

REPRESENTATIVE FOR PETITIONER: Michael White, Certified Tax Representative

REPRESENTATIVES FOR RESPONDENT: Kevin Gardner and Michael West, Vigo County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MUTCHNER, LLC,)	Petition No.: 84-003-18-1-4-00893-19
)	
Petitioner,)	Parcel No.: 84-09-18-100-009.000-003
)	
v.)	County: Vigo
)	
VIGO COUNTY ASSESSOR,)	Assessment Year: 2018
)	
Respondent.)	

Appeal from the Final Assessment of the
Vigo County Property Tax Assessment Board of Appeals

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. Mutchner, LLC contested its 2018 assessment. It presented an income capitalization approach but failed to provide any market-based support for the income, expense, occupancy rate, or the capitalization rate data used to derive its proposed valuation. Thus, we conclude that Mutchner's income approach is not probative evidence of the property's market value-in-use. Nevertheless, the Assessor conceded that we should reduce the 2018 assessment to \$222,200.

PROCEDURAL HISTORY

2. Mutchner challenged the 2018 assessment of its property located at 5377 South State Road 63 in Terre Haute. On August 7, 2019, the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) issued a final determination upholding the original assessment of \$225,400 (\$133,000 for land and \$92,400 for improvements).
3. Mutchner timely appealed to the Board. On June 25, 2020, David Smith, our designated administrative law judge (“ALJ”), held a telephonic hearing. Neither he nor the Board inspected the subject property.
4. Michael White, Kevin Gardner, and Michael West testified under oath.
5. Mutchner submitted the following exhibit:

Petitioner Ex. A: Cover sheet; narrative statement; income calculation; profit and loss statement; and 2018 Property Record Card (“PRC”) for subject

6. The Assessor submitted the following exhibits:

Respondent Ex. 1(A): 2017 PRC for subject property
Respondent Ex. 1(B): 2018 PRC for subject property
Respondent Ex. 2: GIS images of property on 4/3/2016 and 3/16/2018
Respondent Ex. 3: Revised 2018 PRC with changes to linear feet of fence
Respondent Ex. 4: GIS image showing measurement of fence
Respondent Ex. 5(A): 2011 Manual, Appendix G pg. 27
Respondent Ex. 5(B): 2011 Manual, Appendix F pg. 26
Respondent Ex. 5(C): 2011 Manual, Appendix F pg. 28
Respondent Ex. 6: 2018 Honey Creek Township Commercial Land Order
Respondent Ex. 7: GIS map for Commercial/Industrial parcels Honey Creek Township
Respondent Ex. 8(A): 2011 Manual, Ch. 2, pg. 65
Respondent Ex. 8(B): 2011 Manual, Ch. 2, pg. 67
Respondent Ex. 9: Copy of IBTR decision in *McKee Realty Corp v. Marion County Assessor* (issued 9/4/2019)
Respondent Ex. 10: Uniform Standards of Professional Appraisal Practice (“USPAP”) compliance statement

7. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
9. Here, the assessment increased from \$3,600 in 2017 to \$225,400 in 2018—an increase of more than 5%. Mutchner argued that the Assessor should therefore have the burden of proof. However, the Assessor argued that Mutchner should retain the burden because the property's use changed from agricultural in 2017 to commercial in 2018. Our ALJ preliminarily ruled that Mutchner has the burden based on the change in use.
10. The evidence before us demonstrates that Mutchner added new improvements to the property sometime before January 1, 2018, and then utilized it as an outdoor storage area for its nearby mini-warehouse business during the full 2018 calendar year. It further shows that the Assessor had not considered those changes when he assessed the property for 2017. Accordingly, the burden shifting statute does not apply. *See* I.C. § 6-1.1-15-17.2(c) (stating that the burden-shifting statute does not apply if the assessment under appeal is based on substantial renovations or new improvements, zoning, or uses that were not considered in the prior year's assessment). We therefore adopt our ALJ's ruling assigning the burden of proof to Mutchner.

MUTCHNER'S CONTENTIONS

11. Mutchner owns a mini-warehouse facility that is separated from the subject property by a parcel. Mutchner paved the subject property and installed fencing and an entry system to convert it into a 119-space outdoor storage facility. Customers rent spaces on a per month basis to store boats, trailers, and other equipment. The 2018 assessment increased the taxes to an amount that exceeds the property's rental income. In 2018, during the property's first full year of use, Mutchner collected just over \$13,000 in rental income and had zero net operating income after expenses. *White testimony; Pet'r Ex. A at 1-3.*

12. Because the property is income producing, Mutchner presented an income capitalization approach. It projected gross annual rent of \$49,980 based on the rental of all 119 spaces at an average price of \$35 per month. It then applied a 70% vacancy rate and subtracted \$4,799 for operating expenses, producing net operating income ("NOI") of \$10,195. Mutchner selected a 7.0% base capitalization rate because that is the rate White had utilized with other self-storage clients. It then added 2.071% to the base rate to account for real estate taxes, for a loaded capitalization rate of 9.071%. Applying the loaded cap rate to the NOI resulted in a value of \$112,391—its proposed assessed value for 2018. *White testimony; Pet'r Ex. A at 1, 2.*

THE ASSESSOR'S CONTENTIONS

13. The GIS maps show the change to the property from 2017 to 2018. Mutchner's attempt to calculate an assessed value based on the number of spaces is contrary to a prior decision by the Board, which rejected an income capitalization calculation based on the number of parking spaces. Additionally, Mutchner did not present any evidence to verify the capitalization rate that it used. The Assessor believes that its revised cost approach value of \$222,200 is the correct assessment for Mutchner's property. *West testimony; Resp't Exs. 2, 3, 4, 9.*

ANALYSIS

14. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC § 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
15. All three standard appraisal approaches—the cost, sales comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; see also *Eckerling V. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is January 1, 2018. I.C. § 6-1.1-2-1.5(a).
16. As explained above, Mutchner has the burden of proving the property’s correct market value-in-use for 2018. It offered an income capitalization approach prepared by White and requested we reduce the 2018 assessment to \$112,391. However, White’s analysis relied solely on Mutchner’s own average monthly rental rates. Although examining a property’s actual rent is an important step, relying on it exclusively is inappropriate when appraising a property’s market value-in-use. See *Indiana MHC, LLC v. Scott Cty. Ass’r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (citing THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001) (“[T]o provide a sound value indication

under the income capitalization approach, one must not only examine the historical and current income, expenses and occupancy rates for the subject property, but the income, expenses, and occupancy rates of comparable properties in the market as well.”) (emphasis in original). Similarly, Mutchner offered no market support for the 70% vacancy rate, \$4,799 in operating expenses, or the 7.0% base capitalization rate White used in his analysis. We conclude that these errors deprive Mutchner’s income capitalization approach of any probative value.

17. Because Mutchner did not offer any probative market-based evidence to demonstrate the property’s correct market value-in-use for 2018, it failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported its 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). Nevertheless, we accept the Assessor’s concession that the property’s 2018 assessment should be \$222,200.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2018 assessment reduced to \$222,200.

ISSUED: August 14, 2020

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>>.