

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

Petitions: 53-017-06-1-4-00009
53-017-07-1-4-00006
Petitioner: Kooshtard Properties LLC
Respondent: Monroe County Assessor
Parcel: 011-02310-04
Assessment Years: 2006 and 2007

The Indiana Board of Tax Review (Board) issues its determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal for the 2006 assessment with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) on December 15, 2006. It initiated the 2007 assessment appeal with the PTABOA on January 14, 2008.
2. The PTABOA mailed its decision for the 2006 assessment appeal on May 29, 2007. The PTABOA mailed its decision for the 2007 assessment on April 28, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 for the 2006 appeal on June 27, 2007, and a Form 131 for the 2007 appeal on June 10, 2008. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 2, 2009.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on September 10, 2009. She did not conduct an inspection of the property.
6. Milo Smith represented the Petitioner. Marilyn Meighen represented the Respondent. The following persons were sworn as witnesses at the hearing:
For the Petitioner — Milo Smith,
For the Respondent — County Assessor Judy Sharp,
Ken Surface, Nexus Group.

Facts

7. This is a case about a commercial property located at 7340 Wayport Road in Bloomington.

8. The PTABOA determined the assessed values as follows:

	year 2006	year 2007
land	\$1,200,000	\$1,200,000
improvements	<u>282,500</u>	<u>303,800</u>
total	\$1,482,500	\$1,503,800

9. The Petitioner requested \$29,100 for land and \$282,500 for improvements (total \$311,600) for 2006 and 2007.

Record

10. The official record for this matter is made up of the following:

- a) Petitions for Review of Assessment (Form 131) with attachments,
- b) Notice of Hearing,
- c) Hearing Sign-In Sheet,
- d) Digital recording of the hearing,
- e) Petitioner Exhibit 1 – A list of Monroe County commercial & industrial sales,
Petitioner Exhibit 2 – Annual Adjustment of Assessed Values Fact Sheet from the
Dep’t of Local Gov’t Finance, page 1,
Petitioner Exhibit C – Copy of Respondent’s Exhibit C,
Petitioner Exhibit 3 – An aerial photograph of the subject property,
Petitioner Exhibit 4 – A copy of Ind. Code § 6-1.1-4-4.5,
Petitioner Exhibit 5 – Pages 1 and 2 of 4 from a February 2009 DLGF memo
“Annual Adjustment (‘Trending’) Guidance”,
Petitioner Exhibit 6 – ReMax sale listing for property located on Highway 37,
Petitioner Exhibit 7 – Subject property record card,
Petitioner Exhibit 8 – Subject property record card,
Petitioner Exhibit 9 – Subject property record card,
Petitioner Exhibit 10 – Marshall Valuation Service, Section 13, pages 9 and 22,
Respondent Exhibit A – Sales disclosure form for the subject property,
Respondent Exhibit B – Aerial photograph showing the subject property,
Respondent Exhibit C – Aerial photograph, sales disclosure form, and property
record card for Parcel 53-08-29-200-023.000-008,
Respondent Exhibits D, E, F and G – Not offered,
Respondent Exhibit H – Statement regarding statutory amendments,
- f) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) According to the Annual Adjustment of Assessed Values Fact Sheet (Fact Sheet) published by the Department of Local Government Finance, "Trending requires the assessors to research sales of properties in a particular area over the previous two (2) years. Using that information, assessors then estimate the values of other properties in the same area to determine an assessed value." *Smith testimony; Pet'r Ex. 2.*
- b) The list of commercial and industrial sales for Monroe County includes only one sale included in the Respondent's evidence. The sale included is for 4.93 acres located south of Bloomington at 5100 S. Victor Pike. This property's land value is based on a \$125,000 per acre base rate with a 100% influence factor applied because it is a corner lot. The subject property has a land base rate of \$400,000 per acre. *Smith testimony; Pet'r Ex. C.*
- c) According to the Department of Local Government Finance, "[a] ratio study sample with fewer than five (5) sales must not be used due its exceptionally poor reliability." Only one sale was presented to justify raising the subject property's land base rate from \$45,000 (the 2005 base rate) to \$1,200,000. *Smith testimony; Pet'r Ex. 4, 5.*
- d) The subject property's assessment should be based on what it would cost to rebuild it—the cost of the land plus the cost of construction. *Smith testimony.*
- e) Vacant land in the subject property's neighborhood with frontage on Wayport Road can be purchased for \$21,072 per acre. ReMax Realty Professionals currently has a listing for 14 acres of vacant land located at 7328 North Wayport Road with frontage on Highway 37 and zoned Limited Business. The listed price for that property is \$295,000. That asking price would be \$21,072 an acre. *Smith testimony; Pet'r Ex. 6.*
- f) The subject property's 4,942 square foot building can be rebuilt new for \$66.60 per square foot as shown on the 2007 property record card or \$330,800. The square foot cost of \$66.60 was verified using Marshall Valuation Service cost schedules which would calculate to a square foot cost of \$68.03 as of May 2006. *Smith testimony; Pet'r Ex. 10.*
- g) Similar land can be purchased for \$21,000 per acre. Therefore, the subject property's land assessment should be \$52,500 ($\$21,000 \times 2.5$ acres) plus \$330,800 for improvements for a total assessment of \$383,300 for both 2006 and 2007. *Smith testimony.*

12. Summary of the Respondent's case:

- a) The Department of Local Government Finance approved Monroe County's 2006 and 2007 sales ratio studies, which were based on property class type such as improved commercial/industrial property and unimproved commercial/industrial property. For the 2006 and 2007 commercial and industrial valuation, Monroe County did not rely solely on sales data. Because commercial and industrial sales are very limited, Monroe County also relied on other data such as appraisal information, income information provided through previous appeals, communication with investors, etc. as provided by 50 IAC 21-5-2(b). *Surface testimony.*
- b) The subject property is a convenience mart with gas pumps and a fast food restaurant located on Highway 37. This location is very important to value because it is on the "main drag" into Bloomington. The subject property is one of only two convenience marts located along Highway 37 in this county. It sold for approximately \$1.6 million in 2001. *Surface testimony; Resp't Ex. A, B.*
- c) The other convenience mart in Monroe County located on Highway 37 is approximately 15-18 miles south of the subject property. This property is comparable to the subject property because it also has gas pumps and food service. On April 4 2005, it sold for \$1,550,000. This sale was used in the ratio study for 2006 and 2007. *Surface testimony; Resp't Ex. C.*
- d) The Petitioner submitted a cost approach value for the subject property using Marshall Swift cost data. Even though Indiana uses a Marshall Swift derivative, the assessment applied to the subject property is not strictly based on the cost approach. The assessment manual requires consideration of all three approaches to value: cost, income, and sales comparison. In fact, values based strictly on the cost approach were found unconstitutional. *Surface testimony.*
- e) The ReMax listing offered by the Petitioner is not relevant because it is a 2009 sale listing which is well beyond the time frame established for the 2006 and 2007 assessment periods. Additionally, the listing is for an unimproved agricultural property and the subject property is an improved commercial property. For market value-in-use basis, unimproved agricultural property is not comparable to improved commercial property. *Surface testimony.*
- f) The subject property sold in 2001 for approximately \$1.6 million which is more than its current assessment. The subject property's assessment should not be less than \$1,000,000. *Surface testimony.*
- g) The Petitioner's case suffers a real disconnect because it relies solely on a cost approach to value based on Marshall Swift cost data and a land value derived from a non-comparable sale listing. The income approach, the cost approach, and the sales comparison approach are used together to determine property value. The

sale of a comparable convenience mart has been presented and it shows that the value of convenience marts is three or four times higher than the Petitioner's requested value. *Meighen argument*.

- h) The statutory amendment placing the burden of proof on the assessor should not be retrospectively applied to pending appeals. This position is supported by case law. Amendments may be applied retrospectively if the amendments were remedial or procedural; however, the burden of proof is neither. *Meighen argument; Resp't Ex. H*.

Analysis

- 13. A petitioner who seeks review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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). In making its case, a petitioner must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).¹
- 14. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It 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); 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. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties,

¹ The Petitioner initiated one assessment appeal with the PTABOA on December 15, 2006, and the other on January 14, 2008. Although it is not clear when the PTABOA hearings were held, one notice of the PTABOA’s determination was mailed on May 29, 2007, and the other on April 28, 2008. The Petitioner filed one of the Form 131 Petitions on June 27, 2007, and the other on June 10, 2008. Effective July 1, 2009, Ind. Code § 6-1.1-15-1(p) provides that a taxpayer may obtain a review of a county board’s or township official’s action with respect to the taxpayer’s assessment—and if the assessment increased by more than five percent over the assessed value for the immediately preceding assessment, the assessor has the burden of proving that assessment is correct. The Petitioner provided no indication that this new provision applies retroactively and the Board is aware of no authority for doing so. Therefore, that new subsection does not transfer the burden of proof to the Respondent in this case. That responsibility remained with the Petitioner. The Board reserves other questions about Ind. Code § 6-1.1-15-1(p) for another day.

appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

15. Regardless of the approach used to prove a property's value-in-use, a 2006 assessment must reflect its value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. An appraisal or any other evidence of value must have some explanation as to how it demonstrates or is relevant to value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
16. Much of the Petitioner's case focused on why the land base rate was improperly determined and why trending to update value had not been done properly. But Mr. Smith's conclusions that proper procedures were not followed in determining the land base rate or trending are not probative evidence. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence). Furthermore, his conclusions disregard the fact that 2006 and 2007 assessments must be based on different valuation dates. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3; *Long*, 821 N.E.2d at 471. The 2005 assessment was a value as of January 1, 1999. It does not help to prove what a more accurate assessment for 2006 or 2007 might be. *Long*, 821 N.E.2d at 471; *Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (each tax year stands on its own and where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
17. A taxpayer must show through the use of market-based evidence that the assessed value does not accurately reflect market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). Challenging and assessment by attacking the methodology of assessment does not make a case for any valuation change. To prove that a change is required, one must establish that the existing assessment fails to accurately reflect the subject property's market value-in-use. *Id.* at 678. The Petitioner, however, did not do so.
18. The Petitioner claimed that, based on an alleged comparable property, the land base rate should be \$21,000. To support the claim that the land base rate exceeded its market value, the Petitioner presented a 2009 listing for another property along Highway 37. A property's value can be estimated by comparing it to similar properties that have sold. In fact, that is what the sales comparison approach does. MANUAL at 3. The Petitioner, however, did not follow the basic requirements for that approach. The evidence offered by the Petitioner was merely a listing, not an actual sale. Even if it had been an actual sale, the evidence still would not be probative because when offering sales comparison evidence, one must explain the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the relative market value-in-use of the properties. *Long*, 821 N.E.2d at 471. Conclusory statements that a property is similar or comparable to another property do not suffice. *Id.* at 470. And the Petitioner did very little to meaningfully compare the

properties. Mr. Smith simply identified the general location and the effective asking price per acre. He failed to address how any differences between the properties affected their relative market values-in-use. His presentation falls short of the type of detailed facts and analysis that might support a legitimate conclusion about value. *See Long*, 821 N.E.2d at 471.

19. The listing that the Petitioner relied is from 2009. The valuation dates for the March 1, 2006 and the March 1, 2007, assessments under appeal are January 1, 2005, and January 1, 2006. The Petitioner needed to explain how a 2009 list price might relate to a value as of January 1, 2005, or January 1, 2006. It did not do so. This is another reason the 2009 listing lacks probative value. *See Long*, 821 N.E.2d at 471.
20. Although the case primarily focused on land value, the Petitioner offered a bit of conclusory evidence that, using the cost approach, the value of the building should be premised upon a factor of \$66.60 per foot—as shown on the property record card. Such conclusory statements are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119. But more importantly, the Petitioner failed to establish how that point might help to prove any assessment change should be made. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022.
21. The Petitioner failed to make a prima facie case. Where the Petitioner fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1221-1222.

Conclusion

22. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, 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>>