

REPRESENTATIVE FOR PETITIONER:
Kevin L. Smith, President of Builders Gallery, Inc.

REPRESENTATIVE FOR RESPONDENT:
Terri L. Boone, Huntington County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BUILDERS GALLERY, INC.,)	Petition No.:	35-012-18-1-4-01218-18
)		
Petitioner,)		
)	Parcel No.:	35-09-36-400-008.900-012
v.)		
)		
HUNTINGTON COUNTY)	County:	Huntington
ASSESSOR,)		
)		
Respondent.)	Assessment Year:	2018

Appeal from the Final Determination of
Huntington County Property Tax Assessment Board of Appeals

May 22, 2019

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. In this assessment appeal, Builders Gallery had the burden of proof even though the assessment increased more than 5% from 2017 to 2018, due to the significant structural improvements it made to the property during 2017. Because Builders Gallery failed to

offer probative evidence proving what the correct assessment should be, we find for the Assessor.

PROCEDURAL HISTORY

2. Kevin L. Smith, President of Builders Gallery, Inc., filed a Form 130 Petition contesting the assessment of the subject property, a commercial property located at 6062 West 600 South in Huntington. On October 11, 2018, the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination lowering the assessment to \$250,400, which was not to the level Smith requested. Thus, on November 13, 2018, Smith filed a Form 131 Petition with the Board.
3. On February 21, 2019, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on the petition. Smith, Assessor Terri L. Boone, and Deputy Assessor Julie Newsome were sworn and testified.
4. Builders Gallery offered the following exhibits:¹
 - Petitioner Exhibit 1: Mt. Etna land use map
 - Petitioner Exhibit 2: Mt. Etna 1958 zoning map
 - Petitioner Exhibit 3: 1995 subject property record card
 - Petitioner Exhibit 5: Form 11, dated March 26, 2018
 - Petitioner Exhibit 6: 2018 subject property record card printed March 21, 2018
 - Petitioner Exhibit 7:² 2018 subject property record card printed April 2, 2018
 - Petitioner Exhibit 8: 2016 aerial photograph of the subject property
 - Petitioner Exhibit 9: 2016 photograph of the subject property
 - Petitioner Exhibit 10: 2018 photograph of the subject property
 - Petitioner Exhibit 11: 2016 photograph of the subject property
 - Petitioner Exhibit 12: Certificate of Occupancy
 - Petitioner Exhibit 13: Beacon 2018 property record card for 6851 West 600 South, Huntington
 - Petitioner Exhibit 13A: Assessor’s 2018 property record card for 6851 West 600 South, Huntington
 - Petitioner Exhibit 14: Beacon 2018 property record card for 5889 South 600 West, Huntington

¹ Builders Gallery offered its exhibits in six “packages.” It did not offer an Exhibit 4.

² This exhibit was included in two different “packages.”

- Petitioner Exhibit 14A: Assessor's 2018 property record card for 5889 South 600 West, Huntington
- Petitioner Exhibit 15: Beacon 2018 property record card for 5843 South 600 West, Huntington
- Petitioner Exhibit 15A: Assessor's 2018 property record card for 5843 South 600 West, Huntington
- Petitioner Exhibit 16: Beacon 2018 property record card for 6026 South 600 West, Huntington
- Petitioner Exhibit 16A: Assessor's 2018 property record card for 6026 South 600 West, Huntington
- Petitioner Exhibit 17: Beacon 2018 property record card for 6021 South 600 West, Huntington
- Petitioner Exhibit 17A: Assessor's 2018 property record card for 6021 South 600 West, Huntington
- Petitioner Exhibit 18: Beacon 2018 property record card for 6141 South 600 West, Huntington
- Petitioner Exhibit 18A: Assessor's 2018 property record card for 6141 South 600 West, Huntington
- Petitioner Exhibit 19: Beacon property record card for 5900 West 582 South, Huntington
- Petitioner Exhibit 19A: Assessor's 2018 property record card for 5930 South 588 West, Huntington
- Petitioner Exhibit 20: Beacon property record card for 5909 South 588 West, Huntington
- Petitioner Exhibit 20A: Assessor's 2018 property record card for 5909 South 588 West, Huntington
- Petitioner Exhibit 21: Beacon 2018 property record card for 5933 South 600 West, Huntington
- Petitioner Exhibit 21A: Assessor's 2018 property record card for 5933 South 600 West, Huntington
- Petitioner Exhibit 22: Beacon property record card for 5908 South 594 West, Huntington
- Petitioner Exhibit 22A: Assessor's 2018 property record card for 5908 South 594 West, Huntington
- Petitioner Exhibit 23: Beacon 2018 subject property record card
- Petitioner Exhibit 24: Aerial photograph of the subject property's vicinity
- Petitioner Exhibit 25: Beacon property record card for 240 Hauenstein Road, Huntington
- Petitioner Exhibit 25A: Assessor's 2018 property record card for 240 Hauenstein Road, Huntington
- Petitioner Exhibit 26: Beacon property record card for 150 South Main Street, Roanoke
- Petitioner Exhibit 27: Beacon property record card for 8376 North U.S. Highway 24 East, Roanoke

- Petitioner Exhibit 27A: Assessor's 2018 property record card for 8376 North U.S. Highway 24 East, Roanoke
- Petitioner Exhibit 28: Beacon property record card for 7251 South Warren Road, Warren
- Petitioner Exhibit 28A: Assessor's 2018 property record card for 7251 South Warren Road, Warren
- Petitioner Exhibit 29: Beacon property record card for 7253 South Warren Road, Warren
- Petitioner Exhibit 29A: Assessor's 2018 property record card for 7253 South Warren Road, Warren

5. The Assessor offered the following exhibits:

- Respondent Exhibit 1: Letter from Boone to Smith, dated January 29, 2019
- Respondent Exhibit 2: Form 131 Petition
- Respondent Exhibit 3: Form 115
- Respondent Exhibit 4: Form 134
- Respondent Exhibit 5: Form 130 Petition
- Respondent Exhibit 6: 2018 subject property record card and photographs
- Respondent Exhibit 7: Value approach analysis
- Respondent Exhibit 8: Multiple Listing Service ("MLS") sale listing for the subject property
- Respondent Exhibit 9: Appraisal of the subject property as of March 6, 2017
- Respondent Exhibit 10: Indiana Code § 6-1.1-15-17.2
- Respondent Exhibit 11: 2017 subject property record card
- Respondent Exhibit 12: Zoning Ordinance No. 2016-08
- Respondent Exhibit 13: Photograph of the subject property
- Respondent Exhibit 14: Building permit, issued March 12, 2018; two (2) emails from James J. Straws, Indiana Department of Homeland Security, dated September 22, 2017
- Respondent Exhibit 15: Concluding statement
- Respondent Exhibit 16: Sales disclosure, dated August 31, 2016

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

OBJECTIONS

7. Smith, on behalf of Builders Gallery, objected to several of the Assessor's exhibits. Specifically, Smith objected to Respondent Exhibits 8, 9, 11, 13, and 14. The ALJ

overruled Smith's objection to Respondent Exhibit 11, the subject property's 2017 record card, and admitted it to the record. The ALJ took the remaining exhibits under advisement.

8. First, regarding Respondent Exhibit 11, we affirm the ALJ's ruling. Smith apparently objected to the 2017 property record card because he disagrees with the residential classification indicated on the card. That does not, however, establish any legal grounds to exclude the exhibit from the record. Thus, Respondent Exhibit 11 remains part of the record.
9. We similarly overrule Smith's remaining objections. Smith objected to Respondent Exhibit 8 (an MLS listing for the subject property), Exhibit 9 (an appraisal of the property), and Exhibit 13 (photographs of the property) all for the same reason—because he claims the exhibits are private, personal information that the Assessor is using against him. However, while all of these exhibits may not be exceptionally relevant, they were intended to help establish the value of the subject property, which is precisely what Smith has appealed. Again, he offered no legal reason to exclude them from the record. Therefore, Respondent Exhibits 8, 9, and 13 are admitted.
10. Smith objected to Exhibit 14, claiming it is nothing more than “courthouse gossip.” Based on Smith's testimony at hearing, he believes there is a collusion against him involving the Huntington Countywide Department of Community Development (“DCD”) and the Assessor's office. He argued that any code violations alleged by the DCD are not relevant to the subject property's assessment.
11. We agree with Smith that any alleged code violations are irrelevant here, and we will not consider them in this determination. However, the fact that Smith was issued a building permit for the subject property *is* relevant. For that reason, the objection is overruled and Respondent Exhibit 14 is admitted to the record.

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden to prove both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.

13. Indiana Code § 6-1.1-15-17.2 creates an exception to that rule where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or a successful appeal reduced the prior year's assessment below the current level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If the assessor fails to do so, it reverts to the prior year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

14. Here, the assessment increased from \$24,300 in 2017 to \$250,400 in 2018. Clearly, the assessment increased more than 5%. However, the Assessor argued that Builders Gallery should have the burden of proof because there was a use change, a zoning change, and structural improvements from 2017 to 2018. As discussed above, Smith argued that there should not have been a zoning change, and that the blueprint or footprint of the building did not change. The ALJ made a preliminary determination that Builders Gallery has the burden of proof.

15. We affirm the ALJ's preliminary determination. While the zoning change appears to have taken place in 2016, there clearly were structural improvements made between 2017 and 2018. Even without an addition to the footprint of the building, it is clear that the main building, which Smith himself testified was near collapse, was completely renovated. Further, according to undisputed testimony from Newsome, at least three new improvements were added to the property sometime after March 2017. Given these

circumstances, the burden shifting statute does not apply. *See* I.C. § 6-1.1-15-17.2(c). Consequently, Builders Gallery has the burden of proof.

SUMMARY OF BUILDERS GALLERY'S CASE

16. The subject property's assessment is too high. The property is over 100 years old and cannot be worth very much. Smith believes that his problems with the DCD flowed to the Assessor's office, and Builders Gallery is being treated unfairly.³ *Smith testimony.*

17. While the property was re-zoned from "open space" to "general business" in 2016, no re-zoning should have been needed. The property was erroneously assessed as residential before the re-zoning, but it was never used for that purpose. It was used as a saw mill and was zoned as "light industry." But because "somebody made a mistake" in believing the parcel had residential-type zoning, the previous owner of the property was required to have it re-zoned after Builders Gallery made an agreement to buy it. Even after the re-zoning, a property record card printed on April 2, 2018 indicates that the subject property is "residential." *Smith testimony; Pet'r Exs. 1-3, 7; see also Resp't Exs. 12, 16.*

18. When Builders Gallery bought the property, it was a "trash hole" and the main building was "about ready to collapse." After buying it, Smith began to clean up the property and renovate the building. He put siding on the building, and put in new doors and windows where the old doors and windows had been. Much of the wood had been infested with powder post beetles, so he replaced the wood and all of the joists with treated lumber. Because rodents had eaten through the old metal electrical boxes, Smith replaced the boxes and the wiring. He also installed two awnings. However, Smith insisted that the building is not a new structure. He did not change the original footprint of the building, but merely restored the old building back to where it was. He received a Certificate of Occupancy in December 2018. *Smith testimony; Pet'r Exs. 6, 8-12.*

³ On January 30, 2019, Smith filed a request to move the hearing location out of Huntington County, arguing that Builders Gallery would not "have a fair hearing" because of "a number of troubles with employees in the Huntington County Courthouse." We denied his request.

19. The appraisal completed for the property was for a bank loan, and not to determine the assessed value. *Smith testimony (referencing Resp't Ex. 9).*
20. Finally, Builders Gallery offered property record cards for fifteen other commercial properties in Huntington County. Those properties are generally newer, and in better locations with more visibility. Yet, their assessments are lower than the subject's assessment. *Smith testimony; Pet'r Exs. 13-29A.*

SUMMARY OF THE ASSESSOR'S CASE

21. The subject property's assessment is correct. Because of "new renovation" to the property, the cost approach was given the most weight in determining the value. Also, "considerable weight" was given to an appraisal of the property Smith provided to the Assessor. *Newsome testimony; Resp't Exs. 7, 9.*
22. In 2017, the property consisted of farm buildings, but there was no crop production and no operations were ongoing. Thus, on January 1, 2017, the property was assessed as residential excess acreage. During 2017, after the property was re-zoned, it was "completely revamped." While Builders Gallery did not apply for a building permit until February 2018, to install the awnings, the rest of the renovation of the property was completed prior to January 1, 2018. *Newsome testimony; Resp't Exs. 11-14.*
23. Builders Gallery purchased the property in August 2016 for \$45,000. The Assessor did not consider that purchase price to be representative of fair market value, because she verified through the seller that the property was not listed on the open market. The property was listed on the MLS from November 8, 2017, to February 8, 2018 for \$499,999. *Newsome testimony; Resp't Exs. 8, 16.*
24. The subject property was appraised for \$235,000 as of March 6, 2017. While the appraisal was considered, there were further additions to the property after that date,

including a car shed and two barns. Thus, the current \$250,400 assessment is “a good fair market value.” *Newsome testimony; Resp’t Ex. 9.*

ANALYSIS

25. Indiana assesses real property based on its “true tax value,” which is 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). “True tax value” does not mean either “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). In accordance with these statutory directives, 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.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.
26. The cost, sales-comparison, and income approaches are three generally accepted ways to determine 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 accepted appraisal principles. *Id.* at 3; *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 (“USPAP”) is the most effective method for rebutting an assessment’s presumed accuracy). Regardless of the method used, a party must explain how its evidence relates 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 2018 assessments, the valuation date was January 1, 2018. I.C. § 6-1.1-2-1.5.
27. Builders Gallery had the burden of proof. Its president, Kevin Smith, essentially argued that his problems with the local DCD, which occurred during his renovation of the property’s main building, resulted in collusion with the Assessor and she produced a substantially increased, and incorrect, assessment. Unfortunately, this argument alone does nothing to help Builders Gallery meet its burden of proof, which was to offer

probative evidence to establish that the current 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).

28. In that vein, Builders Gallery offered property record cards for a number of other commercial properties in Huntington County. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of the property under appeal. Ind. Code § 6-1.1-15-18(c)(1). But a proponent must do more than just point to other properties. Smith needed to establish the comparability of the properties being examined, and explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470, 471.
29. Smith failed to establish that the properties are comparable to the subject. And while he did point to many differences, including age, size, location, and visibility, he did not explain how those differences affect their relative market values-in-use. His analysis also contained no conclusion of what the correct assessment should be. Consequently, Builders Gallery did not make a prima facie case.
30. Because Builders Gallery failed to make a prima facie case for a reduction in the assessment, the burden never shifted to the Assessor. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Although the Assessor offered an appraisal valuing the property at \$235,000 as of March 6, 2017, it is undisputed that Builders Gallery added further improvements to the property between the appraisal date and the January 1, 2018 assessment date. Therefore, there is no probative evidence to support a change in the assessment.

SUMMARY OF FINAL DETERMINATION

31. In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2018 assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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>>.