), Petition # 41-025-08-1-4-00959 and 41-025-08-1-4-01386,
Respondent’s Ex. I:	Sales disclosure form from Corral Group LP to CPB Foods, LLC (conveyed January 10, 2013),
Respondent’s Ex. J:	Weisbecker, Lee, <i>Golden Corral sues top franchisee Guillermo Perales</i> , Sep. 21, 2009,

- Respondent's Ex. K: Sales disclosure form from CPB Foods, LLC to MP Investments XII LLC (conveyed February 6, 2015),
- Respondent's Ex. L: Email from Kahlil Barnard to Dean Layman (Nov. 1, 2017, 4:19 p.m. EST),
- Respondent's Ex. L.1: Personal Property Tax Return for CPB Foods, LLC,
- Respondent's Ex. M: Sales disclosure form from MP Investments XII LLC to The Morgan and Sue Johnson Family Trust (conveyed July 25, 2016),
- Respondent's Ex. N: Summary statement describing timeline from July 22, 2005 through 2016

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders and notices issued by the Board or our administrative law judge; and (3) a digital recording of the hearing.

OBJECTION

7. The Assessor objected to Petitioner's Ex. A, an appraisal report prepared by Denise Klivansky, on the grounds that it was not exchanged. Under 52 IAC 2-7-1(b)(1), a party to an appeal must provide copies of documentary evidence at least five (5) business days before the hearing. Failure to comply with these rules may serve as grounds to exclude the evidence at issue. *See* 52 IAC 2-7-1(b)(1); *see also*, 52 IAC 2-7-1(f). Barnard testified that he provided a 1-page excerpt to the Assessor the day before the hearing but did not exchange the full appraisal. In addition, MP Investments did not request a continuance of the hearing. We sustain the Assessor's objection and exclude Petitioner's Ex. A.¹

FINDINGS OF FACT

8. The subject property is located at 1250 National Road in Columbus, Indiana. As of March 1, 2015, it contained approximately 1.66 acres of land and a "Golden Corral" restaurant which closed immediately prior to the assessment date. MP Investments bought the subject property for \$1,200,000 on February 6, 2015. The Golden Corral continued to operate through February 14, 2015, then shut down. The improvements

¹ The Assessor made several arguments referencing Petitioner's Ex. A. Because we have excluded the exhibit at the Assessor's request, we will not consider those arguments.

were demolished sometime in 2015 after the assessment date. The cost of demolishing the improvements and redeveloping the site was approximately \$125,000. *Barnard testimony; Resp't Ex. C, K, L; Ind. Code § 6-1.1-2-1.5(a)(1).*

PETITIONER'S CONTENTIONS

9. MP Investments argued that the subject property is assessed too high. It argued that that its February 6, 2015, purchase of the subject property for \$1.2 million was the best evidence of value. Barnard testified that the purchase was an arm's length transaction, and that the seller, CPB Foods, hired a specialized real estate broker to market the property. *Barnard testimony.*

RESPONDENT'S CONTENTIONS

10. The Assessor argued that the burden of proof is on the Petitioner because stipulations "do not form a baseline," and as a result the value did not increase by more than 5% from the 2014 to 2015 assessment years. *Whipple testimony/argument; Resp't Ex. G & H.*
11. The Assessor discussed a number of different sales of the property. The first sale was from Guillermo Perales to CPB Foods LLC in January 2013. Whipple testified that it was a private sale, and thus not an arms-length transaction or a reliable indication of value. *Resp't Ex. I; Whipple testimony.*
12. Whipple also testified about the February 2015 sale to MP Investments from CPB Foods. She testified that CPB told her that the lease expired and was not renewed, and they "wanted to get rid of it." She argued that this fact shows that CPB Foods was a "motivated seller" when it sold the property to MP Investments. Based on this, she argued the sale was not an "arms-length transaction." *Resp't Ex. K; Whipple testimony.*
13. Whipple also testified about a July 2016 sale from MP Investments to Chick-fil-a for approximately \$2.2 million. She testified that this sale was too far removed from the assessment date to represent the value for March 1, 2015. However, she also argued that it could represent a reliable land value for the property as of March 1, 2015. In addition,

she testified the sale represented a different property because MP Investments demolished the improvements and made site improvements. *Whipple testimony.*

14. The Assessor argued that the various sales of the subject property are “not true valid arms-length transactions.” He requested that the 2015 assessment of the subject property remain at \$1,892,100. *Whipple argument.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

15. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that the assessment is wrong, and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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). A burden-shifting statute creates two exceptions to the rule.
16. First, Ind. Code § 6-1.1-15-17.2(a) “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.” Under Ind. Code § 6-1.1-15-17.2(b), “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.”
17. 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 Ind. Code §§ 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “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).

18. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c)(2014).
19. MP Investments made no argument about the burden of proof. The Assessor argued that the burden of proof rested with the Petitioner. In support of this, the Assessor argued that the prior year’s stipulated value of \$1,475,000 did not form a baseline for purposes of the burden shifting rule. The Assessor submitted an excerpt from *Mac’s Convenience Stores, LLC v. Johnson Co. Ass.*, (IBTR July 25, 2012) in which we found just that.
20. In 2014, subsequent to that decision, the Indiana Legislature amended Indiana Code § 6-1.1-15-17.2. Now, when an assessment is reduced after an appeal is filed, if there is any increase in the subsequent year the Assessor bears the burden of proof. The assessment increased from approximately \$1,475,000 to \$1,892,100. Thus, the Assessor has the burden of proof.

B. Assessor’s Arguments

21. The Assessor argued that the various sales of the subject property were not representative of value, but he offered little evidence supporting the current assessment. He also made a brief argument that the July 2016 sale could represent a land value for the property. But the Assessor did nothing to relate that sale to the March 1, 2015 assessment date. We also note that the Golden Corral, which was standing as of March 1, 2015, was soon after demolished. We find it entirely plausible that the improvements were actually detracting from the value of the subject property. Thus, we find the Assessor failed to meet the burden of proof. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) Because the Petitioner has requested a value lower than the prior year’s assessment, we now consider its evidence.

C. MP Investments' Arguments

22. MP Investments requested an assessment of \$1.2 million based on the price it paid for the subject property less than a month prior to the assessment date. *See Hubler Realty Co. v. Hendricks Co. Assessor*, 938 N.E.2d 311, 314 (Ind. Tax. Ct. 2010) (the Tax Court found sales information regarding the subject property or comparable properties can be probative evidence of market value-in-use). We find that sale to be reliable evidence of the subject property's market value-in-use as of the assessment date.
23. The Assessor argued that this sale is not reliable evidence because the seller was "motivated" which caused the sale to not be an "arms-length transaction." The term "arms-length transaction" refers to whether the buyer and seller were related parties. *See Millennium Real Estate Inv., LLC v. Assessor Benton Co., Indiana*, 979 N.E.2d 192, 195 (Ind. Tax Ct. 2012) *citing Austin v. Indiana Family & Soc. Svcs. Admin.*, 947 N.E.2d 979, 985 (Ind. Ct. App. 2011). There is nothing in the evidence to indicate CPB Foods and MP Investments were related parties. To the contrary, Barnard testified that CPB Foods hired a real estate broker to market the property.
24. Nevertheless, we will presume that the Assessor was arguing that CPB Foods was atypically motivated. There is little in the record to support this conclusion. Although Whipple testified that CPB foods "wanted to get rid of" the subject property, one would presume that a desire to get rid of a property is ordinarily a prerequisite to selling a property. Whipple also testified that the lease to Golden Corral was not renewed, but there is nothing in the record to support the contention that the lack of a lease renewal is an atypical motivation. We find the Assessor failed to show that the February 6, 2015 sale was not reliable evidence of value for the March 1, 2015 assessment date.

D. Conclusions

25. The Assessor bore the burden of proof and failed to make a prima facie case that the 2015 assessment was correct. MP Investments requested a lower assessment based on its 2015 purchase of the subject property. We find that sale to be reliable evidence and order the 2015 assessment reduced to \$1,200,000.

The Assessments are changed accordingly. This 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>>.