

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

**Petition No.:** 03-009-12-1-3-00001  
**Petitioner:** Robert L. Dalmbert  
**Respondent:** Bartholomew County Assessor  
**Parcel No.:** 03-05-15-330-000.700-009  
**Assessment Year:** 2012

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 an assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (the "PTABOA") by filing a Form 130 dated January 11, 2013.
2. On October 7, 2013, the PTABOA issued its Notification of Final Assessment Determination lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner then timely filed the Form 131 petition with the Board on November 19, 2013.
4. The Petitioner elected to have the administrative hearing conducted under the Board's small claims procedures. The Respondent did not elect to have the proceeding removed from the Board's small claims procedures.
5. John Thompson, the Board's appointed Administrative Law Judge (the "ALJ"), held the administrative hearing on October 28, 2014. The ALJ did not inspect the subject property.
6. Tax Representative Milo Smith represented the Petitioner. Bartholomew County Assessor Gordon Wilson and Virginia Whipple appeared for the Respondent. All were sworn in as witnesses and testified under oath.

**FACTS**

7. The subject property is a truck washing facility located at 3750 W. 700 N. in Columbus.
8. The PTABOA determined the 2012 assessed value for the land is \$94,300 and the assessed value for the improvements is \$35,000, for a total assessed value of \$129,300.

## **RECORD**

9. The official record for this matter contains the following:

a) A digital recording of the hearing,

b) Exhibits:

Petitioner Exhibit 1:	Property Record Card (“PRC”) for 2011
Petitioner Exhibit 2:	PRC for 2012
Petitioner Exhibit 3:	GIS aerial map of the Subject and neighboring parcels
Petitioner Exhibit 4:	GIS zoning map of the Subject and neighboring parcels
Petitioner Exhibit 5:	2001 Contract for the Conditional Sale of Real Estate for Subject

Respondent Exhibit A:	Curricula Vitae of Gordon Wilson and Virginia Whipple
Respondent Exhibit A1:	Statement of Professionalism
Respondent Exhibit B:	2011 and 2012 PRCs for subject
Respondent Exhibit C:	Aerial map of the subject
Respondent Exhibit D:	Exterior and interior pictures of the subject
Respondent Exhibit E:	Corrected PRC for the subject
Respondent Exhibit F:	Sales Approach Workup
Respondent Exhibit G:	Aerial showing location of sales
Respondent Exhibit H:	PRCs and sales disclosure forms for comparable properties
Respondent Exhibit I:	Time adjustment explanation
Respondent Exhibit J:	Time adjustment charts for comparable properties
Respondent Exhibit K:	Median sales used in time adjustments
Respondent Exhibit L:	Time adjustment backup data
Respondent Exhibit M:	Reconciliation of values for subject

Board Exhibit A:	Form 131 petition
Board Exhibit B:	Notice of hearing
Board Exhibit C:	Hearing sign-in sheet

c) These Findings and Conclusions.

## **OBJECTIONS**

10. The Respondent objected to the admission of Petitioner’s Exhibit 5 on the grounds of relevance, given the age of the sale. The Petitioner contends that the sale has to have some relevance given that the contract has not been paid off, and the purchaser is still making payments and is still operating the facility. Parties are permitted to offer evidence relevant to the market value-in-use to rebut or affirm a property’s assessed value. The Respondent provided no grounds for the objection. The Respondent’s objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled and Petitioner’s Exhibit 5 is admitted.

## BURDEN OF PROOF

11. 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). The taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
12. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Thus, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal regardless of the amount of the increase..." *See* I.C. § 6-1.1-15-17.2(d). These provisions may not apply if there was a change in the property's improvements, zoning or use, or if the assessment was determined using the income approach to value. *See* I.C. § 6-1.1-15-17.2(c) and (d).
13. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence of the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, the assessment reverts to the previous year's value. *See* I.C. § 6-1.1-15-17.2(b).
14. The subject property was assessed at \$79,200 for 2011 and the PTABOA determined a 2012 value of \$129,300, which was more than a 5% increase. As conceded by the parties, the Respondent has the burden of proving the 2012 assessment is correct.

## CONTENTIONS

15. Summary of the Respondent's case:
  - a) All work regarding the subject property's assessment was performed "in accordance with the Constitution and laws of the State of Indiana, applicable rules, regulations and guidelines published by the Department of Local Government Finance (DLGF), and also with generally accepted appraisal principles and the ethical professional guidelines of the International Association of Assessing Officers (the "IAAO") and USPAP." *Whipple testimony; Resp't Ex. A1.*

- b) The Respondent presented an aerial view of the subject property, which shows the subject property is located on a frontage road with close access to US 31 and the I-65 exit at Edinburgh. The subject property is used as a truck wash for semi-trucks and is in a good location for its business. *Whipple testimony; Resp't Ex. C.*
- c) The Respondent presented photos of the subject property showing a "lean-to" that was built in 2002 and a modular office that were not accounted for on the 2012 PRC. The 2012 PRC shows a 40'x80' building only, which the Respondent contends was a mistake. The parties failed to address this issue before the PTABOA. *Whipple testimony; Resp't Exs. B and D.*
- d) After visiting the subject property and finding these additional buildings, the Respondent made corrections to the PRC using the cost approach. The Respondent changed the condition of the improvements from average to fair and the grade from C-1 to D, to account for the lower quality of the lean-to attached to the main building. The Respondent also assessed the modular office as an E-grade, fair condition office. These changes brought the total value using the cost approach to \$150,100 from \$129,300. *Whipple testimony; Resp't Ex. E.*
- e) The Respondent also presented a sales comparison approach to value the subject property. The Respondent introduced an aerial map showing the locations of four comparable sales. The comparable sales properties are farther away from I-65 than the subject property. Although the comparable sales properties have better access to US 31, their locations are not as good as the subject property. *Whipple testimony; Resp't Ex. G.*
- f) The Respondent introduced the PRCs and sales disclosure forms for the four comparable sales. The Respondent time-adjusted the sales prices using IAAO methodology using sales from January 2007 to December 2013. The adjustment divided the sale price by the assessment to come up with the ratio and sorted the ratios by the median for each month. The median ratio for each month was then plotted on a spreadsheet. To arrive at the percentage adjustment, the Respondent took the difference between the median ratio for the sale date and the assessment date, subtracting the two to find the time adjustment difference. *Whipple testimony; Resp't Exs. F, H and J.*
- g) For Comparable Sale No. 1, there was no adjustment to the sale price from March 7, 2011 to March 1, 2012, and it remained at \$189,000. Comparable Sale No. 2 sold in 2010 and was adjusted by 1.9%, a \$2,945 decrease, resulting in a time adjusted sale price of \$152,100. Comparable Sale No. 3 had a sale date of March 8, 2012, and was not time adjusted. Comparable Sale No. 4 had a 5% decrease and was adjusted down from \$295,000 to \$280,250. *Whipple testimony; Resp't Ex. J.*
- h) The Respondent calculated a dollar per square foot sale price by dividing the square footage of the sold buildings by the sales price. Adjustments were then made for

desirability, condition, and location after looking at hundreds of appraisals and looking at adjustments made by fellow appraisers. The Respondent contends the adjustments are warranted because of the desirability. The subject property is a concrete block building, which is older than some of the comparable sales. When questioned about the actual ages, Ms. Whipple testified that the subject property was built in 1982, Comparable Sale No. 1 was built in 1994, Comparable Sale No. 2 was built in 1998, Comparable Sale No. 3 was built in 2002, and Comparable Sale No. 4 was built in 1978. The Respondent also contends the subject property is much less desirable because three of the other buildings are Morton-type buildings and Comparable Sale No. 4 is an older metal building. This led the Respondent to make a 25% adjustment with regard to desirability. *Whipple testimony; Resp't Ex. F.*

- i) The indicated values, after the net adjustments, were calculated using the square footage of the subject property multiplied by the adjusted square footage to arrive at an indicated value. The median value is \$172,900, while the average value is \$180,000. The Respondent believes the median value of \$172,900 is the better value in this instance, and that value is the Respondent's recommended value from the sales comparison approach. *Whipple testimony; Resp't Ex. F.*
- j) Respondent's Exhibit M is the reconciliation of values, showing the cost approach value as \$150,100, and the sales comparison approach value as \$172,900. The Respondent contends that the sales comparison approach is the better approach and requests an increase of the subject property's 2012 assessment to \$172,900. If the Board does not find that the Respondent has met the burden, then the PRC should be corrected with the correct information. *Whipple testimony; Resp't Ex. M.*

16. Summary of the Petitioner's case:

- a) The Petitioner contends that there was no reason for the land base rate of the subject property to increase from a value of \$30,000 per acre in 2011 to \$100,000 per acre in 2012. *Smith testimony; Pet'r Exs.1 and 2.*
- b) The Petitioner presented an aerial view of the subject property that shows the access road to the subject property dead ends at the subject property. *Smith testimony; Pet'r Ex.3.*
- c) Petitioner's Exhibit 4 shows the zoning of the subject property is industrial, while many of the properties around the subject property are in different commercial zoning districts and the area highlighted in black is the "marketplace" outlet mall. *Smith testimony; Pet'r Ex.4.*
- d) The Petitioner contends that the comparable sales used by the Respondent in the sales comparison approach are not similar to the subject property in any way. The comparable sales are located in a different township, in a relatively new subdivision with paved roads and easy access. The comparable sales have city water and utilities, and can also be seen from US 31, which consists of four lanes. When questioned

about the city utilities, the Respondent agreed that the comparable sales do have city utilities, but was unsure of whether the subject property had them. *Smith testimony; Wilson testimony.*

- e) According to Mr. Smith, the Petitioner had to sell the subject property on contract. If the subject property had been easy to sell, then the Petitioner would not be selling it on contract. The buyers paid \$87,000 when the Petitioner sold the subject property to them in 2001. The contract term expired in ten years. However, Mr. Smith testified that the contract has not been paid off and that the buyers are still making payments to the Petitioner. The buyers have been operating the truck wash for approximately twenty years and are still operating the facility. The Petitioner contends that the contract shows that the buyer purchased both the real property and the improvements inside to operate the truck wash. *Smith testimony; Pet'r Ex.5.*
- f) The Petitioner contends that the modular office is a personal property structure because it is on skids and could be moved from one area to the next. Thus, the Petitioner does not believe it should be assessed as real property. When questioned as to whether the Petitioner was paying personal property taxes on the modular office, Mr. Smith testified that he did not know. *Smith testimony.*
- g) The Petitioner contends that the Respondent failed to meet his burden of proof to show why the assessment increased over 50% from 2011 to 2012. The Respondent has not shown that there was something new on the property on the assessment date of March 1, 2012. If there was, then it should be put on the PRC using a correction of error. *Smith testimony.*

## 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
- 18. Regardless of the method used to prove a property's true tax value, 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. 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).

19. As explained above, the Respondent had the burden of proving that the assessment of \$129,300 was correct. The Respondent presented both a sales comparison approach and a cost approach to value the subject property. The Respondent ultimately requested an increase to \$172,900 based on his sales comparison approach.
20. For the sales comparison approach, Ms. Whipple estimated the value based on four sales involving properties she believed were comparable to the subject property. 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. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* at 471.
21. While the Respondent provided the sales disclosure forms and PRCs for the purportedly comparable properties, the Respondent failed to offer any evidence relating their specific features and amenities to the subject property. Indeed, the Respondent's evidence mainly highlighted their differences. Ms. Whipple testified that the comparable sales she chose are farther away from I-65 and not in as good a location as the subject property. She also testified that three of the comparables are Morton-type buildings and one is a metal building, whereas the subject property is a concrete block building. Additionally, the actual ages of the comparable buildings range from 1978 to 2002, while the subject property's main building was constructed in 1982. Although the Respondent accounted for these differences by making adjustments for time, desirability, condition, location and size, the Respondent did nothing to show how the comparable properties' characteristics were actually similar to those of the subject property as required by *Long*.
22. Again, specific reasons must be provided as to why a proponent believes a property is comparable. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Id.* at 470. Because the Respondent failed to establish that his purportedly comparable properties were actually comparable to the subject property, his sales comparison approach did not conform to generally accepted appraisal and assessment principles. Thus, the Respondent failed to make a prima facie case supporting his requested increase to \$172,900.<sup>1</sup>
23. Turning to the cost approach, the Respondent claims that there were two structures, a lean-to and a modular office, that were not accounted for in the 2012 assessment. After

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<sup>1</sup> When a witness is not presenting a USPAP compliant appraisal, or is not offering an opinion as a certified appraiser, the witness must direct the Board to the appraising principles relied upon, and ideally, citations to appraisal treatises. Without support, the Board cannot accept a mere blanket statement that adjustments to comparables or time are in conformity with USPAP.

discovering these issues, the Respondent valued the subject property using the cost approach.<sup>2</sup> When using the cost approach, an appraiser calculates the cost new of the improvements and subtracts from that cost accrued depreciation to arrive at an estimate of the improvement's value, and then adds the value of the land as if vacant to arrive at an estimate of the subject property's total value. MANUAL at 9.

24. The Respondent made corrections to the 2012 value by changing the condition of the main building from average to fair and the grade from C-1 to D to account for the lower quality of the lean-to. The Respondent also calculated an assessed value for the modular office by rating it as an E-grade, fair condition office. When taken together, the Respondent's corrections brought the total assessed value for the subject property to \$150,100 under the cost approach. Although the Respondent briefly discussed the reasons underlying these corrections, the Respondent did nothing more to walk the Board through his cost approach analysis and merely offered a PRC showing the corrections as evidence. *See Resp't Ex. E.*
25. As part of making a prima facie case, "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). Because the Respondent failed to walk the Board through every element of the cost approach analysis as required by *Long*, the Respondent has not shown that his cost approach conforms to generally accepted appraisal and assessment principles. Consequently, the Respondent failed to make a prima facie case supporting an assessment of \$150,100.
26. Because the Respondent did not offer sufficient evidence to show the market value-in-use of the subject property, the Respondent failed to make a prima facie case that the 2012 assessment was correct. Accordingly, the burden did not shift to the Petitioner, and since the Petitioner did not request a value lower than the 2011 assessment, the Board need not evaluate the Petitioner's evidence. For the foregoing reasons, the Petitioner is entitled to have the property's 2012 assessment reduced to its 2011 value of \$79,200.

## CONCLUSION

27. The Respondent had the burden of proving the 2012 assessment was correct. The Respondent failed to make a prima facie case that the 2012 assessment was correct, and the Petitioner did not seek an assessment lower than the 2011 assessment. The 2012 assessment must therefore be reduced to the subject property's 2011 assessed value.

## FINAL DETERMINATION

In accordance with the above Findings Conclusions, the Board determines that the 2012 assessment must be changed to \$79,200.

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<sup>2</sup> Because the Respondent conceded that the burden-shifting statute applied, the Board will not review whether the items not previously assessed would have affected the analysis.



ISSUED: January 26, 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>>.