

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

Petition: 55-005-12-1-4-00032
Petitioner: Kooshtard Property VII LLC
Respondent: Morgan County Assessor
Parcel: 55-13-04-145-001.900-021
Assessment Year: 2012

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Morgan County Property Tax Assessment Board of Appeals (PTABOA) by timely filing a Form 130 on November 8, 2012.
2. The PTABOA mailed notice of its decision on June 7, 2013.
3. The Petitioner appealed to the Board by timely filing a Form 131 petition on July 19, 2013, and elected to have the case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 23, 2013.
5. Administrative Law Judge Ronald Gudgel held the Board's administrative hearing in Martinsville on December 12, 2013. He did not inspect the property, nor did the Board.
6. Certified Tax Representative Milo Smith testified for the Petitioner. PTABOA member Reva Brummett testified for the Respondent.

Facts

7. The subject property is a Circle K convenience market with a gasoline station located on leased land at 339 S. Main Street in Martinsville.
8. The PTABOA determined the total assessed value is \$253,000.
9. The Petitioner claimed the total assessed value should be \$194,300.

Record

10. The official record contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 4¹ – Photograph, property record card, and map of neighboring Swifty gasoline station,
 - d. Respondent Exhibit 1 – Form 130 initiating the appeal process (page 1 of 2),
Respondent Exhibit 2 – Property record card for the property under appeal,
Respondent Exhibit 3 – Photograph of the store prior to the 2008 remodel,
Respondent Exhibit 4 – Current photograph of the Petitioner’s property,
Respondent Exhibit 5 – 2011 REAL PROPERTY ASSESSMENT GUIDELINES, APP. F page 6,
Respondent Exhibit 6 – Current photograph of a Circle K convenience store located at 143 E. Main St., Mooresville,
Respondent Exhibit 7 – Remodeling permit for the Circle K located at 143 E. Main St., Mooresville,
Respondent Exhibit 8 – Current photograph of Circle K located at 2166 Perry Road, Plainfield,
Respondent Exhibit 9 – Table 6-10, Condition Codes,
Respondent Exhibit 10 – Table F-2, Actual Age to Effective Age Conversion,
Respondent Exhibit 11 – Table F-3a, Typical Structure Lives – GCM,
Respondent Exhibit 12 – Table F-4, Depreciation – Commercial and Industrial Structures,
Respondent Exhibit 13 – Property record card for the Mac’s Convenience Stores property at 143 E. Main Street, Mooresville,
Respondent Exhibit 14 – Map of Mooresville area,
Respondent Exhibit 15 – Map of Martinsville area,
Respondent Exhibit 16 – Signed agreement letter for Mac’s Convenience Store, Mooresville,
Respondent Exhibit 17 – Notice of Stipulated Agreement – Order of Dismissal for Mac’s Convenience Store, Mooresville,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - e. These Findings and Conclusions.

¹ The Petitioner did not introduce exhibits 1 – 3.

Contentions

11. Summary of the Respondent's case:

- a. The Petitioner's store was remodeled in 2008. The property is a 1,848 square foot convenience store and gasoline station in average condition. The improvements include a 2,100 square foot service station canopy and 12,100 square feet of paving. The convenience store was built in 1993 and has an effective year of construction of 2000. *Brummett testimony; Resp't Ex. 2, 3, 4.*
- b. After the remodeling, the condition rating, effective year of construction, and depreciation were changed according to procedures outlined in the 2011 Real Property Assessment Guidelines. *Brummett testimony; Resp't Ex. 9, 10, 11, 12.* The remodeling resulted in an exterior that is similar or identical to other Circle K stations. *Brummett testimony; Resp't Ex. 6, 8.*
- c. A building permit shows the Circle K store located at 143 E. Main in Mooresville was remodeled in 2011 at an estimated cost of \$60,000. *Brummett testimony; Resp't Ex. 7.* This comparable property and the subject property are both approximately two blocks from the downtown areas of their respective cities and are equal in utility and appearance. *Resp't Ex. 4, 6.* The Mooresville property is 3,825 square feet and assessed at \$145.49 per square foot as a result of a stipulation agreement. *Brummett testimony; Resp't Ex. 13, 16, 17.* The property under appeal is assessed at \$124.03 per square foot. *Brummett testimony.*
- d. The market factor of 1.65 applied to the subject property was calculated using sales/assessment ratio study approved by the Department of Local Government Finance. *Brummett testimony.*
- e. The Swifty gasoline station identified by Mr. Smith does not have a convenience store. *Brummett testimony.*

12. Summary of the Petitioner's case:

- a. The Respondent has not met her burden of proof. The assessment should revert back to the 2011 amount of \$194,300. *Smith testimony/argument.*
- b. A Swifty gasoline station is located directly across the street from the subject property. The market factor for the Swifty property is only 1.35. This disparity in the market factors is the cause of the excessive assessment of the subject property. *Smith testimony/argument; Pet'r Ex. 4.*
- c. Activities in a building are not assessed. The market adjustment is not required because any adjustment is accounted for in the building classification. *Smith testimony/argument.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the 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 burden-shifting statute as recently amended by P.L. 97-2014, however, creates two exceptions to that rule.
14. First, Indiana Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Indiana Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.”
16. The amended version of the burden-shifting statute was effective March 25, 2014, and it applies to all appeals since then.
17. The parties agreed the Respondent has the burden of proof because the 2012 assessment increased by more than 5%.

Analysis

18. The Respondent did not make a prima facie case that the 2012 assessed value is correct. The Board reached this decision for the following reasons:
 - a. 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. But any evidence relevant to the true tax value of the property as of the assessment date may be presented. *Id.* at 3.

- b. The Respondent described the procedures in the Guidelines that were followed in computing the effective age, condition, and depreciation. But as the Indiana Tax Court has explained, strictly applying the Guidelines does not prove the assessed value is correct in an assessment appeal. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor’s methodology rather than offering market value-in-use evidence).
- c. The Respondent’s reliance on the sales/assessment ratio study (and the market adjustment factor derived from it) is misplaced. While the DLGF approved the ratio study, the Respondent offered no authority for using a ratio study to prove an individual property’s market value-in-use. In fact, the IAAO’s Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . .
However, ratio study statistics cannot be used to judge the level of appraisal of an individual parcel.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

- d. Comparable sales or comparable assessments can be used to help prove the correct value of the subject property. Conclusory statements that a property is “similar” or “comparable” to another property, however, do not constitute probative evidence of comparability. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party seeking to establish comparability must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *See Id.* at 470-71. When seeking to establish comparability between parcels of land, the relevant characteristics to compare include things such as location, accessibility, topography. *See Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The party seeking to establish comparability between properties also must explain how any significant differences between the properties affect their relative values. *See Long*, 821 N.E.2d at 470-71.
- e. The Respondent identified two properties as comparables, one located in Mooresville and the other in Plainfield. But the Respondent made only a minimal comparison of the properties with photographs and the front page of the property

record card of the Mooresville property owned by Mac's Convenience Stores LLC. Without a meaningful explanation and analysis, such evidence is conclusory. This part of the Respondent's presentation was insufficient to support any legitimate conclusion about the relative values of the properties.

- f. The Respondent presented a building permit for the Mooresville property that purportedly shows \$60,000 was spent on remodeling/updating the Mac's Convenience Stores property in 2011. Actual construction costs can be probative of market value-in-use, but here no explanation was offered to explain how this evidence might help establish the true tax value of the subject property. Although the properties may have similar exterior views, a far more detailed comparison of the characteristics of the properties would be required to make this evidence probative. For example, the Respondent failed to address the notation on the building permit that it was for "interior remodel" on a building with more than twice the square footage as the subject property. This building permit does not help to prove an accurate value for the subject property.
 - g. The Respondent also introduced evidence relating to an agreement that settled the Mac's Convenience Stores' 2012 appeal of its Mooresville property. According to Ms. Brummett, the agreed valuation in that settlement was \$145.49 per square foot and the disputed assessment on the subject property is only \$124.03 per square foot: "The subject property is currently assessed at \$124.03 per square foot, which is \$21.46 per square foot less than what the Petitioner agreed to on the very like building that's in Mooresville." Although her testimony is not entirely clear on the point, it appears that Ms. Brummett was stating that the Petitioner was the same in both cases. Perhaps this confusion results from the fact that Mr. Smith was the taxpayer representative in both cases, but he is not the Petitioner in either case. The Respondent presented no probative evidence or cogent argument to support her assertion that this settlement somehow shows the disputed value on the subject property is correct.²
19. The Respondent failed to present a prima facie case that the current assessment is correct. As a result, the Petitioner's duty to provide substantial evidence to support a more accurate assessment is not triggered. *See Lacy Diversified Indus.v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113,1119 (Ind. Tax Ct. 1998).
20. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden, the Board has ordered that the assessment

² Furthermore, although the Petitioner made no objection to the evidence relating to the settlement of the Mac's Convenience Stores property in Mooresville, the Board has discussed evidence of settlement in several prior determinations. In those cases we explained that the law encourages parties to engage in settlement negotiations. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). There are many reasons for parties to make such agreements. The Board will not speculate on what those reasons might have been and will not apply the settlement to other matters.

be returned to the assessed value of the year before. Therefore, the assessment will be changed to that value, which was \$194,300.

Conclusion

21. The Board finds in favor of the Petitioner. The 2012 assessment will be reduced to \$194,300.

Final Determination

22. In accordance with the above findings and conclusions, the assessment will be changed.

ISSUED: May 27, 2014

Commissioner, Indiana Board of Tax Review

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- 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>>.