

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

Petitions: 39-003-16-1-4-01055-19
39-003-17-1-4-01054-19
39-003-18-1-4-01053-19
39-003-19-1-4-00496-20
39-003-16-1-4-01033-19
39-003-17-1-4-01034-19
39-003-18-1-4-01035-19
39-003-19-1-4-00494-20
39-003-16-1-4-01030-19
39-003-17-1-4-01031-19
39-003-18-1-4-01032-19
39-003-19-1-4-00495-20

Petitioners: William G. & Virginia L. Bruther / Horizon Properties I LLC /
Virginia L. Bruther

Respondent: Jefferson County Assessor

Parcels: 39-14-12-331-006.000-003
39-14-12-332-020.000-003
39-14-12-332-021.000-003

Assessment Years: 2016, 2017, 2018, 2019

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

Procedural History

1. The Petitioners filed property tax appeals for three parcels for tax years 2016, 2017, 2018, and 2019 with the Jefferson County Assessor. The parcel at 104 North Main Cross Street in Hanover contains a Circle K convenience store and gas station. The other two parcels located at 139 West LaGrange are adjacent vacant lots.
2. The Jefferson County Property Tax Assessment Board of Appeals (“PTABOA”) determined the following assessed values for parcel 39-14-12-331-006.000-003, owned by William G. & Virginia L. Bruther to be:

<u>Year</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
2016	\$47,100	\$405,400	\$452,500
2017	\$47,100	\$424,900	\$472,500
2018	\$47,100	\$402,100	\$449,200
2019	\$47,100	\$402,100	\$449,200

3. For parcel 39-14-12-332-020.000-003, owned by Horizon Properties I LLC, the PTABOA determined the assessed value to be:

<u>Year</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
2016	\$48,600	\$0	\$48,600
2017	\$48,600	\$0	\$48,600
2018	\$48,600	\$0	\$48,600
2019	\$48,600	\$0	\$48,600

4. For parcel 39-14-12-332-021.000-003, owned by Virginia L. Bruther, the PTABOA determined the assessed value to be:

<u>Year</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
2016	\$26,500	\$0	\$26,500
2017	\$26,500	\$0	\$26,500
2018	\$26,500	\$0	\$26,500
2019	\$26,500	\$0	\$26,500

5. The Petitioners timely filed appeals with the Board, electing the Board’s small claims procedures.
6. On September 15, 2020, Joseph Stanford, Administrative Law Judge (“ALJ”) held the Board’s consolidated telephonic hearing. Neither the Board nor the ALJ inspected the property.
7. Tax Representative Milo Smith appeared telephonically for the Petitioners and was sworn. Jefferson County Assessor Karen Mannix and Tyler Technologies’ employee Aaron Shelhamer were sworn as witnesses.

Record

8. The official record for this matter is comprised of the following:
- a) A digital recording of the hearing
 - b) Exhibits

- Petitioner Exhibit A¹: GIS Aerial photograph of the 3 Subject Parcels
- Petitioner Exhibit B: 2016 Property Record Card—104 N. Main Cross Street
- Petitioner Exhibit C: 2017 Property Record Card—104 N. Main Cross Street
- Petitioner Exhibit D: 2018 Property Record Card—104 N. Main Cross Street
- Petitioner Exhibit E: 2019 Property Record Card—104 N. Main Cross Street
- Petitioner Exhibit F: 2016 Property Record Card--Parcel 39-14-12-332-020.000-003 (139 W. LaGrange)
- Petitioner Exhibit G: 2017 Property Record Card--Parcel 39-14-12-332-020.000-

¹ The ALJ has labeled the Petitioner’s exhibits.

Petitioner Exhibit H: 003 (139 W. LaGrange)
 2018 Property Record Card--Parcel 39-14-12-332-020.000-003 (139 W. LaGrange)
 Petitioner Exhibit I: 2019 Property Record Card--Parcel 39-14-12-332-020.000-003 (139 W. LaGrange)
 Petitioner Exhibit J: 2016 Property Record Card---Parcel 39-14-12-332-021.000-003 (139 W. LaGrange)
 Petitioner Exhibit K: 2017 Property Record Card--Parcel 39-14-12-332-021.000-003 (139 W. LaGrange)
 Petitioner Exhibit L: 2018 Property Record Card--Parcel 39-14-12-332-021.000-003 (139 W. LaGrange)
 Petitioner Exhibit M: 2019 Property Record Card
 Parcel 39-14-12-332-021.000-003 (139 W. LaGrange)
 Petitioner Exhibit N: Street photograph of unimproved subject parcels
 Petitioner Exhibit O: 2011 Real Property Assessment Guidelines, Chapter 2, p.11
 Petitioner Exhibit P: 2011 Real Property Assessment Guidelines, Chapter 2, p.18
 Petitioner Exhibit Q: 2011 Real Property Assessment Guidelines, Chapter 2, p.67
 Petitioner Exhibit R: 2011 Real Property Assessment Guidelines Chapter 2, p. 65
 Petitioner Exhibit S: Email from Tax Accountant-May 19, 2020
 Petitioner Exhibit T: Email from Melinda Klopp to Milo Smith -August 28, 2020
 Petitioner Exhibit U: Tax Payment Records-Jefferson County Treasurer
 Petitioner Exhibit V: Installment Tax Bill for parcel 39-14-12-331-006.000-003
 Petitioner Exhibit W: Tax Installment Bill for parcel 39-14-12-332-021.000-003
 Petitioner Exhibit X: Tax Installment Bill for parcel 39-14-12-332-020.000-003
 Petitioner Exhibit Y: Email from Kimberly Judge to Milo Smith -August 2020
 Petitioner Exhibit Z: Pages from Local Zoning Ordinance
 Petitioner Exhibit AA: Aerial photograph of Subject Parcels
 Petitioner Exhibit BB: Email-IAAO's Larry Clark to Milo Smith-August 2020

For Parcel 39-14-12-332-020.000-003 (139 West LaGrange-Horizon Properties I, LLC--unimproved lot):

Respondent Exhibit A ²: 2016 Property Record Card -139 West LaGrange
 Respondent Exhibit B 1: 2016 Property Record Cards-Vacant Commercial Land
 Respondent Exhibit C 1: 2011 Real Property Assessment Guidelines Chapter 2, p. 57
 Respondent Exhibit D 1: Aerial View of the Subject Parcel
 Respondent Exhibit E 1: 2017 Subject Property Record Card
 Respondent Exhibit F 1: 2017 Property Record Cards-Vacant Commercial Land
 Respondent Exhibit G 1: 2018 Subject Property Record Card
 Respondent Exhibit H 1: 2018 Property Record Cards-Vacant Commercial Land
 Respondent Exhibit I 1: 2019 Subject Property Record Card
 Respondent Exhibit J 1: 2019 Property Record Cards-Vacant Commercial Land

For Parcel 39-14-12-332-021.000-003 (139 West LaGrange-Virginia Bruther-unimproved lot):

² The Respondent provided three sets of exhibits, one for each parcel, each labeled alphabetically. For clarity in reference, we refer to each numerical set with an additional number.

- Respondent Exhibit A 2: 2016 Property Record Card for 139 West LaGrange
- Respondent Exhibit B 2: 2016 Property Record Card- Vacant Commercial Land
- Respondent Exhibit C 2: 2011 Real Property Assessment Guidelines Ch. 2, p. 57
- Respondent Exhibit D 2: Aerial View of Subject Parcel
- Respondent Exhibit E 2: 2017 Subject Property Record Card
- Respondent Exhibit F 2: 2017 Property Record Cards-Vacant Commercial Land
- Respondent Exhibit G 2: 2018 Subject Property Record Card
- Respondent Exhibit H 2: 2018 Property Record Cards-Vacant Commercial Land
- Respondent Exhibit I 2: 2019 Subject Property Record Card
- Respondent Exhibit J 2: 2019 Property Record Cards-Vacant Commercial Land

For Parcel 39-14-12-331-006.000-003 (104 North Main Cross Street-William & Virginia Bruther-improved lot):

- Respondent Exhibit A 3: 2016 Property Record Card-104 North Main Cross St.
- Respondent Exhibit B 3: 2015 Property Record Card-Vacant Commercial Land
- Respondent Exhibit C 3: 2011 Real Property Assessment Guidelines Chapter 2, p. 57
- Respondent Exhibit D 3: Aerial View of Subject Parcel
- Respondent Exhibit E 3: 2017 Subject Property Record Card
- Respondent Exhibit F 3: 2017 Property Record Card-Vacant Commercial Land
- Respondent Exhibit G 3: 2018 Subject Property Record Card
- Respondent Exhibit H 3: 2018 Subject Property Record Card
- Respondent Exhibit I 3: 2019 Subject Property Record Card
- Respondent Exhibit J 3: 2019 Property Record Card- Vacant Commercial Land

- c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Contentions

9. Summary of the Petitioner's case:

- a) The Petitioners argue that the subject parcels are adjacent, collectively comprise a Circle K convenience store and gas station, and should be valued together as one economic unit, thereby lowering the assessed value. While William & Virginia Bruther own the three parcels under various names, Circle K's tax accountant pays the property taxes for all three parcels. The Petitioners contend that in accordance with International Association of Assessing Officer guidelines, the three parcels should be valued and assessed together. *Smith testimony; Pet'r. Exs. A, BB.*
- b) The Petitioners contend that when the parcels are assessed together as one economic unit, the assessed value for land varies greatly from the current values. The Assessor used the incorrect methodology to value the properties, and thus, the resulting values are too high. The unimproved parcels are small, but the Assessor applied influence

- factors and adjustments that increase the assessed values. Since the overall size of the property would be 1.17 acres if the parcels were combined, the influence factors and adjustment factors would be eliminated if the parcels were valued together. The Assessor should have valued the three parcels together as one parcel. *Smith testimony; Pet'r. Exs. O, P, Q, R, S, T, BB.*
- c) The Petitioners contend that Indiana's Real Property Guidelines require that all contiguous parcels associated with the parcel designated with the main use should be coded with the same property subclass and that the Assessor made a mistake in coding. Thus, the unimproved parcels should be coded as "450 convenience market/gasoline" rather than "452 service station" or "400 vacant." Each of these coding classifications has a land base rate of \$50,000 for primary land. *Smith testimony; Pet'r. Exs. O, P, Q, R, S, T.*
 - d) Additionally, the Petitioners argue, when assessed correctly as one economic unit, the assessed values together for the three parcels should be \$463,900 for 2016, \$472,000 for 2017, and \$460,600 for 2018 and 2019. *Smith testimony.*

10. Summary of the Assessor's case:

- a) The parcels' assessed values are correct. Indiana law requires that assessors value each parcel according to the rates stated in the land order, and the Petitioners have not previously requested that the county combine the subject parcels. Indiana assessors by law, do not assess properties as one economic unit. *Mannix testimony, Resp't. Exs. A1, A2, A3.*
- b) Because the parcels must be assessed separately under Indiana law, the acreage adjustment factors applied to the assessments are warranted, and correct. *Mannix testimony, Resp't. Exs. A1, A2, A3.*
- c) The two unimproved parcels should both have a subclass of "400 vacant." Thus, the "452 service station" subclass for parcel 39-14-12-332-021.000-003 is incorrect. Each of these sub-classification codes are designated at \$50,000 valuation per acre. Thus, the assessed values for each parcel are correct, despite the minor detail in mislabeling the subclass. *Mannix testimony, Resp't. Exs. A1, A2, A3.*

Burden of Proof

- 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. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). The burden-shifting statute creates exceptions to that rule.
- 12. Indiana Code § 6-1.1-15-17.2 (a) applies to an appeal if the assessed value that is the subject of the appeal is an increase of more than five percent over the assessed value for the same property for the prior tax year. None of the values on appeal for any of the

parcels individually increased by more than five percent from the prior year. The values collectively for the parcels also did not increase by more than five percent from the prior year.

13. The Petitioners offered no argument that the burden should shift to the Assessor. The assessed values did not increase more than 5% for any of the three parcels and in some years, the values decreased or remained the same as the prior year. The burden is with the Petitioners.

Analysis

14. The Petitioners did not make a prima facie case that the assessed values for the parcels should be reduced.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 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, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For the years under appeal, the valuation dates were January 1 of each respective assessment year. *See* Ind. Code § 6-1.1-2-1.5.
 - c) The Petitioners contended that the Assessor should have assessed the three parcels as one economic unit. As a result, they argued, if the Assessor had correctly assessed the parcels collectively instead of individually, the acreage adjustment factors on the unimproved, smaller would be eliminated, and therefore the overall assessed values would be lower.
 - d) The Petitioners' argument amounts to an attack on the methodology used to compute the assessed values. Simply attacking methodology is not sufficient to make a prima facie case. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006), holding that taxpayers failed to make a prima facie case by simply focusing on the Assessor's methodology instead of offering evidence of market value-in-use.
 - e) Rather than focusing on how the Assessor valued the parcels, the Petitioners must offer market-based evidence proving the market value-in-use. *Id.* The Petitioners failed to offer any market-based evidence at all. Thus, they failed to make a prima facie case for any change in the assessed values for the property.

- f) While the Assessor admitted that the subclass code for parcel 39-14-12-332-021.000-003 should be “400 vacant” rather than “452 service station,” this detail has no effect on the assessed value of any of the parcels. Both the Petitioners and the Assessor testified that as the information on the property record cards reflects, the base rate for both subclass codes are \$50,000 per acre. Thus, the code is an administrative detail and does not impact assessed values.
- g) The Petitioners failed to make a prima facie case for reducing the assessed values for any of the parcels for the years under appeal. Where the Petitioners have not supported the claim with probative evidence, the Assessor’s duty to support the assessed values is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

- 15. The Board finds for the Assessor. The Petitioners did not provide any evidence that the assessed values for the three parcels individually or collectively, for any of the years under appeal was incorrect or what a different market value-in-use should be. Instead they focused on attacking methodology, which *Eckerling* clearly establishes taxpayers may not do for a successful appeal.

Final Determination

In accordance with the above findings and conclusions, the Board finds for the Assessor and orders no change to the 2016, 2017, 2018 or 2019 assessed values for the three parcels.

ISSUED: December 7, 2020

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>>.