

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

Petition No.: 02-074-11-1-4-00129
Petitioner: Bushmann, LLC
Respondent: Allen County Assessor
Parcel No.: 02-07-35-153-006.000-074
Assessment Years: 2011

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

Procedural History

1. Bushmann, LLC appealed the subject property’s March 1, 2011 assessment to the Allen County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determination making no change to the assessment.
2. Bushmann responded by filing a Form 131 petition with the Board. Bushmann elected to have its appeal heard under the Board’s small claims procedures.
3. On October 11, 2012, the Board held a hearing on the Bushmann’s petition through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. Milo Smith, Bushmann’s certified tax representative, and deputy assessor, Rob Williamson, testified under oath at that hearing. John Rogers appeared as counsel for the Allen County Assessor.

Facts

5. The subject property is a convenience store that sells gasoline and is located at 2304 Sherman Boulevard, Ft. Wayne, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for March 1, 2011:

Land: \$165,200 Improvements: \$659,300 Total: \$824,500

Contentions

8. Summary of the Assessor's evidence and contentions:
 - a. The subject land was assessed as encompassing 22,948 square feet. Upon re-measuring the parcel using "aerial tools," however, Mr. Williamson discovered that it actually has 31,636 square feet, with an additional 3,911 square feet of road right-of-way. *Williamson testimony*. Based on those corrected dimensions, the land should be assessed at \$227,800 rather than at its current level of \$165,200. *Id.*; *Resp't Exs. 6-7*.
 - b. Next, Mr. Williamson compiled a list of local construction costs from building permits issued for newly constructed convenience stores/gas stations in Allen County. He referenced 15 stores, including the subject store, all of which were built between 2005 and 2011. Those stores ranged from 2,326 to 4,620 square feet with canopies ranging from 1,000 to 7,102 square feet. The overall construction costs ranged from \$313,260 to \$1,068,461. In terms of unit pricing, the those costs ranged from \$39.61 to \$156.11 per square foot of combined store/canopy area, with a mean of \$83.78 per square foot and a median of \$77.88 per square foot. The actual construction costs for the subject store and canopy in 2005 were \$800,000 or \$109.05 per square foot. Their 2011 replacement cost new, as determined under the Department of Local Government's assessment guidelines, was \$87.66 per square foot. While that is slightly higher than the average for all the stores that Mr. Williamson surveyed, the subject store's actual construction costs were among the highest in the survey. *Williamson testimony*; *Resp't Ex. 8*.
 - c. When the re-computed land value is added to the current improvement value, the total is \$887,100. The Assessor therefore asked the Board to increase the property's assessment to that amount. *Williamson testimony*; *Resp't Ex. 8*.
 - d. Mr. Williamson also used the sales-comparison approach to estimate the subject property's market value-in-use. He used three arms-length sales of convenience stores/gas stations in Allen County that did not involve sale-leasebacks. The properties sold between October 20, 2009 and August 31, 2012, for prices ranging from \$250,000 to \$1,016,600. *Williamson testimony*; *Resp't Exs. 9, 11*.
 - e. In analyzing those sales, Mr. Williamson first deducted the land value for each property to eliminate the need for a location adjustment. Next, Mr. Williamson adjusted each extracted improvement sale price to account for the following factors: sale date, building age, special features, and condition. To quantify the sale-date adjustment, Mr. Williamson looked at six properties that sold twice during periods ranging from one to five years. He then took the net difference between the two sale prices for each property, which ranged from 17% to -89%, and divided that by the total number of months between the sales to get a monthly rate of appreciation or depreciation. The monthly rates varied from 1.32% to -2.18%. Mr. Williamson used the median rate of -07%. *Williamson testimony*; *Resp't Exs. 1, 10*.

- f. To account for differences between the subject store's condition and the condition of the three comparable stores, Mr. Williamson turned to the adjustments contained on what he described as the "state's website." *Williamson testimony, see also Resp't Ex. 10.* To derive an annual age adjustment, Mr. Williamson took the replacement cost new of the subject store and calculated its fully depreciated value with 20% remaining depreciation and then divided that number by the building's remaining economic life. *Id.*
 - g. Mr. Williamson came up with an adjusted mean sale price for his three comparable improvements of \$163.35 per square foot and an adjusted median of \$169.73 per square foot. Both are more than the subject improvements' assessment of \$139.29 per square foot. When Mr. Williamson added land values, the comparable properties sold for adjusted prices ranging from \$927,600 and \$954,900. Thus, Mr. Williamson believes that the subject property was actually under-assessed. *Williamson testimony; Resp't Exs. 9-11.*
 - h. According to Mr. Williamson, Mr. Bushmann's representative has previously tried to show that properties were assessed too high by comparing their assessments to the assessments of comparable properties. But the Board has rejected that approach. *Williamson testimony (citing Mac's Convenience Stores, LLC v. Hamilton County Assessor, pet. nos.: 29-006-08-1-4-00085, -86 and -87 (Ind. Bd. of Tax Rev. Dec. 27, 2011)).* Nonetheless, Mr. Williamson compared the subject property's assessment to the assessments for three other convenience store/gas stations from Allen County. When taking into account Mr. Williamson's proposed changes, the subject property as a whole would be assessed at \$207.07 per square foot of building area, while the assessments for the other three properties ranged from \$78.01 to \$123.22 per square foot. Mr. Williamson, however, believed that the other properties were assessed for less than their actual market values-in-use. *Williamson testimony; Resp't Ex. 12.*
9. Summary of Bushmann, LLC's evidence and contentions:
- a. Going back to 2006, the subject parcel has been assessed as having 22,948 square feet. The parcel size listed on the property record card is correct. If the Board believes that the parcel's measurements should be changed, however, the parties should have the parcel surveyed and move forward from there. *Smith testimony and argument; Pet'r Ex. 1.*
 - b. Mr. Williamson's own assessment comparison shows a disparity between the subject property and comparable properties. The assessments for two of the comparable properties deviated from the median by \$22.60 per square foot and \$37.72, respectively, while the subject property's assessment deviated from the median by \$106.46 per square foot. That shows a significant inequity in assessments. *Smith testimony; Resp't Ex. 12.*
 - c. The Assessor therefore failed to meet her burden. In any case, Mr. Smith prepared his own analysis based on the assessments for six other convenience store/gas station

improvements. Those assessments ranged from \$37.79 to \$85.22 per square foot of combined building and canopy area, with an average of \$55.57 per square foot. By contrast, the subject property's improvements were assessed at \$89.87 per square foot. Applying the average per-square foot assessment from the other properties leads to a value of \$407,695 for the subject improvements. When the land's current assessment of \$165,200 is added, the property's total assessment should be \$572,895. *Pet'r Ex. 2.*

- d. As to the Assessor's reliance on *Mac's Convenience Stores, LLC v. Hamilton County Assessor* for the proposition that a property's market value-in-use cannot be proved through the assessments of comparable properties, that appeal was decided before Indiana Code 6-1.1-15-18 was enacted. That statute, which became effective on July 1, 2012, allows parties to offer evidence of comparable assessments to prove a property's true tax value. *See Smith argument.*

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

- a. The Form 131 petition,
- b. A digital recording of the hearing,
- c. Exhibits:
 - Petitioner Exhibit 1: Copy of the subject property record card,
 - Petitioner Exhibit 2: Assessment analysis prepared by Milo Smith

 - Respondent Exhibit 1: Respondent's Position Statement,
 - Respondent Exhibit 2: Copies of two e-mails from Robert Williamson to Milo Smith and h59@in.gov,
 - Respondent Exhibit 3: Copy of 52 IAC 3,
 - Respondent Exhibit 4: Copy of page 1 of Bushmann's Form 130 petition,
 - Respondent Exhibit 5: Copy of Bushmann's Form 131 petition,
 - Respondent Exhibit 6: Copy of the subject's property record card,
 - Respondent Exhibit 7: Aerial map of subject property with the new land measurements highlighted,
 - Respondent Exhibit 8: Summary of compiled local construction costs for gas stations in Allen County,
 - Respondent Exhibit 9: Sales comparison grid and adjustment grid,
 - Respondent Exhibit 10: Spreadsheet with time adjustments, sheet with condition adjustments, Straight Line Depreciation Calculator,
 - Respondent Exhibit 11: Property record cards for properties in sales-comparison analysis,
 - Respondent Exhibit 12: Assessment Comparison,

Respondent Exhibit 13: Excerpts from IBTR Final Determination for *Mac's Convenience Stores, LLC v. Hamilton County Assessor*.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice dated September 10, 2012,
Board Exhibit C: Notice of Appearance for F. John Rogers,
Board Exhibit D: Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). To make a prima facie case, a taxpayer must explain how each piece of evidence relates to its 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 taxpayer makes a prima facie case, the burden shifts to the assessor 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.
12. Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.¹ That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% from its previous year's level:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

I.C. § 6-1.1-15-17.2.

¹ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

13. The PTABOA determined the property's March 1, 2011 assessment at \$824,500, which represents an increase of more than 5% over the property's March 1, 2010 assessment of \$745,000. The Assessor therefore had the burden of proving that the subject property's March 1, 2011, assessment was correct. To the extent that Bushmann seeks an assessment below the previous year's level, however, Bushmann had the burden of proving that value.²

Discussion of the Merits

14. The Assessor failed to meet her burden of proving that the subject property's assessment was correct. The Board reaches this conclusion for the following reasons:
- 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. To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. In that vein, appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches.
 - b. In any case, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2011 assessments, the assessment and valuation dates were the same. *See* I.C. § 6-1.1-4-4.5(f).
 - c. The Assessor pointed to three things in an attempt to show that the subject property was actually assessed for less than its market value-in-use: (1) Mr. Williamson's testimony that the subject parcel is actually significantly larger than its assessment reflects; (2) Mr. Williamson's analysis of building permits for the subject store and other convenience store/gas stations; and (3) Mr. Williamson's sales-comparison analysis. As explained below, none of these things suffices to prove the subject property's market value-in-use.

² The Assessor's witness, Robert Williamson, questioned whether Bushmann could offer evidence relating to subject property's market value-in-use given that Bushmann contested only the property's quality grade in its Form 130 petition to the PTABOA. *Williamson* (citing to 52 IAC 3-1-2(b)). But Mr. Williamson conceded that the Assessor had burden of proving that the assessment was correct and therefore attempted to show that the property was not assessed for any more than its actual market value-in-use. Counsel for the Assessor did not actually object to any of Bushmann's evidence or offer argument on Mr. Williamson's observations. Under those circumstances, the Board need not address Mr. Williamson's observations regarding the divergence between the issues raised in Bushmann's Form 130 and Form 131 petitions.

- d. As to the first item, Mr. Williamson did little to explain how he re-measured the subject property other than to say that he used basic “aerial tools.” *Williamson testimony*. Even if one assumes that the subject parcel was assessed using the wrong measurements, simply showing the parcel’s correct dimensions does not translate to any particular value. Mr. Williamson presumably multiplied the additional area by the same base rate used to assess the parcel in the first place. But he did nothing to show how that base rate was determined or otherwise explain how the base rate correlated to the property’s actual market value-in-use.
- e. Mr. Williamson did explain where he got the data for his survey of building costs, albeit in a highly summary fashion. But the Board fails to see how average or median building costs show the market value-in-use for the subject store and canopy. Instead, Mr. Williamson’s data merely shows that building costs varied widely.
- f. Mr. Williamson’s survey, however, included actual construction costs for the subject store and canopy. And the actual construction costs for a property under appeal are relevant to its market value-in-use. But as already explained, Mr. Williamson referenced those costs in a highly summary fashion, and he did not include the permits from which he drew his information. Also, the subject store was built in 2005, and Mr. Williamson did not explain how those 2005 costs related to building costs for March 1, 2011—the valuation date at issue this appeal. While Mr. Williamson did offer some evidence to trend market levels from 2005 to 2011 in the form of a paired sales analysis, that analysis showed widely varying rates of appreciation and depreciation. Without more support, Mr. Williamson’s trending information does little to relate the subject improvements’ construction costs to a value as of March 1, 2011.
- g. That leaves Mr. Williamson’s sales-comparison analysis. For sales data to be probative, the sold properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not show comparability. *See Long*, 821 N.E.2d at 470. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the sold properties. *Id.* at 471. Similarly, one must explain how any differences between the sold properties and the property under appeal affect the properties’ relative market values-in-use. *Id.*
- h. Although Mr. Williamson did not extensively compare the other properties in his analysis to the subject property, he did compare at least some relevant characteristics. For example, he explained that all the properties were used as convenience stores that sold gas. And he both identified the age and condition of all the stores and adjusted each store’s sale price where those characteristics differed from the subject store. Mr. Williamson also adjusted those sale prices to make them reflect March 1, 2011 values, although, as explained above, his adjustments in that regard have little or no probative weight.

- i. Significantly, Mr. Williamson did not compare the stores in terms of their relative locations other than to say that all of the sales were from Allen County. Mr. Williamson justified his decision by explaining that he deducted each store's land value from its sale price. Although Mr. Williamson did not say so, the Board infers that he believed any location-related market influences would be reflected solely in the value of each property's land. Similarly, while Mr. Williamson did not explain the process by which he allocated the properties sale prices between land and improvements, it appears that he simply deducted each property's land assessment from its total sale price.
 - j. Of course, that assumes that each property's land assessment accurately reflected its market value-in-use, a proposition that Mr. Williamson offered nothing to support. Mr. Williamson's failure to offer that support is especially problematic given that each sale price differed dramatically from the property's assessment. Thus, absent further explanation, there is little reason to believe that any component of the comparable properties' assessments was accurate. Under those circumstances, Mr. Williamson's claim that he did not need to account for differences in location—a key influence on the market value-in-use of a convenience store/gas station—is not persuasive. At a minimum, Mr. Williamson needed to provide some assurances that his methodology complied with generally accepted appraisal principles. And he did not give any such assurances.
 - k. Because the Assessor did not offer probative evidence to show the subject property's market value-in-use, she failed to make a prima facie case that the property's March 1, 2011 assessment was correct. Bushmann is therefore entitled to have the property's assessment returned to its March 1, 2010 level of \$745,000.
 - l. Bushmann, however, sought an assessment below that amount. And as explained above, Bushmann had the burden of proving that lower amount. It is to that issue that the Board now turns.
15. Bushmann did not meet its burden of proving that the subject property's assessment should be reduced below its March 1, 2010 level. The Board reaches this conclusion for the following reasons:
- a. To support Bushmann's claim for a lower assessment, Mr. Smith analyzed the assessments of several other convenience store/gas stations. To support his methodology, Mr. Smith pointed to Ind. Code § 6-1.1-15-18, which allows parties to offer evidence of comparable properties' assessments to prove the value of a property under appeal:
 - (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. As Mr. Smith correctly pointed out, this appeal was pending before the Board on July 1, 2012. Indiana Code § 6-1.1-15-18 therefore applies. But that statute does not automatically make evidence of other properties' assessments probative. As with a sales-comparison analysis, the party offering the evidence must show that the properties in question are comparable to the property under appeal and how relevant differences affect their relative values. Mr. Smith's attempt to compare the properties was highly superficial; indeed, he did not even offer the property record cards for any of his purportedly comparable properties. Instead, Mr. Smith simply summarized a few of the myriad factors that go into assessing improvements. He similarly failed to explain how relevant differences, such as significant disparity between the quality grades assigned to the purportedly comparable stores and the "B+2" grade assigned to the subject store, affected the properties' relative values. Mr. Smith's comparison data therefore lacks probative value.

Conclusion

16. Because the subject property's assessment increased by more than 5% between assessment dates, the Assessor bore the burden of proving that the property's March 1, 2011 assessment was correct. Her failure to do so means that Bushmann is entitled to have the property's assessment reduced to the previous year's level of \$745,000. Bushmann, however, bore the burden of proving that it was entitled to any further reduction. Because Bushmann failed to meet that burden, the subject property's assessment should be changed to \$745,000.

Final Determination

In accordance with the above findings and conclusions, the assessment is changed to \$745,000.

ISSUED: January 8, 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>>.