

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

Petition Nos.: 02-070-11-1-4-00024
02-070-11-1-4-00025
02-070-11-1-4-00026
Petitioners: MSW Enterprises, LLP / Phyllis W. Sutherland¹
Respondent: Allen County Assessor
Parcel Nos.: 02-13-05-126-003.000-070
02-13-05-126-004.000-070
02-13-05-126-006.000-070
Assessment Year: 2011

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

Procedural History

1. MSW Enterprises, LLC and Phyllis W. Sutherland, filed three Form 130 petitions with the Allen County Assessor contesting the above-captioned parcels’ March 1, 2011 assessments. The Allen County Property Tax Assessment Board of Appeals (“PTABOA”) denied the Petitioners’ appeals.
2. The Petitioners then timely filed three Form 131 petitions with the Board and elected to have the appeals heard under the Board’s small claims procedures.
3. On October 11, 2012, the Board held a hearing on the three petitions through its designated administrative law judge, Jennifer Bippus (“ALJ”). F. John Rogers appeared as counsel for the Respondent. Milo Smith, the Petitioners’ certified tax representative, and Jill Weikart, deputy county assessor, were sworn as witnesses.

Facts

4. The subject parcels, which the parties generally treat as one property, are improved with a 28,450-square-foot bowling facility. They are located at 3810 and 4012 Lake Avenue in Fort Wayne. Unless otherwise indicated, the Board refers to all three parcels collectively as “the subject property.”
5. Neither the Board nor the ALJ inspected the subject property.

¹ MSW Enterprises, LLP filed petition nos. 02-070-11-1-4-00024 and 02-070-11-1-4-00026. Phyllis W. Sutherland filed petition no. 02-070-11-1-4-00025. For ease of reference, the Board refers to Ms. Sutherland and MSW collectively as “the Petitioners” unless otherwise indicated.

6. The PTABOA determined the following assessed values for the subject parcels:

Parcel No.	Land	Improvements	Total
02-13-05-126-003.000-070	\$181,600	\$369,800	\$551,400
02-13-05-126-004.000-070	\$156,800	\$20,000	176,800
02-13-05-126-006.000-070	\$56,400	\$0	\$56,400
Total			\$784,600

7. The Petitioners requested a total assessment for all three parcels of \$13.77 per square foot of building area.

The Parties' Contentions

8. Summary of the Petitioners' evidence and contentions:

- a. The subject property was assessed at \$27.58 per square foot of building area. That is significantly more than what other bowling alleys were assessed for. The Petitioners' witness, Milo Smith, analyzed the assessments for five bowling alleys that he felt were similar to the subject property in use, design, age, condition, and size. The assessments for those properties (including land and improvements) ranged from \$8.34 to \$25.00 per square foot of building area:

<u>Property address</u>	<u>Assessed Value</u>	<u>Per Square Foot</u>
746 North Coliseum	\$132,700	\$8.34 ²
2400 West Jefferson	\$312,800	\$11.00
1710 Bluffton	\$252,700	\$10.00
6770 East State	\$901,200	\$25.00
6700 US 27 South	\$587,400	\$17.00

On average, those properties were assessed at \$12.27 per square foot. When looking at land alone, the properties were assessed for an average of \$1.00 per square foot. *Smith testimony; Pet'rs Ex. 4.*

- b. The subject property contains a large parking lot and a smaller parking lot. The smaller parking lot is used very little, and the large parking lot is used about 60% of the time. When assessors used their "old-fashioned" approach, they did not price a parking lot as primary land unless they saw oil spots on it. *Smith testimony; Pet'rs Ex. 7.* In any event, the amount that a parking lot is used affects its market value-in-use. *Id.*

9. Summary of the Respondent's evidence and contentions:

² The Petitioner's exhibit originally indicated that this property was assessed at \$29.00 per square foot of building area. But Mr. Smith discovered that the property also included a driving range and a golf course, which required him to correct his calculation. He affixed sticky notes with his corrected values to the exhibit. *Smith testimony; Pet'r Ex. 4.*

- a. On their Form 130 petitions, the Petitioners claimed, “[t]his assessment should be based on its current use.” *Resp’t Exs. R-3, R-5*. The Petitioners should be limited to that issue in their appeal to the Board. *Rogers argument*.
- b. In any case, the Petitioners failed to make a prima facie case that the property was incorrectly assessed. The Petitioners offered no evidence of the subject property’s market value-in-use. Mr. Smith’s analysis of purportedly comparable properties’ assessments did not address important characteristics such as age, location, neighborhood influence, or the value of improvements. And he did not account for important differences between his purportedly comparable properties and the subject property. *See Weikart testimony*.
- c. In reality, most of Mr. Smith’s purportedly comparable properties are not actually comparable to the subject property. The property located at 746 North Coliseum Boulevard is merely a small portion of a golf course property. The bowling area is a pole barn with twelve lanes, and it gets very little use. Similarly, the Bluffton Road facility is not even open for business and the West Jefferson facility has no visibility from the road. Also, the Bluffton Road and West Jefferson facilities are older, have lower wall heights, and are in much worse condition than the subject facility. *Weikart testimony; Resp’t Rebuttal Ex. 5*.
- d. The properties on U.S. 27 South and East State are somewhat more comparable to the subject property, at least in terms of their improvements. The property on U.S. 27 South is in a worse location than the subject property, but renovations and upgrades to the bowling alley make it at least worthy of comparison. The facility on East State is probably the most comparable to the subject bowling alley in terms of construction type, wall height, and age. The Respondent’s witness, Jill Weikart, therefore offered her own assessment-comparison analysis using only the U.S. 27 South and East State properties. After removing land values, the two buildings were assessed for an average of \$14.39 per square foot, which is slightly more than \$13.70 per square foot for which the subject building was assessed. *Weikart testimony; Resp’t Rebuttal Exs. 4-5*.
- e. The median land value for recent sales in the subject property’s area was \$3.40 per square foot. The Respondent also contracted two appraisers to re-evaluate all Allen County commercial and industrial land values for the March 1, 2012 assessment date. Unlike some other base rates in the area, the base rates used to assess the subject parcels did not increase between 2011 and 2012. *Weikart testimony; Resp’t Rebuttal Ex. 1*.
- f. Ms. Weikart also did a market analysis for special purpose properties using sales and listing information from the Indiana Commercial Real Estate Exchange (“ICREX”). The subject property’s assessment falls within the range indicated by those listing and sale prices. *Weikart testimony; Resp’t Rebuttal Ex. 2*.

10. The official record for this matter is made up of the following:

- a. The Form 131 petition,
- b. Digital recording of the hearing,
- c. Exhibits:
 - Petitioners Exhibit 1: 2011 property record card for Parcel No. 02-13-05-126-003.000-070,
 - Petitioners Exhibit 2: 2011 property record card for Parcel No. 02-13-05-126-006.000-070,
 - Petitioners Exhibit 3: 2011 property record card for Parcel No. 02-13-05-126-004.000-070,
 - Petitioners Exhibit 4: Assessment analysis of five bowling alleys in Fort Wayne with sticky notes attached,
 - Petitioners Exhibit 5: Aerial photograph of Parcel No. 02-13-05-126-003.000-070,
 - Petitioner Exhibit 6: Aerial photograph of Parcel No. 02-13-05-126-006.000-070,
 - Petitioners Exhibit 7: Aerial photograph of Parcel No. 02-13-05-126-004.000-070.

 - Respondent Exhibit 1: Allen County Position Statement,
 - Respondent Exhibit 2: Photograph of and data for subject property and aerial photograph of subject property,
 - Respondent Exhibit 2a: Property record card for Parcel No. 02-13-05-126-003.000-070,
 - Respondent Exhibit 2b: Property record card for Parcel No. 02-13-05-126-004.000-070,
 - Respondent Exhibit 2c: Property record card for Parcel No. 02-13-05-126-006.000-070,
 - Respondent Exhibit 3: Form 130 petitions for the subject property,
 - Respondent Exhibit 4: October 10, 2011 letter from Jill Weikart to Milo Smith with attached blank forms for withdrawing appeals,
 - Respondent Exhibit 5a: Two Form 114 notices scheduling hearings before the PTABOA; Form 115 determination for Parcel No. 02-13-05-126-003.000-070 with mailing date of 12/16/11; Form 115 determination with mailing date of 1/27/12; excerpt from Assessor's Operations Manual,
 - Respondent Exhibit 5b: Two Form 114 notices scheduling hearings before the PTA BOA; Form 115 determination for Parcel No. 02-13-05-126-004.000-070 wit mailing date of 12/16/11; Form 115 determination with mailing date of 1/27/12,

- Respondent Exhibit 5c: Two Form 114 notices scheduling hearings before the PTABOA; Form 115 determination for Parcel No. 02-13-05-126-006.000-070 with mailing date of 12/16/11; Form 115 determination with mailing date of 1/27/12,
- Respondent Exhibit 6: The three Form 131 petitions for the subject property,
- Respondent Exhibit 7: Copy of 52 IAC 3 and text of 52 IAC 3-1-5,
- Respondent Exhibit 8: September 19, 2012 e-mail from Jill Weikart to Milo Smith and September 19, 2012 letter from Weikart to Smith
- Respondent Exhibit 9: Text of Ind. Code §§ 6-1.1-15-18 and 6-1.1-15-17.2; Burden Shifting Legislation; HB 1195; *Charles D. and Mary Sue King*, Pet. no. 45-026-06-1-5-00001 (Ind. Bd. of Tax Rev., January 7, 2010); various pages from the Real Property Assessment Guidelines for 2002 – Version A describing General Commercial pricing models; excerpt from Assessor’s Operations Manual: Duties, Responsibilities and Procedures,
- Respondent Exhibit 10: Evidence of Market Value-In-Use (properties sold and currently listed for sale),
- Respondent Exhibit 10a: Three Approaches to Value Rebuttal Evidence (discussion of Petitioner’s comparable properties).
- Respondent Rebuttal Exhibit 1: Land value analysis; aerial photograph with parcels outlined in red pen; five completed sales disclosures
- Respondent Rebuttal Exhibit 2: Six ICREX property listings, including three sold properties,
- Respondent Rebuttal Exhibit 3: Photograph, data and property record card for 746 North Coliseum,
- Respondent Rebuttal Exhibit 4: Comparable property analysis,
- Respondent Rebuttal Exhibit 5: Photographs, data, property record cards, and *mapquest.com* directions for comparable properties.
- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Notice of Appearance for F. John Rogers,
- Board Exhibit D: Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

Issues on Appeal

11. As a preliminary matter, the Respondent claimed that the Board's proceedings are limited to the issue that the Petitioners raised on their Form 130 petitions to the PTABOA, *i.e.* that "[t]his assessment should be based on [the subject property's] current use." *Resp't Ex. R-3*. The Respondent is correct that, "[b]y accepting the small claims procedure, the parties agree that: (1) the issues contained in the appeal petition are substantially the same as those presented to the PTABOA; and (2) no new issues will be raised before the [B]oard." 52 IAC 3-1-2(b). The Petitioners, however, did not raise new issues before the Board. On their Form 131 petitions, the Petitioners claimed that the subject property's assessment "exceeds its market value-in-use," and they sought to prove that claim at the Board's hearing by offering evidence of how other bowling alleys were assessed. Although not phrased identically, that is consistent with the claims asserted on the Petitioners' Form 130 petitions.

Discussion of Merits

12. Generally, a petitioner seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect 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). In making its case, the petitioner must explain how each piece of evidence relates 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"). If the petitioner makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
13. The Petitioners did not make a prima facie case for reducing the subject property's assessment. The Board reaches this conclusion because:
 - a) Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. As the Indiana General Assembly has recognized, one way to show a property's market value-in-use is to offer evidence of comparable properties' assessments:
 - (a) This section applies to an appeal to which this chapter applies, including any review by the board of tax review or the tax court.
 - (b) This section applies to any proceeding pending or commenced after June 30, 2012.

(c) To accurately determine market-value-in-use, a taxpayer or an assessing official may:

(1) in a proceeding concerning residential property, introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district; and

(2) in a proceeding concerning property that is not residential property, introduce evidence of the assessments of any relevant, comparable property.

However, in a proceeding described in subdivision (2), 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.*

I.C. § 6-1.1-15-18 (emphasis added).

- b) But Indiana Code § 6-1.1-15-18 does not automatically make evidence of other properties' assessments probative. Instead, 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. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *See Long*, 821 N.E.2d at 470 (addressing taxpayers' attempt to use sales and listing data to prove their property's market value-in-use). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the other properties. *Id.* at 471. Similarly, one must explain how any differences between the other properties and the property under appeal affect the properties' relative market values-in-use. *Id.*
- c) Mr. Smith did little to compare his purportedly comparable properties to the subject property. He mainly relied on the fact that they were all used as bowling alleys. But a property's use is only one factor to consider in determining comparability. To the extent Mr. Smith claimed that the other bowling alleys were comparable to the subject bowling alley in terms of design, age, condition and size, he made only conclusory assertions. Mr. Smith similarly failed to explain how any relevant differences between the subject property and his purportedly comparable properties, such as differences in location, wall height,³ and the presence of abnormal obsolescence, affected the properties' relative values. Mr. Smith's comparison data and resulting valuation conclusion therefore have little or no probative value.

³ The record is silent regarding the extent to which a bowling alley's wall height is likely to affect its sale price. But Mr. Smith was comparing assessments instead of sale prices, and wall height is an important component in assessing many commercial buildings. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, ch. 6 at 13 ("If the actual wall height is different from the wall height listed in the use-model, an adjustment is necessary."). In fact, the assessment for three of the five bowling alleys to which Mr. Smith sought to compare the subject property included adjustments to account for differences between the building's wall height and the wall height in the General Commercial Mercantile model used to value the building. *Resp't Rebuttal Exs.* 3, 5.

14. Because the Petitioners failed to make a prima facie case for reducing the subject property's assessment, the Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Board sustains the March 1, 2011 assessment for each parcel under appeal.

ISSUED: March 20, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.