

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

Petition No.: 21-003-17-1-3-01020-18
21-003-18-1-3-01021-18
Petitioner: Howden Roots, LLC
Respondent: Fayette County Assessor
Parcel No.: 21-05-24-109-027.000-003
Assessment Years: 2017, 2018

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

PROCEDURAL HISTORY

1. Howden Roots, LLC appealed its assessments to the Fayette County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determinations valuing the property as follows:

Year	Land	Improvements	Total
2017	\$339,600	\$966,500	\$1,306,100
2018	\$339,600	\$992,900	\$1,332,500

2. Howden Roots filed Form 131 petitions with the Board, electing to have the appeals heard under the Board’s small claims procedures. The Assessor did not elect to remove.
3. On March 28, 2019, our designated Administrative Law Judge (“ALJ”), Timothy Schuster, held two hearings, one for each assessment year. We address both assessment years in this determination. Neither he nor the Board inspected the property. Greg Poore, Jeff Coleman, and Jay Morris testified under oath. Poore, a certified tax representative, represented Howden Roots. Coleman represented himself in his capacity as the Fayette County Assessor.

RECORD

4. The follow exhibits were submitted for both assessment years:

Petitioner’s Exhibit P-1: Consulting report prepared by Greg Poore.

Respondent’s Exhibit R1: Subject property record card (“PRC”),

- Respondent's Exhibit R2: 6/30/2015 sales disclosure form for subject property,
- Respondent's Exhibit R3: 2014 and 2016 permit applications,
- Respondent's Exhibit R4: PRC for 1400 Madison Ave., Connersville,
- Respondent's Exhibit R5: PRC for 1321 Illinois St., Connersville,
- Respondent's Exhibit R6: CoStar information for comparable properties,
- Respondent's Exhibit R7: PRC for 1155 Vaile Ave., Kokomo,

For the 2017 assessment hearing, the Assessor additionally submitted:

- Respondent's Exhibit R8: Sales spreadsheet.

For the 2018 assessment hearing, the Assessor additionally submitted:

- Respondent's Exhibit R8a: Original sales spreadsheet,
- Respondent's Exhibit R8b: Updated sales spreadsheet,
- Respondent's Exhibit R9: Summary of Morris testimony.

5. The record also includes the following: (1) all petitions, motions, briefs, and documents filed in these appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) a digital recording of the hearing.

OBJECTIONS

6. The Assessor objected to Petitioner's Ex. P-1 for both assessment years because it was exchanged only five days before the hearing as opposed to five business days. Poore stated that he was unaware of the business days requirement. The Board's small claims procedures state that if a request for evidence is made ten business days or more prior to hearing, the parties must exchange evidence and witness lists at least five business days before the hearing. 52 IAC 3-1-5(d) Failure to comply may be grounds to exclude evidence or testimony. 52 IAC 3-1-5(f). In this case, the Assessor received the evidence prior to the hearing. He did not request a continuance or allege any specific prejudice. Thus, we overrule and admit the exhibit into evidence.
7. Howden Roots objected to Respondent's Ex. R8, R8b, and R9 because they were only exchanged one day prior to the hearing. Howden Roots likewise did not request a continuance or allege any specific prejudice. In addition, Howden Roots stated that it was their preference that all of the exhibits from both parties be admitted. We overrule the objection and admit Respondent's Ex. R8, R8b, and R9 into evidence.

CONTENTIONS

8. Summary of the Petitioner's case:
 - a. The subject property is located at 900 W. Mount Road in Connersville, Indiana. The entire property contains four parcels of land, approximately 18 acres total. Only the largest parcel is under appeal and it contains approximately 12.75 acres. For the

years in question, the site operated as a factory. *Poore testimony; Morris testimony; Pet'r. Ex. P-1 at 1-2; Resp't. Ex. R1.*

- b. Howden Roots claimed the property is over assessed. Greg Poore prepared a valuation analysis for 2017 using sales of properties he considered comparable to the subject. He searched for properties built before 1940 because he considered the property to have an effective year built of 1914. Poore selected five properties, four from Indiana and one from Ohio. Several of the sales had significant issues including distress, foreclosure, and serious fire code violations. *Poore testimony; Pet'r. Ex. P-1 at 7-22.*
 - c. Poore made adjustments for sale date, gross building area, land area, location, property type use, functional aspects, physical aspects, effective age, and condition. He did not explain how he derived those adjustments. He also included ratios of the sale price to assessed value for each comparable to show each comparable was over assessed. *Poore testimony; Pet'r. Ex. P-1 at 22.*
 - d. He determined the median per square foot value was \$1.61, and the average was \$2.03. He concluded to a value of \$2.00/sq. ft. for the subject property or \$650,600 for 2017. For the 2018 assessment year, Poore applied a 3% appreciation factor to arrive at a value of \$670,100. *Poore testimony; Pet'r. Ex. P-1 at 1-2, 23.*
9. Summary of the Respondent's case:
- a. The Assessor offered a valuation analysis prepared by Jay Morris. Morris searched for manufacturing properties built between 1900 and 1960, ranging in size from 150,000 sq. ft. to 400,000 sq. ft. that sold between 2013 and 2018. He found seven properties he considered comparable. The sale prices for the properties ranged from \$1.61/sq. ft. to \$11.67/sq. ft. *Morris testimony; Resp't. Exs. R6, R8, R8a, R8b.*
 - b. Morris adjusted the sales for location, property use, age and physical depreciation, and acreage. He based his location adjustments on the DLGF guidelines. Based on these sales, he calculated the median unadjusted sale price, the median adjusted sale price, and the average adjusted sale price. These were \$5.65, \$5.13, and \$6.18 respectively. He settled on a value of \$5.58/sq. ft. Based on this, Morris concluded to a value of \$1,701,200 for both assessment years. *Morris testimony; Resp't. Exs. R6, R8, R8a, R8b, R9.*

BURDEN OF PROOF

10. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was

determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15- 17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b). For 2017, the Assessor argued the burden should not shift because there were structural improvements to the subject property. Howden Roots agreed and thus bears the burden of proof.

ANALYSIS

11. Indiana assesses real property based on its true tax value, which the Indiana Department of Local Government Finance (“DLGF”) has defined as “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). Parties may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property-tax appeals). When using comparable sales to show a property’s value, a party must: (1) identify the relevant characteristics of the subject property, (2) explain how those characteristics compared to any purportedly comparable properties, and (3) explain how any relevant differences affected the properties’ market value-in-use. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.*
12. We first examine Howden Roots’ evidence. While Poore identified some relevant characteristics about his comparables, he did little to explain how he derived his adjustments. In making its case, a taxpayer must walk the Board through the facts supporting its case. The Board will not make Howden Roots’ case for it. *Indianapolis Racquet Club, Inc. v. Washington Twp. (Marion Cnty.) Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). This failure alone renders his analysis largely unreliable. Likewise, Poore did little to justify the 3% appreciation factor he used for his 2018 analysis.
13. In addition, several of Poore’s sales had readily apparent issues that seriously undercut their reliability. These included a foreclosure sale and the sale of a property with significant fire code issues. Poore did not show how these sales were reliable despite these problems. Thus, we find Howden Roots failed to make a prima facie case for a

reduction in value for either assessment year.¹

14. There is some confusion in the record as to whether the Assessor sought to increase the assessments. Nevertheless, we will examine whether the Assessor's evidence supports such an increase. Morris's valuation suffers from many of the same problems as Poore's. His adjustments are largely conclusory because, like Poore, he did not adequately explain how he derived them. For his location adjustments, Morris relied on the DLGF guidelines. As discussed above, a party must offer market-based evidence. Relying on the guidelines to develop a location adjustment fails to meet this standard. For these reasons, we find the Assessor failed to make a prima facie case for an increase in the assessments.

CONCLUSION

15. Neither party provided reliable evidence of value for either assessment year. Thus, we order no change to the assessments.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board orders no change to the 2017 or 2018 assessments.

ISSUED: June 25, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

¹ Poore noted that the comparable properties sold for less than their assessed values. To the extent that Howden Roots may have been asking for an equalization adjustment, we note that the Tax Court has previously held, "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 and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). There is no indication that Poore's presentation of comparables constitutes a statistically reliable sample.

- 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>>.