

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

Petitions: 45-006-15-1-4-01236-18
45-006-16-1-4-01235-18
Petitioner: 444 Building, LLC
Respondent: Lake County Assessor
Parcel: 45-07-23-351-011.000-006
Assessment Years: 2015, 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. 444 Building, LLC (“Building”) contested the 2015 and 2016 assessments of its property located at 444 W. Ridge Road in Griffith. The Assessor valued Building’s restaurant as follows:

Year	Land	Improvements	Total
2015	\$292,900	\$974,900	\$1,268,800
2016	\$337,600	\$915,500	\$1,253,100

2. On November 16, 2018, Building filed Form 131 petitions with the Board and elected to proceed under our small claims procedures.¹ On September 10, 2019, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Building’s petitions. Neither she nor the Board inspected the subject property.
3. Building appeared by its tax representative, Peter Karagan. The Assessor appeared by its Hearing Officers Robert Metz and Joseph James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit 1: Notice of Preliminary Conference for 2014

¹ Building elected to appeal its 2015 and 2016 assessments directly to us after the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) failed to issue a determination within 180 days of the filing of its Form 130 notices of appeal. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).

- Petitioner Exhibit 2: Property Record Card (“PRC”) for subject property
 Petitioner Exhibit 3: 2014 pay 2015 tax bill for subject property
 Petitioner Exhibit 4: Screenshot of corrected 2014 assessed value
 Petitioner Exhibit 5: Notice of Preliminary Conference for 2017 and withdrawal of 2017 appeal
 Petitioner Exhibit 6: Building’s objections to Vale’s appraisal
 Petitioner Exhibit 7: PRC for Vale’s land sale #1
 Petitioner Exhibit 8: PRC for Vale’s land sale #2
 Petitioner Exhibit 9: PRC for Vale’s land sale #3
 Petitioner Exhibit 10: PRC for Vale’s land sale #4
 Petitioner Exhibit 11: Information on Vale’s capitalization rate comps
 Petitioner Exhibit 12: Listing for a rental space in Griffith Park
 Petitioner Exhibit 13: Timeline of K-Mart’s decline
 Petitioner Exhibit 14: Article from *CNNMoney*, June 2015
 Petitioner Exhibit 15: Article from *Forbes*, January 2014
 Petitioner Exhibit 16: Article from *MarketWatch*, December 2015
 Petitioner Exhibit 17: Sears Holding Reports, Fourth quarter and full 2015 year
 Petitioner Exhibit 18: Sears Holding Reports, Fourth quarter and full 2016 year
 Petitioner Exhibit 19: Article from *CNBC*, November 2017,
 Petitioner Exhibit 20: Article by *PYMNTS*, February 2018 on Sears’ sales slide
 Petitioner Exhibit 21: GIS map of the subject property’s location in the plaza
 Petitioner Exhibit 22: GIS map of the subject property’s entry and K-Mart, the anchor store
 Petitioner Exhibit 23: PRC for K-Mart
 Petitioner Exhibit 24: PRC for Popeye’s, 430 W. Ridge Rd.
 Petitioner Exhibit 25: Article from *Real Estate Weekly*, May 2018
 Petitioner Exhibit 26: Article from *NWI Times*, April 2018
 Petitioner Exhibit 27: Spreadsheet of local restaurants with property record cards
- Respondent Exhibit 1: Appraisal prepared by Jeffrey R. Vale

5. The official record for this matter 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

6. 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).

7. Here, the 2015 assessment increased above the level determined in Building’s successful appeal of the 2014 assessment. The Assessor therefore bears the burden of proof for 2015. The burden for 2016 depends on the outcome of the 2015 appeal.

SUMMARY OF CONTENTIONS

8. The Assessor’s case:

- a. The Assessor presented an appraisal prepared by Jeffrey R. Vale, an Indiana certified general appraiser. Vale prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). He developed all three approaches to value, but he primarily relied on the sales comparison approach in estimating the property’s value to be \$1,235,000 as of January 1, 2015 and January 1, 2016. The Assessor recommends the Board change both assessments to that value. *Metz testimony; Resp’t Ex. 1.*
- b. Building’s newspaper articles concerning big-box stores going out of business are not relevant to the value of a family-style restaurant. And Building’s claim regarding the need for an external obsolescence adjustment is speculation. Vale considered the changing conditions and did not find any external obsolescence. While he may come to a different conclusion for 2018, K-Mart was still operating in 2015 and 2016, so there was no reason for external obsolescence. *Metz testimony.*

9. Building’s case:

- a. Building criticized several aspects of Vale’s cost approach. According to Building, access to the subject is not “typical” as Vale described it in his land sales adjustment grid because there is no direct access to the subject from a main road—only secondary access using easements across the neighboring K-Mart property. Building also criticized Vale for not adjusting Land Sales 2 and 3 to account for the fact that they were purchased as part of land assemblages. *Karagan testimony; Pet’r Exs. 6-10, 21, 22; Resp’t Ex. 1.*
- b. Additionally, Vale failed to account for the external obsolescence caused by the neighboring K-Mart property. Although the K-Mart was operational on the valuation dates, the decline in its sales reduced overall mall traffic, resulting in less traffic for the subject. Vale also failed to account for the functional obsolescence caused by the subject’s building being “a little too big for a family-style restaurant.” *Karagan testimony; Pet’r Exs. 6, 13-26; Resp’t Ex. 1.*
- c. Regarding Vale’s sales comparison approach, Building complained that Vale used Sale 6 to value the subject for 2015 despite stating that it was not relevant to the 2015 valuation since it closed in October 2016. As for Vale’s income approach, Building pointed out that all of the properties Vale relied on to develop his capitalization rate are multi-tenant strip malls as opposed to single-tenant structures like the subject. For

example, Vale used the property at 142-316 W. Lincoln Highway even though it has 31 tenants. *Karagan testimony; Pet'r Exs. 6, 10, 11; Resp't Ex. 1.*

- d. Building also compared the subject's 2015 assessment to those of four other restaurant properties located within approximately 2 miles of the subject. Their assessments ranged from \$64.07/SF to \$111.13/SF and they had an average assessment of \$90.63. The subject's assessment was \$153.32/SF, which is excessive compared to the competition down the street. *Karagan testimony; Pet'r Ex. 27.*
- e. The parties agreed to an assessment of \$1,016,400 for 2014, but the value reflected on the tax bill is not accurate. The parties also settled on a value of \$1,141,500 for 2017, and Building subsequently withdrew its 2017 appeal. *Karagan testimony; Pet'r Exs. 1, 2, 4, 5.*

ANALYSIS

- 10. The Assessor made a prima facie case that the 2015 and 2016 assessments should be reduced to the values reflected in Vale's appraisal. Building failed to make a case for a further reduction. The Board reached this decision for the following reasons:
 - a. 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 Department of Local Government Finance ("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.
 - b. 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 any 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 the Uniform Standards of Professional Appraisal Practice 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.* For 2015 assessments, the valuation date was March 1, 2015. For 2016 assessments, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5(a).

2015 Assessment

- c. As discussed above, the Assessor has the burden of proving that the subject property's 2015 is correct. He presented a USPAP-compliant appraisal report prepared by Vale, a certified general appraiser. Vale developed all three approaches to value, but he primarily relied on the sales comparison approach in estimating the value to be \$1,235,000 as of January 1, 2015.
- d. In an effort to impeach Vale's appraisal, Building pointed to a number of alleged errors with each valuation approach. We start by addressing Building's criticisms of Vale's cost approach.
- e. Building's strongest criticisms concerned the need to account for external and functional obsolescence. Building contends that K-Mart's declining sales caused external obsolescence by reducing traffic around the subject. However, in order to receive an adjustment for obsolescence, a taxpayer must both identify the causes of obsolescence and quantify the amount of obsolescence he believes should apply. *Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Here, Building did not present evidence showing that K-Mart's issues actually caused obsolescence. Nor did it quantify the amount of obsolescence it thought Vale should have applied. Building similarly failed to show that the market views the subject as too big, or how much functional obsolescence it believes the allegedly excessive space produced.
- f. Building also contends that access to the subject is not "typical" because there is no direct access to the subject from a main road. While there is no direct access to the subject site, Building acknowledged that it did not even know what Vale meant by "typical." And it did not even attempt to demonstrate that the comparable sales had access issues requiring adjustment, let alone provide market-based evidence to show that Vale's adjustments (or lack thereof) were inadequate. And while we are skeptical of Vale's decision to forego adjustments to Land Sales 2 and 3 despite his acknowledgement that they were purchased as part of land assemblages, Building did not offer any evidence demonstrating that the market valued those particular sales differently than non-assemblage sales.
- g. Turning to the sales comparison approach, Building's only complaint was that Vale used Sale 6 to value the subject for 2015 despite stating that it was irrelevant to the 2015 valuation since it closed in October 2016. But Vale specified that he included Sale 6 because it provided an indication of the market conditions for the 2016 valuation. And Vale included a sale from October 2015 (Sale 8) with an indicated value slightly higher than that of Sale 6. Thus, it is not clear that Vale even relied on Sale 6 to reach his 2015 value conclusion. However, even if he did, we would find no error because Vale explained that the data he reviewed did not support a time adjustment for Sale 6.

- h. We do find merit to Building's criticisms of Vale's income approach. Building complained that the properties Vale used to develop his capitalization rate were multi-tenant properties even though the subject is a single-tenant property. Because Vale failed to demonstrate that the multi-tenant properties he selected are actually comparable to the subject or that they compete in the same investment market, we find Vale failed to provide sufficient support for his capitalization rate. We therefore conclude that the value estimates produced by Vale's income approach are not probative.
- i. Finally, we note that Vale used an incorrect valuation date for the 2015 assessment—it should have been March 1, 2015, not January 1, 2015. While the date is incorrect, we conclude it is sufficiently close to the correct valuation date to be probative.
- j. Although there are some issues with Vale's appraisal, they are not significant enough to undermine its credibility. This is particularly true because Vale concluded to the value produced by his sales comparison approach—an approach Building failed to meaningfully impeach. We ultimately find Vale's 2015 value conclusion to be probative evidence of the subject property's market value-in-use. Accordingly, the Assessor made a prima facie case that the 2015 assessment should be \$1,235,000. The burden therefore shifts to Building to rebut Vale's valuation.
- k. Building offered an assessment comparison approach in which it compared the subject's 2015 assessment to those of four other restaurant properties located within approximately 2 miles of the subject. To effectively use an assessment comparison approach, parties must show the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 470-71. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id at 471*.
- l. Here, Building's evidentiary presentation was insufficient to demonstrate that any of the properties are truly comparable to the subject. While the properties undoubtedly share some similarities to the subject given that they are all restaurants, the only characteristics Building even mentioned in its analysis were the building and land sizes. And Building failed to explain why it was unnecessary to make adjustments to account for differences between the properties and the subject. Consequently, Building's assessment comparison approach lacks probative value.

- m. Because Building offered no probative market-based evidence proving the subject's market value-in-use was lower than \$1,235,000, it failed to rebut the Assessor's prima facie case.²

2016 Assessment

- n. We start by addressing the question of which party has the burden of proof. Here, Building's 2015 appeal resulted in a reduction to the 2015 assessment. Because the 2016 assessment of \$1,253,100 represents an increase over the new 2015 assessment of \$1,235,000, the Assessor bears the burden for 2016 as well.
- o. The Assessor presented Vale's USPAP-compliant appraisal valuing the property at \$1,235,000 as of January 1, 2016. For the same reasons discussed in our analysis of the 2015 assessment, we find Vale's value conclusion to be probative evidence of the subject property's market value-in-use. Accordingly, the Assessor made a prima facie case that the 2016 assessment should be \$1,235,000. And the burden again shifts to Building to rebut Vale's valuation.
- p. Building offered no valuation evidence for 2016. It therefore failed to rebut the Assessor's prima facie case.

FINAL DETERMINATION

In accordance with the above findings and conclusions, we find for the Assessor and order the 2015 and 2016 assessments changed to \$1,235,000.

ISSUED: December 9, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

² To the extent that Building argued the values reflected in the settlement agreements it entered into with the Assessor for 2014 or 2017 represent the property's market value-in-use for 2015 or 2016, we disagree. As the Tax Court has explained, "each tax year—and each appeal process—stands alone." *Fisher v. Carroll Cnty. Ass'r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another.

- 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>>.