

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

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, *Attorney*

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Centra Credit Union,)	Petition Nos.: 10-040-12-1-4-00001
)	10-040-13-1-4-00002
)	
)	
Petitioner,)	
)	Parcel Nos.: 10-26-08-800-219.000-040
)	
v.)	
)	
)	
)	
Clark County Assessor,)	County: Clark
)	Township: Jeffersonville
)	
Respondent.)	Assessment Year: 2012, 2013

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

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 roughly 3 acre commercial property with only an automated teller machine (ATM)¹ located on Hamburg Way in Sellersburg.
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 \$280,000.
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 \$280,000.
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 hearing officer. The hearing was conducted on the record. The Board did not conduct a physical inspection.

¹ The ATM is assessed as personal property. The property is not located near or used in conjunction with a retail bank branch.

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.²
 - Petitioner Exhibit 1 – 2012 Property Record Card
 - Petitioner Exhibit 2 – 2013 Property Record Card
 - Petitioner Exhibit 3 – Hamburg Park plat map
 - Petitioner Exhibit 4 – Hamburg Park plat map enlarged
 - Petitioner Exhibit 5 – Copy of the Tax Court decision in *Community Hospital Foundation v. DLGF*
 - Petitioner Exhibit 6 – Assessment comparison analysis
 - Petitioner Exhibit 7 – Copy of IC 6-1.1-4-4.5
 - Petitioner Exhibit 8 – Copy of IC 6-1.1-4-4.5 version b
 - Petitioner Exhibit 9 – Copy of the Tax Court decision in *Peters v. Garoffolo*

9. The Respondent presented the following exhibits:³
 - Respondent Exhibit A – Map of comparable listings
 - Respondent Exhibit B – Sales disclosure for subject property
 - Respondent Exhibit C – Sales disclosure for property at 1712 Williamsburg Dr.
 - Respondent Exhibit D – Sales disclosure for property identified as parcel 10-26-08-156.000-040
 - Respondent Exhibit E – Listing for property at 6915 Highway 311

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.

² The Petitioner also presented an exhibit cover letter.

³ Respondent also presented an exhibit cover letter.

PETITIONERS' CONTENTIONS

12. The Petitioner contended the assessed value was incorrect and presented the following evidence in support of the assessment:
- A. The Petitioner argued the assessments should be reduced to \$126,000 for 2012 and 2013. It argued the assessments should be reduced on two grounds. First a positive influence factor of .57 should be removed. Second, .88 acres of property should be deducted or reclassified as unusable/undeveloped because of restrictive utility and drainage easements. *Smith testimony*.
- B. Mr. Smith presented the 2015 property record cards (PRCs) for nine nearby non-agricultural properties ranging in size between .5 and 8 acres. He noted that none of the land assessments contained a positive influence factor, and one had a negative influence factor. Mr. Smith presented a land assessment comparison analysis that indicated the average assessed value per acre was \$70,313 compared to the subject property's \$93,960.⁴ Based on this analysis, he argued that the subject property is overvalued relative to nearby comparable assessments and the influence factor should be removed. Mr. Smith also cited to I.C. §6-1.1-4-4.5 to suggest that the burden is on the assessor to justify the application of trending factors to the value reached under the cost approach. *Smith testimony, Pet. Ex. 6*.
- C. Mr. Smith calculated the square footage of two drainage/utility easements and a stormwater retention easement from the recorded plat of the subject property. The total unusable land was .88 acres. In support, Mr. Smith cited to *Community Hospital Foundation v. Dept. Local Government & Finance*,⁵ for the premise that the assessor

⁴ Mr. Smith misstated the subject property's assessment per acre in his testimony, but corrected it upon cross-examination. Exhibit 6 was also amended during cross-examination to reflect the correct average assessed value per acre.

⁵ 794 N.E.2d 1168 (Ind. Tax Ct. 2003).

erred in classifying the easements as primary commercial rather than unusable/undeveloped. *Smith testimony, Pet. Ex. 3, 4, 5.*

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. In regard to Mr. Smith's comparison, he found that the subject property was above average but in the range of the assessments of the properties selected by Mr. Smith. As for the imposition of the .57 influence factor, Mr. Surface noted that the PRC suggested that it was added by the PTABOA in 2011 to reflect sales of surrounding properties, but he had no opinion as to its accuracy. *Surface testimony.*
 - B. Mr. Surface presented four exhibits as evidence supporting the market value of the property. Exhibit B was the 2007 sales disclosure for the subject property reflecting a \$700,000 sale price. Mr. Surface noted that the same easements were platted at the time of sale. Exhibit C was the 2010 sales disclosure for a 10.81 acre parcel one property down the street from the subject property reflecting a \$1,500,000 sale price.⁶ Exhibit D was the 2010 sales disclosure for 1.339 acre parcel across the street from the subject property reflecting a \$145,945.74 sale price. Exhibit E was a current listing for a 1.96 acre property some distance away from the subject property on a different road reflecting a \$297,000 list price. *Surface testimony, Resp. Ex. B, C, D, E.*

⁶ Neither party addressed the fact that the \$1.5M sale price included a separate property in another town worth \$525,000.

- C. Mr. Surface indicated that, under the Guidelines, the size of the parcels would not be adjusted due to the presence of easements. *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. Respondent argued that *Community Hospital Foundation* is a pre-2002 case, and accordingly, considered the issues under a different standard. Any challenge requesting a change in an influence factor must be made pursuant to a quantifiable condition of the property. For these reasons, Petitioner failed to make a prima facie case for reduction of the assessed value. *Cusimano argument*.

ANALYSIS

14. For 2012, 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-acre analysis only indicates an average value, or a range of values, and provides no indication as to what the subject property's precise value should be. The analysis fails to support the contention that the influence factor should be removed. It similarly fails to substantiate 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 I.C. §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. Additionally, the Petitioner cannot rely on *Community Hospital Foundation*, 794 N.E.2d at 1168 n.1, because it was based "on the law in effect prior to January 1, 2002." The Board finds that *Community Hospital Foundation* has been abrogated by the statutory changes recognized in *Long* and its progeny. Accepting at face value that the easements should have been considered in classifying the property or calculating the size of the property, the Petitioner still fails to produce objectively verifiable evidence that the true tax value is lower than the assessment.
18. 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.

19. As the Petitioner has failed to meet its burden the Board need not address the evidence presented by the Respondent.
20. The Board finds in favor of the Respondent and the assessed value shall remain \$280,000 for 2012 and 2013.

CONCLUSION

21. The Petitioners failed to establish a prima facie case that the assessed value of the subject parcel should be changed.

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 amount of \$280,000.

ISSUED: October 27, 2015

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>>.