

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

**Petitions:** 18-019-12-1-5-00004  
18-019-13-1-5-00004  
18-019-14-1-5-10279-15  
**Petitioner:** Key Enterprises, Inc.  
**Respondent:** Delaware County Assessor  
**Parcel:** 18-04-35-477-003.000-019  
**Assessment Years:** 2012, 2013, 2014

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

**Procedural History**

1. The Petitioner appealed its 2012-2014 assessments. On September 30, 2014, the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations for 2012 and 2013, denying the Petitioner relief in both years. On June 3, 2015, the PTABOA issued its determination for 2014, again denying the Petitioner relief.
2. The Petitioner timely filed Form 131 petitions with the Board for all three years. It elected to proceed under our small claims rules.
3. On December 3, 2015, our designated administrative law judge, Jennifer Bippus (“ALJ”), held a hearing on the petitions. Neither she nor the Board inspected the property.
4. The Petitioner’s president, Christopher Hiatt, Tom Terry, Scott Alexander, Charles Ward, Christopher Ward, and Abby McDaniel were sworn as witnesses.<sup>1</sup>

---

<sup>1</sup> Mr. Hiatt represented the Petitioner. *See* 52 IAC 2-2-4 (defining a permanent full time employee as an authorized representative). Charles Ward purported to represent the Respondent. He is a certified tax representative. He may also qualify as a local government representative, although he did not file the verification required by our procedural rules. *See* 52 IAC 1-1-3.5 (Identifying who may qualify as a local government representative and laying out verification requirements). Thus, if authorized by the Respondent to do so, Mr. Ward may appear in a representative capacity before us. *See* 52 IAC 1-2-1; 2-2-4. Our rules require certified tax representatives and local government representatives to file a power of attorney, in part to show they have been authorized by the parties they purport to represent. 52 IAC 2-3-2(a). Mr. Ward did not do so. Nonetheless, the ALJ allowed the hearing to continue, and we have little doubt the Respondent authorized Mr. Ward to represent him. He has done so in other appeals. Indeed, the Respondent’s deputy, Abby McDaniel, appeared at the hearing and acquiesced to Mr. Ward’s actions. Thus, we will treat Mr. Ward as the Respondent’s representative for purposes of these appeals. We remind him to comply with our rules in the future.

## Facts

5. The property under appeal is classified as a two-family dwelling located at 1012 North Delaware Street in Albany.
6. The PTABOA determined the following values:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2012	\$12,800	\$59,500	\$72,300
2013	\$12,800	\$57,000	\$69,800
2014	\$12,800	\$57,600	\$70,400

7. On its Form 131 petitions, the Petitioner requested a total assessment of \$44,300 for each year. At hearing, it requested a range of lower values.

## Record

8. The official record for this matter is made up of the following:
  - a) A digital recording of the hearing,

- b) Exhibits:

- |                          |  |
|--------------------------|--|
| Petitioner Exhibit 1:    | 2012 property record card (“PRC”) for the subject property,  |
| Petitioner Exhibit 2:    | 2014 PRC for the subject property,   |
| Petitioner Exhibits 3-9: | Exterior photographs of the subject home,  |
| Petitioner Exhibit 10:   | Sales Disclosure for 444 West Delaware, Albany, Indiana,   |
| Petitioner Exhibit 11:   | Profit and Loss Statement with handwritten notation for 2013,  |
| Petitioner Exhibit 12:   | Profit and Loss Statement with handwritten notation for 2014,  |
| Respondent Exhibit 1:    | Aerial photograph of the subject property and property next door,  |
| Respondent Exhibit 2:    | Aerial photograph of the subject property and property next door,  |
| Respondent Exhibit 3:    | Screen shots of the top and bottom of the first page and part of the second page from Contract for Conditional Sale of Real Estate between the Petitioner and Carlos and Brenda Rodriquez, |
| Respondent Exhibit 4:    | 2012 PRC for the subject property,   |
| Respondent Exhibit 5:    | 2013 PRC for the subject property,   |
| Respondent Exhibit 6:    | 2014 PRC for the subject property,   |
| Board Exhibit A:         | Form 131 petitions with attachments,   |
| Board Exhibit B:         | Hearing notices,   |
| Board Exhibit C:         | Hearing Sign-In Sheet.   |

c) These Findings and Conclusions.

### Objections

9. The Petitioner objected to all of the Respondent's exhibits on grounds that he did not offer them at the PTABOA hearings. The Respondent argued that our hearing is a new and separate proceeding and that parties are free to offer any evidence regardless of whether they offered it to the PTABOA. The ALJ took the objection under advisement.
10. We agree with the Respondent. The Petitioner confuses a limitation on raising new issues with a prohibition on offering new evidence. By accepting our small claims procedure, a party agrees that the issues contained in the appeal petition to us are "substantially the same as those presented to the PTABOA," and that "no new issues will be raised before the board." 52 IAC 3-1-2(b). The Respondent did not raise any new issues. As shown by the Form 130 petitions, the issue in these appeals has always been whether the property was accurately assessed. *See Bd. Ex. A.*
11. In contrast to the small-claims limitation on new issues, our rules do not prohibit parties from offering evidence before us that they did not offer below. To the contrary, "a party participating in the [Board's] hearing may introduce evidence . . . without regard to whether that evidence has previously been introduced at a hearing before the county PTABOA." 52 IAC 2-7-1(a); *see also*, 52 IAC 3-1-1 (providing that 52 IAC 2 applies to the small claims procedures "unless inconsistent with this article."). We overrule the objection and admit the Respondent's exhibits.
12. On a related note, the Respondent objected to Petitioner's Exhibit A, a compact disc with audio recordings of the PTABOA hearings on the assessments at issue in these appeals as well as on appeals of other properties the Petitioner owns.<sup>2</sup> Once again, the ALJ took the objection under advisement.
13. We sustain the objection. The exhibit is irrelevant. The Petitioner offered the exhibit to support its claim that the Respondent did not submit any evidence at the PTABOA hearings. As explained above, that fact has no bearing on these appeals.

---

<sup>2</sup> The Petitioner offered Petitioner's Exhibit A after the ALJ had originally closed the hearing. We scheduled hearings on appeals for several of the Petitioners' properties for the same day. The appeals at issue here were the first hearing. After the ALJ finished a hearing on appeals concerning another property (1804 North Wheeling Avenue), she reopened the records of both hearings to allow the Petitioner to offer the exhibit.

## Contentions

### 14. Summary of the Petitioner's case:

- a) The assessments are too high. According to the Petitioner, its profit and loss statements, the sale of a comparable property, and photographs of the home's deterioration all show the property is worth significantly less than its assessments. *Hiatt argument and testimony; Pet'r Exs. 3-12.*
- b) The Petitioner's witness, Tom Terry, is a certified tax representative. According to Mr. Terry, he used income and expense data from the property's profit and loss statements for 2013 and 2014<sup>3</sup> to estimate net monthly rent. He then multiplied that rent by what he claimed was the Respondent's own gross rent multiplier to arrive at a value of approximately \$28,870. According to Mr. Terry, if he used "their average, it is not an average,"<sup>4</sup> the value would be \$34,600. For 2014, the value would still be somewhere between \$20,870 and \$34,600. The Petitioner did not actually offer the document Mr. Terry described as containing the Respondent's gross rent multiplier. Similarly, Mr. Terry did not explain his calculations at the hearing, and the Petitioner did not offer an exhibit laying out those calculations. *Terry testimony, Pet'r Exs. 11-12.*
- c) The Petitioner also pointed to a sales disclosure for what Mr. Hiatt described as a comparable property located across the street from the subject property. It appears that property sold for \$19,000 on August 22, 2012. *Hiatt testimony; Pet'r Ex. 10.*
- d) In response to Respondent's evidence of a land sale contract for a neighboring property also owned by the Petitioner, the Petitioner called appraiser Scott Alexander, who testified that he would not consider an isolated contract sale between a tenant and landlord an arm's length transaction and that he would only use such a sale if there were no other data available. In any case, the contract at issue was in default in 2012, and title to the property had not passed. *Hiatt testimony and argument; Alexander testimony.*

### 15. Summary of the Respondent's case:

- a) The assessments are correct. The Respondent offered screen shots showing the first page and part of the second page from the conditional sale contract for the property next door. According to Charles Ward, the two properties are identical. The contract calls for a sale price of \$90,000, to be paid with interest in installments. The final installment is due in 2018. It appears the contract was recorded on September 17,

---

<sup>3</sup> Both statements indicate they are "[f]or the period October 1, 2014 to September 30, 2015." *Pet'r Exs. 11-12.* One statement has a handwritten notation reading "2013" while other has one reading "2014."

<sup>4</sup> It is unclear what Mr. Terry was referring to here. He may have been indicating that the Respondent had different gross rent multipliers based on the condition of the building being valued. Because neither Mr. Terry nor the Petitioner actually identified the gross rent multiplier or multipliers Mr. Terry used, we cannot tell for sure.

2008. Mr. Ward acknowledged that the sale was not included in the Respondent's ratio study. *Charles Ward testimony; Resp't Ex. 3.*

- b) Mr. Ward noted that Mr. Terry did not consider income from 2012 or the immediately preceding years in his calculations. And he did not offer any details about how he performed his calculations. While the Respondent annually requests financial data for all rental properties, the Petitioner failed to provide that information for the years in question. *Charles Ward testimony.*

### **Burden of Proof**

- 16. Generally, a taxpayer has the burden of proving an assessment is incorrect and what the correct assessment 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. *See* 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. *See* I.C. § 6-1.1-15-17.2(b).
- 17. The property record cards submitted by both parties show that the assessment increased from \$44,300 in 2011 to \$72,300 in 2012. *Pet'r Ex. 1; Resp't Ex. 4.* Given that increase, the Respondent conceded he had the burden of proof for 2012. Assigning the burden for 2013 and 2014 will ultimately depend on our final determinations for the immediately preceding years.

### **Analysis**

- 18. The Respondent failed to make a prima facie case that the assessments are correct.
  - a) Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of the Department of the Local Government Finance ("DLGF"). I.C. § 6-1.1-3-16(c). The DLGF's 2011 Real Property Assessment Manual defines true tax value as "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 2 (incorporated by reference at 50 IAC 2.4-1-2).
  - b) Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or

assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). The gross rent multiplier is the preferred method for valuing properties, like the subject property, that have between one and four residential rental units. I.C. § 6-1.1-4-39(b).

- c) In any case, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, it lacks probative value. *Id.* The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. *See* I.C. § 6-1.1-4-4.5(f).
- d) With that guidance in mind, we turn to the evidence. We start with the 2012 appeal. To support the assessment, the Respondent pointed to the conditional sale contract for the property next door, which the Respondent's witness claimed was identical to the subject property. Because the contract price is significantly higher than the subject property's assessment, the Respondent argues its true tax value cannot be any lower than the assessment.
- e) The sales-comparison approach assumes that potential buyers will pay no more for a property than it would cost to buy an equally desirable existing property. 2011 MANUAL at 9-10. For comparative sales data to be probative in an assessment appeal, the properties from which the data is taken must be demonstrably comparable to the property under appeal. Conclusory statements that properties are similar or comparable do not suffice. Instead, one must identify the characteristics of the purportedly comparable properties, compare them to the property under appeal, and explain how any differences affect values. *Long*, 821 N.E.2d at 470-71.
- f) The Respondent offered no information about the two properties aside from aerial photographs. From those photographs, the homes look almost identical. So do the properties as a whole, with the exception of two unidentified, round features in the neighboring property's yard. We need not decide whether that is a sufficient comparison upon which to base any conclusions about the subject property's value,<sup>5</sup> because the contract price lacks probative weight for another reason. The contract is from September 2008, almost 3½ years before the valuation date for the 2012 assessment year, and the Respondent did not even attempt to explain how it relates to the valuation date. *See Long*, 821 N.E.2d at 471.
- g) As the Petitioner also notes, it did not transfer title to the neighboring property. Instead, it sold the property under what is commonly known as a land contract. *See Huber v. Hamilton*, 33 N.E.3d 1116, 1122 (Ind. Ct. App. 2015) ("Under a typical land contract, the seller retains legal title until the total contract price is paid by the

---

<sup>5</sup> *See Long*, 821 N.E.2d at 470-71 (holding that taxpayers needed to explain how their property's characteristics compared those of their purportedly comparable properties and how any relevant differences affected values).

buyer.”). That circumstance does not automatically preclude using the transaction as part of a sales-comparison analysis. *See Kooshtard Property I, LLC v. Monroe County Ass ’r*, 38 N.E.3d 750 (Ind. Tax Ct. 2015). In *Kooshtard Property I*, the taxpayer challenged our decision adopting the land value estimated by the assessor’s appraiser, in part, on grounds that the appraiser had not adjusted the sale prices for land contracts. *Id.* at 752-53. The Tax Court affirmed, explaining that the appraiser testified he was not required to adjust those sale prices and that the taxpayer offered nothing to impeach his testimony. *Id.*

- h) Unlike *Kooshtard*, the Respondent did not offer an opinion from a certified appraiser about the propriety of using data from land-contracts generally or the specific contract at issue. Indeed, Mr. Alexander testified that, as an appraiser, he would not use such a transaction unless it was the only available data. Mr. Ward himself acknowledged that the sale had not been used in the Respondent’s ratio study. And the Respondent offered no information about the circumstances surrounding the sale. He did not even offer the complete sale contract. Given those facts, the sale would have little probative weight even if the Respondent explained how the sale price related to the relevant valuation date.
- i) Thus, the sale price for the neighboring property does not make a prima facie case to support the assessment or to show any other value. The Petitioner is entitled to have the 2012 assessment reduced to its 2011 level of \$44,300.
- j) To the extent the Petitioner requested any further reduction, it had the burden of proving a lower value. In that regard, the Petitioner offered a sales disclosure form for a property across the street. Other than their close proximity, the Petitioner did not attempt to compare the two properties. That effort falls well short of the type of analysis required by *Long*.
- k) The Petitioner also offered Mr. Terry’s valuation opinion. He claimed to have valued the property using a gross rent multiplier. Beyond pointing to two profit and loss statements for the property, however, he did almost nothing to explain how he reached his conclusions. His opinion is far too conclusory to carry any probative weight.
- l) Finally, the Petitioner offered several photographs of the home’s exterior, apparently in an attempt to show its deterioration. While the home’s condition likely affects its value, the Petitioner offered no probative market-based evidence to quantify that effect or to show a value, or even a likely range of values, for the property.
- m) Because the Petitioner failed to prove a lower value, the 2012 assessment must be changed to \$44,300.
- n) Turning to the next year, the 2013 assessment is higher than the \$44,300 we have determined for 2012. Thus, the Respondent has the burden of proof for 2013. *See* I.C. § 6-1.1-15-17.2(d). The parties relied on the same evidence for that year as they

did for 2012, and we reach the same conclusion—the assessment must be reduced to \$44,300. The same analysis and result apply for 2014.

### **Conclusion**

19. The Respondent failed to meet his burden of proof for each year, which entitles the Petitioner to have the assessment reduced to the previous year's level. The Petitioner failed to offer probative evidence to support a lower value.

### **Final Determination**

In accordance with these findings and conclusions, the 2012-2014 assessments must be changed to \$44,300.

ISSUED: May 31, 2016

---

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 of 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>>.