

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

Petitions: 41-037-08-1-4-01438
41-037-09-1-4-01388
Petitioner: Coutar Remainder VI LLC
Respondent: Johnson County Assessor
Parcel: 41-04-18-032-003.000-037
Assessment Years: 2008 and 2009

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

Procedural History

1. The Petitioner initiated assessment appeals with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by timely filing Form 130 petitions.
2. The PTABOA mailed its Notification of Final Assessment Determination (Form 115) for each appeal on the dates listed below:

<u>Appeal year</u>	<u>Date mailed</u>
2008	September 3, 2010
2009	April 29, 2011

3. The Petitioner appealed to the Board by timely filing Form 131 Petitions for Review of Assessment and elected to have these cases heard according to small claims procedures.
4. The Board issued its notices of hearing on July 20, 2012.
5. Administrative Law Judge Jaime S. Harris held the Board’s administrative hearing on August 30, 2011. There was no inspection of the property in connection with this appeal.
6. Certified tax representative Milo Smith represented the Petitioner and was sworn as a witness. Michael Watkins, a full time employee for the Johnson County Assessor’s Office, represented the assessor and was sworn as a witness. Certified tax representative Dean Layman was sworn but did not testify.

Facts

7. The subject property is a gas station/convenience store located at 9400 SR 144 in Martinsville.

8. The PTABOA determined that the 2008 and 2009 assessments are \$153,000 for land and \$1,500 for improvements (total \$154,500).¹
9. The Petitioner did not specify an assessed value for 2008. The Petitioner contends that the 2009 assessed value should be \$58,200 for the land, while the value of the improvements should remain the same.
10. The Petitioner owns two neighboring parcels of which the gas station/convenience store is comprised. Initially, both parcels were under appeal for 2008 and 2009. The appeals for one of the two parcels were either stipulated or withdrawn. Regardless, Mr. Smith's testimony and exhibits referred to both parcels. "Subject property one" is the parcel to which this appeal does not pertain, and "subject property two" is the parcel at issue in this determination.

Record

11. The official record contains the following:
 - a. Form 131 Petitions and attachments,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Property Record Card (PRC) for subject property two,
Petitioner Exhibit 2 – Stipulation Agreement regarding subject property two for 2007,²
Petitioner Exhibit 3 – Spreadsheet summarization of comparable properties with attached "Parcel Reports" and GIS map,
Petitioner Exhibit 4 – Notice of Hearing,
Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign in Sheet,
 - d. These Findings and Conclusions.

¹ There was some confusion among the parties regarding the 2008 assessed value for improvements. Both Petitioner and Respondent contended that the value was \$1,200 for 2008. Form 115 clearly states, however, that the assessed value for improvements is \$1,500.

² Respondent objected to the stipulation agreement for 2007 being entered into the record and to Mr. Smith's testimony regarding the same. Watkins quoted from a prior final determination of the Indiana Board of Tax Review to keep the agreement out of evidence. In *Mac's Convenient Stores, LLC*, the Board stated, "Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). *Mac's Convenient Stores, LLC* Petition No's. 41-025-08-1-4-00959 and 41-025-09-1-4-01386 (IBTR decision issued July 25, 2012). Mr. Smith represented the petitioner in *Mac's Convenient Stores, LLC*. He should be fully aware that he cannot use the stipulation agreement as evidence in the case at hand. Respondent's objection is sustained. Petitioner Exhibit 2 will not be considered any further in determining the outcome of this case.

Contentions

12. Summary of the Petitioner's case:

- a. The parties signed a stipulation agreement on subject property two for the previous year that shows an agreed upon assessed value of \$58,200 for 2007. *Smith testimony; Pet'r Ex. 2.*
- b. Comparable land values were not assessed in the same manner as subject property two's land value. Petitioner presented evidence of eight commercial properties including the subject properties that are all located in the same general area. Due to the fact that the subject properties are located in a more rural area, Mr. Smith was not able to find fifteen comparable properties in the immediate area. Three of the six comparables are vacant parcels that were not used to determine an average assessed value per acre. A GIS map shows the subject properties and the six neighboring parcels located in the surrounding area. S1 and S2 are subject properties one and two. The attached parcel reports obtained from the Johnson County website illustrate the following land assessed values per acre for the subject properties and comparables for 2008 and 2009:

(1) S1 (gas station/convenience market):	\$350,109
(2) S2 (gas station/convenience market):	\$350,114
(3) Parcel 3 (vacant land so not included);	
(4) Parcel 4 (Dairy Queen - franchise restaurant):	\$81,300
(5) Parcel 5 (gas station/convenience market):	\$291,351
(6) Parcel 6 (vacant land so not included);	
(7) Parcel 7 (vacant land so not included);	
(8) Parcel 8 (commercial auto sales)	\$166,821

The averaged assessed land value of the three non-vacant comparables is \$179,824 per acre. Subject properties one and two, however, have an average assessed value of approximately \$350,000 per acre. Comparable parcel 5, which has the same use as the subject properties because it is a gas station/convenience store, had a land value that was significantly less than the subject properties. These comparable properties were not assessed in the same manner as the subject properties.

- c. 2008 and 2009 were annual adjustment years. Annual adjustments should be reflective of the market and should look at the percent assessed values have increased or decreased based on the market. The properties in the neighborhood are also adjusted based upon sales. When an annual adjustment is made, it should be uniformly applied to all similar properties. This process did not occur for the subject properties' assessments in 2008 and 2009. *Smith testimony; Pet'r Ex.1; Pet'r Ex. 3.*
- d. Gas stations/convenience stores should not be assessed differently than other neighboring commercial properties. The neighboring properties are comparable to the subject properties based on their geographical locations. The Dairy Queen location is comparable to the real estate the subject properties are on, because a convenience store can be built on the Dairy Queen parcel. The same applies for the commercial auto sales property, because a convenience store could have been built on

that property as well. Also, there is a gas station/convenience store included with the comparables that has a much lower land value per acre. If it is the exact same use as the subject properties, there should not be such a difference in assessed land values. *Smith testimony; Pet'r Ex. 3.*

- e. Differences between the comparables and the subject properties, such as age and whether the parcels have access to a main highway or intersection, were taken into consideration by the Petitioner. The subject properties do not have frontage as there is another parcel in front of them. An access road is required to get back to the properties from the main road. The commercial auto sales property has considerably less assessed land value per acre than the subject properties. The commercial auto sales property, however, is located at an intersection, which is a better and more valuable location. *Smith testimony; Pet'r Ex. 3.*
 - f. The cost approach in the 2002 Real Property Assessment Manual is a generally accepted appraisal practice whereby one uses the replacement cost new based on what it would cost to rebuild a structure minus depreciation plus the value of the land. The Johnson County Assessor used the cost approach to assess all of the properties in Johnson County in 2002 and then made annual adjustments thereafter. *Smith testimony.*
13. Summary of the Respondent's case:
- a. The assessed value for 2008 should be reduced to the certified value of the year prior, which was \$143,100. The assessed value for 2009 should be \$154,500. *Watkins testimony.*
 - b. Declaring a property as a comparable does not make it a comparable. The six properties Petitioner used in his analysis of land values per acre are not comparable to subject property two. Subject properties one and two are a gas station/convenience store, while the comparables used by Petitioner include a Dairy Queen, a commercial auto sales property, and three vacant parcels. These are not comparable to a gas station/convenience store as far as market value in use to the current owner for the current purpose. Only one of the comparables used by Petitioner is a gas station/convenience store. Also, Mr. Smith compared properties with frontage to the subject properties, which do not have frontage. *Watkins testimony; Pet'r Ex. 2.*
 - c. A tax representative does not have the proper certification or license to argue uniform application or to reliably determine the value of property. On cross-examination, Mr. Smith admitted that he is not licensed to practice law in Indiana. Tax representatives are forbidden from bringing up uniform application unless they are attorneys. Mr. Smith is a level 2 assessor/appraiser and has not taken the Uniform Standards of Professional Appraisal Practice (USPAP) class or test. The only certification Mr. Smith has relative to determining the value of property is a real estate brokers' license. *Watkins argument; Smith testimony.*

- d. On cross-examination, Mr. Smith admitted that he has a financial interest in the outcome of this case as he only earns a fee from Petitioner if he is successful in reducing the assessed value of the property. *Watkins argument; Smith testimony.*

Burden

14. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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.

15. Both parties agreed the Respondent has the burden of proof for 2008.
16. As there was not more than a five percent increase in the assessed value from 2008 to 2009, Petitioner has the burden of proof for 2009.

Analysis

17. 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Additional relevant 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. MANUAL at 5.

18. Initially it was Respondent's burden to prove the 2008 assessment was correct given that the assessment increased by more than 5%. Respondent, however, agreed that the 2008 assessment was excessive and should be reduced to the prior year's assessed value. Then, because Petitioner requested a lesser value than the prior year's assessment, it became Petitioner's burden to establish a lesser amount by making a prima facie case. Therefore, Petitioner has the burden for both 2008 and 2009.
19. Comparing assessments without relating those amounts to actual market value-in-use is not probative. The Petitioner argued that the subject property's land was assessed in excess of the assessed land values of neighboring properties. This argument, however, is insufficient to show an error in an assessment. *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In *Westfield Golf*, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the property's market value-in-use. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioner here only argued that the method of the Petitioner's assessment was not performed in the same manner as the subject property.
20. Petitioner failed in his attempt to make a case based on lack of uniformity and equality.³ According to the Tax Court, "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf*, 859 N.E.2d at 399 n.3. Such studies, however, must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Such studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). The Petitioner merely compared subject property two to three other land value assessments and only one of those was a gas station/convenience store. Therefore, Petitioner failed to establish that the other assessments it relied on satisfy the statistically reliable requirement.

³ As a tax representative, Mr. Smith may be engaging in the unauthorized practice of law. The Board's procedural rules for small claims allow parties to appear by "any representative expressly authorized by the party..." 52 IAC 3-1-4(a). The Board's rules concerning tax representatives, however, also apply to small claims procedures. 52 IAC 3-1-4(b). Therefore, Petitioner and Mr. Smith were required to comply with the limitations concerning the scope of representation by tax representatives set forth in 52 IAC 1. A tax representative cannot practice before the board regarding claims of the constitutionality of an assessment or any other representation involving the practice of law. 52 IAC 1-2-1(b)(3) and (4). While he did not specifically say the assessment was unconstitutional, Mr. Smith's argument regarding lack of uniformity or similarity appears to be in reference to the Indiana Constitution. "Article X, Section 1 of the Indiana Constitution requires "...a uniform and equal rate of property assessment and taxation and ... regulations to secure a just valuation for taxation of all property...." IND. CONST. ART. 10, § 1(a). This provision has long been held to require: (1) uniformity and equality in assessment, (2) uniformity and equality as to the rate of taxation, and (3) a just valuation for taxation of all property. *See Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224, 1228 (Ind. Tax Ct. 1998) (citation omitted)." *Westfield Golf*, 859 N.E.2d at 397. The Board is not saying whether Mr. Smith's argument does or does not cross the line of the illegal practice of law, but it is clearly getting close. Regardless, whether Mr. Smith was or was not authorized to make such an argument does not make a difference, however, because he ultimately loses the argument of lack of uniformity and equality.

21. Petitioner failed to show the comparability of the neighboring properties. By comparing the assessed value of the subject property's land per acre to the assessed values of comparable properties' land per acre, the Petitioner essentially relied on a "comparison" method of establishing the market value of their property. In order to effectively use a comparison as evidence in property assessment appeals, however, a party must establish the comparability of the properties being examined. 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 party seeking to rely on a comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioner merely offered a summary sheet and property data cards for each of the properties and testified regarding each land's assessed value per acre. Petitioner stated that one of the comparables is located at an intersection and should be worth more in value, and that another comparable is a gas station/convenience store like the subject properties so its land value should be assessed in the same manner. This evidence falls far short of the showing required to prove the properties are comparable.
22. Both parties failed to provide the kind of detailed analysis that would assist the Board in reaching a conclusion in this case. The assessor, however, admitted the 2008 assessment should be reduced to the assessed value of the year before. In this case, doing so will reduce the assessment to \$143,100.
23. The Petitioner did not prove that the 2009 value should be any lower.

Final Determination

In accordance with the above findings and conclusions, the 2008 assessment will be changed to the assessed value of the year before, which is \$143,100. The 2009 assessment shall remain the same.

ISSUED: October 30, 2012

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, 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>.