REPRESENTATIVES FOR PETITIONER: George Cook, *Pro se*

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney at Law

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Co-Way Rens, LLC	)	Petition No.:	37-027-12-1-4-00001
Petitioner,	)	Parcel No.:	37-07-30-003-007.014-027
Jasper County Assessor,	)	County:	Jasper
	)	Township:	Marion
Respondent.	)	Assessment Year:	2012

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

September 26, 2013

FINAL DETERMINATION

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

INTRODUCTION

In this assessment appeal, the Petitioner contested the March 1, 2012 assessment of the above-captioned parcel. The Board finds that the Jasper County Assessor (the "Respondent") had the burden of proof and that it failed to make a prima facie case that the assessment is correct. The Petitioner failed to make a case for further reduction.

PROCEDURAL HISTORY

1. The subject property is a commercial retail building located at 375 South College Avenue in Rensselaer.

2. Co-Way Rens, LLC (the "Petitioner") initiated its 2012 assessment appeal by filing a Form 130 petition with the Jasper County Property Tax Assessment Board of Appeals (the "PTABOA") on November 8, 2012. The PTABOA issued its notice of final assessment determination on January 25, 2013, affirming the assessment.

3. The Petitioner filed a Form 131 petition on March 6, 2013.

4. The Board's administrative law judge, Ellen Yuhan (the "ALJ"), held an administrative hearing on February 21, 2014, in Rensselaer. The ALJ did not inspect the property.

5. George Cook, the owner of the subject property, was sworn and testified for the Petitioner at the hearing. Dawn Hoffman, the Jasper County Assessor, was sworn and testified for the Respondent at the hearing. Attorney Marilyn Meighen represented the Respondent at the hearing.

6. The Petitioner presented the following exhibits:

   Petitioner Exhibit 1 – Procedure for Appeal of Assessment
   Petitioner Exhibit 2 – Property record card ("PRC") for 901 N. Main, Monticello
   Petitioner Exhibit 3 – MLS data for 901 N. Main, Monticello
   Petitioner Exhibit 4 – MLS data for 1604 E. Wabash, Frankfort
   Petitioner Exhibit 5 – MLS data for the subject property
   Petitioner Exhibit 6 – Photographs of the subject property
   Petitioner Exhibit 7 – Photographs of the subject property

7. The Respondent presented the following exhibits:

   Respondent Exhibit A –PRC for the subject property
   Respondent Exhibit B – Photographs of the subject property

Respondent Exhibit C – MLS data for the subject property
Respondent Exhibit D – Sales disclosure form for the subject property
Respondent Exhibit E – Aerial photograph of the subject property
Respondent Exhibit F – Comparison of the Petitioner's comparable properties

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition with attachments[1]
Board Exhibit B – Notices of Hearing-Reschedule, dated December 5, 2013
Board Exhibit C – Hearing sign-in sheet

9. For 2012, the PTABOA determined the assessed value is $27, 200 for the land and $83,300 for the improvements (total $110,500).

10. For 2012, the Petitioner requested $20,000 for the land and $47,040 for the improvements (total $67,040).[2]

OBJECTIONS

11. The Respondent's counsel stated that the Respondent had not received the Petitioner's exhibits until the day of the hearing. The Petitioner was required to exchange the exhibits five business days before the hearing as required by 52 IAC 2-7-1. The Respondent specifically objected to Petitioner Exhibits 2, 3, and 4 for that reason and on the grounds of relevancy.

12. The ALJ accepted the exhibits pending the Board's determination but cautioned the Petitioner the exhibits probably would not be considered. The Board sustains the objection to Petitioner Exhibits 2, 3, and 4. The exhibits in question consist of a PRC for 901 N. Main in Monticello, MLS data for the same property, and MLS data for 1604 E.

[1] The Petitioner requested that all attachments to the Form 131 be considered for purposes of this determination.
[2] During the hearing, the Petitioner testified that he did not disagree with the land value, only the increased value of the improvements.

Wabash in Frankfort. Because these exhibits were not provided prior to the hearing, this objection is sustained.

BURDEN OF PROOF

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's 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 the rule.

14. First, Ind. Code § 6-1.1-15-17.2(a) "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Under Ind. Code § 6-1.1-15-17.2(b), "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 the Indiana tax court."

15. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15." Under those circumstances:

> if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving the assessment is correct.

16. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the above burden-shifting language. The change applies to all appeals pending before the Board. *See* P.L. 97-2014.

17. In this case, from 2011 to 2012, the assessed value increased by approximately 24% from $89,100 to $110,500. The Respondent concedes that, mathematically, the assessment increased by more than 5% from 2011 to 2012. The Respondent contends, however, that the property cannot be considered the same property due to the Petitioner's renovations of the property.

18. Once established by the taxpayer that the assessment has increased by more than 5% from the prior assessment, the burden is on the assessor to show that the property falls within an exception to the rule. The burden-shifting statute states that:

> This section does not apply to an assessment if the assessment that is the subject of the review or appeal is based on:
> (1) structural improvements;
> (2) zoning; or
> (3) uses;
> that were not considered in the assessment for the prior tax year.

Ind. Code § 6-1.1-15-17.2(c).[3]

19. The term "structural improvements" is not defined. The Board interprets the burden-shifting statute as a recognition by the Legislature that an increase in assessed valuation in excess of 5% from one year to the next, under typical market conditions, is aberrational. And under such circumstances, the assessor should lose the presumption that the assessment is correct. Similarly, the Legislature has recognized that an increase in an assessment in excess of 5% would not necessarily be aberrational if the taxpayer made substantial improvements to the property. And under such circumstances, the assessor should retain the presumption that an assessment is correct. Thus the question

[3] Prior versions of the burden-shifting statute did not have express exceptions to the rule, and the Board analyzed whether the subject property should no longer be considered the "same property" previously assessed due to improvements or other factors.

before the Board is whether the nature and degree of improvements is such that the taxpayer should be expected to bear the burden of proving the correct assessment.

20. The Board notes that the nature of this review is fact-sensitive and must be considered on a case-by-case basis. The exception, relating to "structural" improvements, is clearly not intended to apply to every repair or renovation. The facts of each case will determine whether the burden-shifting statute should apply.

21. The Petitioner testified that since the property was purchased, over a three year period (2010-2012), there has been a total of approximately $10,000 in renovations to the property and that the property continues to be a work-in-progress. The renovations to the building consisted of replacing service doors with windows, cutting back the soffit, removing a 12 foot interior wall and replacing components on the air conditioner.

22. The record does not establish when each repair was made. Because the Respondent testified that the property was reviewed in 2011, some of the repairs may have been included in a prior assessment year. Because the Respondent failed to show which improvements were "not considered in the assessment for the prior tax year," the Respondent did not prove the property should be excepted from the burden-shifting rule. Therefore, the Board need not address whether the alleged improvements were sufficient to fall within the exception, and the Respondent has the burden of proving that the assessment is correct.

RESPONDENT'S CONTENTIONS

23. The Respondent contends that the purchase price of a property is the best evidence of its market value-in-use. Here, the Petitioner purchased the property in April of 2010 for $127,500. The property was listed with a realtor at a much higher price. There is no

indication that the sale was a distressed sale or a foreclosure. *Meighen argument*; *Hoffman testimony; Respondent Exhibits C and D*.

24. The MLS data sheet indicates that, at the time of sale, the property was well-maintained, had a new roof, newer air-conditioning and electrical equipment, and was in a good business location. Furthermore, the Respondent contends that the Petitioner has made additional renovations to the property. *Hoffman testimony; Respondent Exhibit C.*

25. The Respondent contends that the 2010 purchase price is a reasonable value for the 2012 assessment because the Department of Local Government Finance (the "DLGF") instructed assessing officials to use sales data from March 2, 2010 to March 1, 2012 for the March 1, 2012, assessment date. The Respondent contends that the actual 2012 assessed value appears to be low because the sales disclosure shows a loan of $130,000 and the Petitioner has added $10,000 in additional work. *Hoffman testimony; Respondent D.*

26. The property was assessed at $104,500 for 2008, 2009, and 2010. It dropped to $89,100 for 2011. The Respondent contends the 2011 assessed value was too low. According to the Respondent there is no evidence of commercial improved property generally decreasing between 2010 and 2011. The property was reviewed for the reassessment and the new characteristics were noted. In 2012, new cost tables were used and the value increased. *Hoffman testimony*.

27. With regard to the PRCs of properties the Petitioner considered comparable to the subject property, the Respondent contends that the Petitioner did not show how such properties are comparable. The Petitioner made no adjustments to the properties to support a value for the subject property. The Respondent contends, the properties are very different from the subject property in their uses and their characteristics. *Hoffman testimony; Respondent Exhibit F, Attachment to Board Exhibit A.*

28. The Respondent contends that the comparable sales submitted by the Petitioner were not adjusted for any differences and that the locations and building uses are very different. One of the sales, 12 South Ohio in Remington, was a contract sale of a restaurant in a depressed area of the county. Another sale, 539 North Halleck in DeMotte, was an Ace Hardware store transferred from a mother to her son. It was not an arm's length transaction. The sale of 537 North Halleck in Demotte was a transfer between business partners, not an arm's length transaction. The sale of 15 West North in Remington, also in a depressed area, was a contract sale of an industrial warehouse. Finally, the sale of 125 West Washington in Rensselaer is a typical two-story courthouse square building with minimal parking. *Hoffman testimony; Respondent Exhibit F; Attachment to Board Exhibit A.*

29. The Respondent points out that the bid from Hollandale Builders submitted by the Petitioner is for a 4,800 square foot building compared to the actual building of 1,960 square feet. The Petitioner's letter purportedly includes a discussion with Hollandale Builders in which the Petitioner and Hollandale Builders concluded that a new building of 1,960 square feet could be built for $47,040. *Respondent Exhibit F; Attachment to Board Exhibit A.*

30. In bid specifications for the 4,800 square foot building, several items could impact the cost of the project. The Respondent contends that examples of such items are the exclusion of a driveway or parking expense, the addition of doors, windows, flooring and cabinetry with minimal allowance, the provision of light fixtures by the owner and the provision of interior painting and staining by the owner. *Respondent Exhibit F; Attachment to Board Exhibit A.*

PETITIONER'S CONTENTIONS

31. The Petitioner contends that it was required to purchase the subject property and move to the "business district" in town or lose exclusive rights to its territory. The Petitioner was forced to purchase the property over market value to retain the exclusive rights. It should not be considered an arm's length transaction. *Cook testimony; Attachment to Board Exhibit A.*

32. The Petitioner contends that during a prior meeting or in a letter, the county attorney commented that the new construction building value was hearsay. Mr. Cook implied that the MLS listing is essentially hearsay and is surprised that anyone would think that an MLS listing would provide anything a person would consider factual and not suspect. The standard clause on the MLS data sheet states the information contained is believed to be accurate but is not guaranteed. It is an industry standard that the buyer is responsible for verification. *Cook testimony; Petitioner Exhibit 5; Respondent Exhibit C.*

33. The MLS data for the subject property stated the property was well-maintained, received a new roof in 2009 and the air-conditioning and wiring were four years old. The Petitioner contends that, in fact, likely 66% of the roof was replaced in 2009 with residential-type 29-gauge steel panels. The Petitioner contends that the poorly installed roof panels are about 8 inches too short causing leaks at both the high and low side of the single sloped roof. The Petitioner contends that ice continually breaks the previously installed and reapplied seals and leaking continues in many areas of the roof. The other 33% of the roof is standard asphalt shingle and poorly installed. That portion of the roof was definitely not new in 2009. *Cook testimony; Petitioner Exhibit 5.*

34. The Petitioner contends that the only new portions of the air-conditioner were a replaced condenser and start capacitor. The outside unit itself was manufactured in July 2002 based on its serial number. The interior portion of the furnace is over 45 years old. The electrical panel was manufactured in 1999, although some of the wiring may be more

recent. The Petitioner further contends that the term "well-maintained" is a subjective opinion. *Cook testimony*.

35. The Petitioner asked Hollandale Builders to provide a quote for building a new facility comparable to the current facility. The quote included basic well and septic facilities that would be unnecessary given the presence of public utilities. The size of the proposed building was approximately 2.5 times the size of the current facility (i.e. 4,800 square feet versus 1,960 square feet). The owner's initial intent was to discern what type of building he might be able to procure for the assessed value of $83,300. The quote for the new building was $91,500. *Cook testimony; Attachment to Board Exhibit A.*

36. Hollandale Builders estimated a new 1,960 square foot building could be constructed for $24 per square foot, totaling $47,040. The Petitioner contends that he asked the Respondent if he needed to provide a quote with exact dimensions and specifications clearly addressed, but the Respondent said it was unnecessary. *Cook testimony; Attachment to Board Exhibit A.*

37. The current tax code puts the useful life of a commercial property at 39 years for full depreciation. The standard functional life for a commercial property would be between 50 and 75 years. For the sake of argument, the Petitioner concedes that the building has a 70 year useful life. The building was constructed in 1944. With periodic updates, the useful life could be extended such that its effective in-use date would be 1978. Consequently, in 2012, the property would have served approximately 50% of its useful life. Considering a 15% increase as a result of improvements, plus a 5% appreciation rate, the net value of the building should be $28,224. *Cook testimony; Attachment to Board Exhibit A.*

38. The Petitioner contends that for comparison purposes, the average assessed values of six commercial retail properties located with a few hundred yards of the subject property is

$18 per square foot. Applying that value to the 1,960 square feet for the subject property results in a value of $35,280. The Petitioner contends that even if those values increased by the same 24% as the subject property, the net value would only be $43,747. *Attachment to Board Exhibit A*.

39. The Petitioner presented recent sales data on five commercial properties. After deducting the value of the land (and equipment in one case), the Petitioner contends that the average sale price per square foot is $24, or $47,040 for the 1,960 square foot subject property. *Attachment to Board Exhibit A*.

40. The Petitioner contends that there are limited sales to prove the assessor's contention that commercial property values were stable. *Cook testimony*.

41. One of the Respondent's e-mails mentioned a "fair portion" of the Petitioner's tax burden. The Petitioner contends that e-mail implies the more success the business achieves, the more tax it should pay. The Petitioner contends that a building's assessment should be based on the property and not on the success of the business in the building. The Petitioner contends the rules should not be subjective and consistency should matter, but the buildings in Rensselaer are woefully inconsistent in terms of assessed values. *Cook testimony*.

42. The Petitioner contends the Respondent has not tried to reach a compromise and the Respondent did not attempt to schedule an informal meeting to resolve any issues before going to the PTABOA. Not attempting to reach a compromise is very discouraging to a concerned taxpayer. *Cook testimony.*

43. The Petitioner contends that the Respondent is required to present factual information to meet her burden of proof for the increase in assessed value over 5% from the prior year. The Petitioner contends that the Respondent has not met that obligation and the

Petitioner, consequently, requests a reduction in the assessed value of the building based on the evidence presented. *Cook testimony*.

Analysis

44. 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." 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. 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.

45. Regardless of the type of evidence, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

46. The Petitioner purchased the building in April 2010 for $127,500. The Respondent contends the sale is probative because the DLGF directed assessing officials to use sales of properties occurring from March 2, 2010, through March 1, 2012, for the 2012 assessment.

47. The sale of a property can be the best evidence of a property's value. The sale of the subject property, however, took place two years before March 1, 2012. The Respondent implied that the assessment of the property draws validity from the 2010 sale price because the sale price falls within the time period from March 2, 2010 to March 1, 2012. The DLGF memorandum pertains to ratio study guidance for the 2012 assessment. An appeal of an individual assessment is an entirely different matter. The Respondent provided no authority or substantial explanation for applying this standard for the purpose of an assessment appeal. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998.)

48. The Respondent did not provide support for the accuracy of the existing assessment with any meaningful market value-in-use evidence. Accordingly, the Respondent failed to meet the burden of proving the correctness of the assessment. Consequently, the 2012 assessment must be reduced to the 2011 assessed value—unless the Petitioner proved the value should be something less. Whether the 2011 assessment is accurate is irrelevant because the only assessment presented for the Board's consideration is the one for 2012.

49. The fact that the Respondent did not meet the burden of proving the correctness of the assessment does not end the Board's inquiry. The Petitioner requested an improvement value of $47,040 (a lower improvement value than the $58,700 for 2011). And the Petitioner stated he was not contesting the land value.

50. In support of a lower assessed value, the Petitioner presented a construction bid from Hollandale Builders for a much larger facility. Mr. Cook contends the presentation of the construction bid was simply to show what type of building he could procure for the amount of the current assessment. The Petitioner also discussed in two different letters the fact that the new 1,960 square foot structure could be built for $24 per square foot (or $47,040). In doing so, the Petitioner was apparently attempting to employ the cost approach, which is a generally accepted method of determining market value-in-use. The

proper method of applying the cost approach is to estimate the value of the land as if vacant and then add the depreciated cost of the actual improvements to arrive at a total estimate of value. In other words, the cost data used in the analysis must be reflective of the actual current building and not a hypothetical building from which the cost of the current building can be extrapolated. The Petitioner failed to establish that his hypothetical evidence and calculation based on the hypothetical is probative to demonstrate the market value-in-use of the subject property. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products,* 704 N.E. 2d 1113 at 1119.

51. The Petitioner presented information about five commercial sales as additional support for a $24 per square foot value. The Petitioner did not provide any documentation for the sales, no dates for the sales, and no meaningful comparisons to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent of the evidence must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id*. at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id*. The Petitioner calculated the per square foot price for each property, averaged those values, and concluded that the subject property should be valued using the average of $24 per square foot. This evidence is not a meaningful comparison.

52. The Petitioner presented the assessments of six properties in close proximity to the subject property. The average assessment per square foot was $18. Applying that amount to the subject building would result in an improvement assessment of $35,280. A party to an appeal of a non-residential property may "introduce evidence of assessments of any relevant, comparable property" and "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." Ind. Code § 6-1.1-15-18(c)(2); *see Indianapolis Racquet Club, Inc. v. Marion Co. Assessor*, 2014 Ind. Tax LEXIS 48 (Ind. Tax Ct.). The determination of whether the properties are comparable shall be based on generally accepted appraisal and assessment principles. Ind. Code § 6-1.1-15-18. Again, in order to rely on such evidence in an assessment appeal, a party must first show that the properties being examined are comparable to each other. The Petitioner failed to offer a meaningful comparison of the parcels in terms of characteristics that would affect their relative market values-in-use. The Petitioner relied solely on the proximity of the properties to the subject property, but that point falls short of showing how the properties are comparable.

53. The Petitioner presented a calculation of value based on the depreciated value of a replacement building, but this calculation is not probative evidence. The Petitioner used an estimated construction cost that has not been supported by any documentation. Moreover, his opinions of depreciation, value increases, and appreciation are conjecture and not substantiated by any probative evidence. Finally, the Petitioner has not shown that he has any particular qualification or expertise in developing the cost approach in accordance with generally accepted appraisal practices.

54. The Board's proceedings are *de novo*. The Assessor's failure to hold an informal hearing or to resolve any of the issues did not hinder the Petitioner's ability to present relevant evidence during the Board's hearing. See Ind. Code § 6-1.1-15-4. The PTABOA's failure to hold an informal hearing is irrelevant.

CONCLUSION

55. The Respondent failed to make a prima facie case that the 2012 assessed value is correct. The Petitioner failed to make a case for a further reduction. Therefore, the assessment must be reduced to the 2011 assessed value.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the 2012 assessed value of the subject property will be changed to $89,100.

ISSUED: September 26, 2014

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Chairman, Indiana Board of Tax Review

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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>.