

REPRESENTATIVE FOR PETITIONER:  
Milo E. Smith, *Tax Representative*

REPRESENTATIVE FOR RESPONDENT:  
Brian Cusimano, *Attorney*

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Centra Credit Union,	)	Petition Nos.: 10-009-12-1-4-00041
	)	10-009-13-1-4-00036
	)	
	)	
Petitioner,	)	
	)	Parcel Nos.: 10-21-03-300-099.000-009
	)	
v.	)	
	)	
	)	
	)	
Clark County Assessor,	)	County: Clark
	)	Township: Jeffersonville
	)	
Respondent.	)	Assessment Year: 2012, 2013

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

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**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **INTRODUCTION**

1. The Petitioner appeals the 2012 and 2013 assessments on a commercial property. The Petitioner fails to present evidence regarding the market value of the property.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. The property consists of a bank located at 2125 Veterans Parkway in Jeffersonville.
3. The Petitioner initiated the 2012 assessment appeal with the Clark County Property Tax Assessment Board of Appeals (PTABOA) on December 18, 2012. On June 19, 2013, the PTABOA determined the assessed value to be \$359,800 for the land and \$706,500 for the improvements (totaling \$1,066,300).
4. The Petitioner initiated the 2013 assessment appeal with the PTABOA on October 18, 2013. On April 15, 2014, the PTABOA determined the assessed value to be \$359,800 for the land and \$656,100 for the improvements (totaling \$1,015,900).
5. The Petitioner timely filed Form 131 Petitions for Review of Assessment seeking the Board's review of the PTABOA determinations.
6. The Board set the matter for hearing on July 29, 2015, and designated Commissioner Jonathan Elrod as the administrative law judge. The hearing was conducted on the record. The Board did not conduct a physical inspection.
7. Ken Surface, Vicky Kent Haire, Holly Dalton, and Milo Smith were sworn in under oath. Only Mr. Surface and Mr. Smith testified.

8. The Petitioner presented the following exhibits.<sup>1</sup>

- Petitioner Exhibit 1 – 2012 Property Record Card
- Petitioner Exhibit 2 – 2013 Property Record Card
- Petitioner Exhibit 3 – Data analysis of comparable assessments
- Petitioner Exhibit 4 – 2012 data analysis of full service banks
- Petitioner Exhibit 5 – 2013 data analysis of full service banks
- Petitioner Exhibit 6 – Copy of IC 6-1.1-4-4.5
- Petitioner Exhibit 7 – Copy of IC 6-1.1-4-4.5 version b
- Petitioner Exhibit 8 – Copy of the Tax Court decision in *Peters v. Garoffolo*

9. The Respondent presented the following exhibits:<sup>2</sup>

- Respondent Exhibit A – 2012 and 2013 Property Record Cards
- Respondent Exhibit B – Spreadsheet of assessment details

10. The Board also recognizes as part of the record of proceedings the Form 131 Petitions, Notices of Hearing, hearing sign-in sheet, and the digital recording of the hearing.

### **BURDEN**

11. Generally, the taxpayer has the burden to prove that an 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). A burden-shifting statute creates two exceptions to that rule in I.C. § 6-1.1-15-17.2. The Petitioner stipulated that it has the burden.

### **PETITIONER'S CONTENTIONS**

12. The Petitioner contended the assessed value was incorrect and presented the following evidence:

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<sup>1</sup> The Petitioner also presented an exhibit cover letter.

<sup>2</sup> The Respondent also presented an exhibit cover letter.

- A. The Petitioner challenged only the assessment of the building. Specifically, the Petitioner contended the “remainder value” of the building prior to the application of the market factor is correct. Thus, after the elimination of the 1.35 market factor, the building values would be \$502,760 for 2012 and \$471,510 for 2013. In support of its argument, the Petitioner presented assessment comparison analyses to show that the subject property is assessed higher than similar properties. *Smith testimony*.
- B. Mr. Smith presented the 2015 property record cards (PRCs) for all Clark County properties classified as 444 “full service banks.” From that list, he chose 11 comparable properties of similar size and age, among other factors. Among those, the building value per square foot ranged from \$65-\$140, the average was \$106, and the subject property was \$122. *Smith testimony, Pet. Ex. 3*.
- C. Mr. Smith presented the 2012 PRCs from 9 properties chosen from among all “full service banks” based on similar factors.<sup>3</sup> The building value per square foot ranged from \$77 to \$149, the average was \$110, and the subject property was \$170. Similarly, Mr. Smith presented the 2013 PRCs from 9 properties chosen from among all “full service banks” based on similar factors. The building value per square foot ranged from \$76 to \$147, the average was \$106, and the subject property was \$170. *Smith testimony, Pet. Ex. 4, 5*.
- D. Mr. Smith’s testimony also considered total assessed value (building and land) relative to building size. Mr. Smith relied on the building value ratio to control for varying values as to location, as the differences in location, theoretically, would be isolated to the land values in the cost approach. Mr. Smith argued that there was nothing unique about the subject property’s construction that would justify a valuation significantly higher than the average similar bank on a square foot basis. Furthermore, those differences of grade and quality should be accounted for in assessing the exterior and interior rather than in the market factor. *Smith testimony*.

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<sup>3</sup> It is unclear why Mr. Smith chose 11 properties from 2015 and 9 properties from 2012 and 2013, or why some properties on the 2012 and 2013 analyses are not included in the 2015 analysis.

E. Mr. Smith also argued that trending under IC 6-1.1-4-4.5 requires assessors to justify changes based on trending. Mr. Smith also cited *Peters v. Garoffolo*.<sup>4</sup> Mr. Smith suggested that the presumption of accuracy applied to the remainder value, but not the adjusted value after the application of the market factor. *Smith testimony*.

### RESPONDENT'S CONTENTIONS

13. The Respondent contended that the assessed value was correct. The Respondent presented the following evidence in support of her contentions:
- A. Mr. Surface, a level III assessor-appraiser, testified that the property was properly assessed pursuant to the Guidelines. He argued that an assessment is not based solely on the cost approach, but also considers market factors identified through ratio studies. The cost schedules apply to all 92 counties and should be adjusted based on local sales comparison data. *Surface testimony*.
- B. Mr. Surface did not agree with Mr. Smith's analyses. He noted that none of the banks were identical and Mr. Smith made no adjustments to account for differences. Furthermore, the value-per-square-foot comparison was unreliable because some of the banks had portions that were classified as utility, storage, or general office and those have inferior grades and values under the Guidelines. While Mr. Smith intended to only compare bank classified space to the subject property, Mr. Smith failed to do so in regard to at least one of the properties. *Surface testimony*.
- C. On cross-examination, Mr. Surface was asked specifically why the 1.35 market factor was applied in 2012 when it had not been applied in prior years. Mr. Surface stated that the revised cost schedules lowered the value of the subject property and the market factor was applied to return the property to its prior value. Mr. Surface was

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<sup>4</sup> 32 N.E.3d 847 (Ind. Tax Ct. 2015).

also asked to explain the B+2 grade and 1.35 market factor, which cumulatively result in an assessment 90% higher than an average bank. When asked what makes the subject property so much above average, Mr. Surface responded “I can’t answer.” He noted that the change in the cost schedules impacted the properties differently and market factors would vary accordingly. *Surface testimony.*

D. The Respondent argued that the Petitioner did not present a comparison analysis in conformity with generally accepted appraisal practices and that the alleged errors are methodological. For these reasons, the Petitioner failed to make a prima facie case for reduction of the assessed value. *Cusimano argument.*

### ANALYSIS

14. For the years at issue, real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2(incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.
15. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

16. The burden is on the Petitioner to prove the true tax value of the property. The Petitioner has failed to present the type of analysis required by *Long*. The value-per-square-foot analysis only indicates an average value, or a range of values, and provides no indication as to what the precise subject value should be. Similarly, the comparable properties' market factors varied between .8126 and 1.3. The analysis fails to support the contention that the market factor should be removed (or, more accurately, be entered as 1.0). Neither analysis substantiates a specific true tax value for the subject property. Moreover, as argued by the Respondent, these challenges to mere methodology are insufficient. The application of market factor adjustments is part of the general assessment process:

Cost information provides an initial value estimate based on the cost to build a property, from which the assessor then applies market factors or other adjustments in order to arrive at the appropriate value.

*DLGF, 2012 Residential and Commercial Cost Tables Overview of Methodology, 2012.*

A challenge focused solely on the “methodology used to determine [an] assessment” is insufficient to present a prima facie case. *See Westfield Golf Practice Ctr., LLC v. Wash. Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). The Board does not find that IC 6-1.1-4-4.5 or *Peters* alter the presumption that an assessment is correct. Nor does the Board accept the Petitioner’s suggestion that only the assessment prior to the application of the market factor should be presumed accurate.

17. The Petitioner arguably also makes a uniformity and equality challenge. In order to make a prima facie argument regarding uniformity and equality, a taxpayer must show “its property's actual market value-in-use,” and “the actual market value-in-use of any comparable properties.” *Westfield Golf Practice Ctr., LLC*, 859 N.E.2d at 399. Without evidence of the degree to which the subject and other properties vary from their market value relative to their assessed value, a uniformity and equality challenge cannot prevail. Petitioner has failed to present objectively reliable evidence and fails to make a prima facie case that uniformity and equality is lacking.

18. The evidence suggests that the market factor was applied to avoid a reduction in value from a lowered cost schedule rather than to adjust the value in conformity with sales data. The Board is troubled by Mr. Surface's admission that he could not answer the simple question of why it considers this bank building to be roughly double the value of an average bank. But the burden is on the Petitioner to present objectively verifiable evidence of the market value-in-use, and the Petitioner failed to do so.
19. The Board finds in favor of the Respondent.

### **CONCLUSION**

20. The Petitioner failed to establish a prima facie case that the assessed value of the subject property is incorrect.

### **FINAL DETERMINATION**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the correct assessed values are those set forth by the PTABOA in the Forms 115: \$359,800 for the land and \$706,500 for the improvements (totaling \$1,066,300) for 2012, and \$359,800 for the land and \$656,100 for the improvements (totaling \$1,015,900) for 2013.



ISSUED: October 27, 2015

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.