

REPRESENTATIVE FOR PETITIONER:

Jeff Baker, Vice President of Lafayette Rentals

REPRESENTATIVE FOR RESPONDENT:

Eric Grossman, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lafayette Rentals,)	Petition No.: 79-032-17-1-4-00438-19
)	
Petitioner,)	Parcel No.: 79-11-09-252-001.000-032
)	
v.)	
)	County: Tippecanoe
Tippecanoe County Assessor,)	
)	
Respondent.)	Assessment Year: 2017

Appeal from the Final Determination of the
Tippecanoe County Property Tax Assessment Board of Appeals

January 15, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

ISSUE

1. Did the Petitioner prove the 2017 assessment was incorrect?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2017 assessment appeal with the Tippecanoe County Assessor on July 16, 2018. On March 28, 2019, the Tippecanoe County Property Tax Assessment

Board of Appeals (PTABOA) issued its determination denying the Petitioner relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.

3. On October 23, 2019, Joseph Stanford, the Board’s designated administrative law judge (ALJ), held a hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Vice President Jeff Baker and Assessor Eric Grossman appeared *pro se* and were sworn. Valuation specialist Christopher Coakes was sworn as a witness for the Respondent but did not testify.

5. The Petitioner offered the following exhibits:

Petitioner Exhibit A:	Aerial photograph of the subject property,
Petitioner Exhibit B:	Aerial photograph of 3218 Daughtery Drive and surrounding properties,
Petitioner Exhibit C:	Map with Veterans Memorial Parkway/350 South highlighted,
Petitioner Exhibit D:	Exterior photograph of 3218 Daughtery Drive,
Petitioner Exhibit E:	Exterior photograph of the property to the east of 3218 Daughtery Drive,
Petitioner Exhibit F:	Exterior photograph of the subject property,
Petitioner Exhibit G:	Exterior photograph of the subject property.

6. The Respondent offered the following exhibits:

Respondent Exhibit 1:	Subject property record card,
Respondent Exhibit 2:	Subject property “2017 income model.”

7. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders and notices issued by the Board or ALJ, and (3) the digital recording of the hearing and these findings and conclusions.
8. The commercial property under appeal is located at 3667 Braddock Drive in Lafayette.
9. The PTABOA determined the 2017 assessment was \$1,448,900, all for improvements.
10. The Petitioner requested an assessment of \$1,334,000, all for improvements.

PETITIONER'S CONTENTIONS

11. The subject property is over-assessed. The property is assessed similar to properties located on Veteran's Memorial Parkway, also known as 350 South. Properties with access from 350 South have "great value." But the subject property has very little frontage along 350 South and is actually located on Braddock Drive. *Baker argument; Pet'r Ex. A, C.*
12. The subject property is unique because it is located in a retail area but it is "kind of more office than retail." The subject property allocates space to a gym, a church, a dentist, an insurance company, and "some medical and some office." *Baker testimony; Pet'r Ex. A, F, G.*
13. In an attempt to prove the subject property is over-assessed, the Petitioner presented assessment information on a comparable property located on Veteran's Memorial Parkway. This property is nicer than the subject and has a "humongous strip" that faces Veteran's Memorial Parkway. This property is only assessed at \$48.98 per square foot while the subject property is assessed at \$54.27 per square foot. If the subject property were valued at a rate of \$48.98 per square foot, the assessment would be \$1,334,000. *Baker argument; Pet'r Ex. A, B.*

RESPONDENT'S CONTENTIONS

14. The subject property is correctly assessed. The 2017 assessment is based on multi-tenant office use. In past years, it was valued as multi-tenant retail, but through years of discussions, it was determined the predominant use of the property is office. If the subject property was valued as retail use rather than office use, the assessment would be greater than \$54.27 per square foot. *Grossman argument; Resp't Ex. 1, 2.*
15. The property was valued using the income approach. The program the Respondent used derives rent, vacancies, expenses, and capitalization rates from the condition, desirability, and location rankings. While the property record card shows the "replacement cost work-

up,” the total assessed value shown matches the income approach report that is also part of the property record card. *Grossman testimony; Resp’t Ex. 1, 2.*

16. The Petitioner did not meet its burden of proof that the assessment is incorrect. Offering information on one purportedly comparable property is insufficient to raise either a valuation argument or an equitability argument. *Grossman argument.*

BURDEN OF PROOF

17. 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. Ass’r*, 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 creates two exceptions to that rule.
18. First, Ind. 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).
19. Second, Ind. Code § 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 IC 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.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.

20. Here, the Petitioner accepted the burden of proof and did not present any argument the burden of proof should shift to the Respondent. The total assessment increased from \$1,434,600 in 2016 to \$1,448,900 in 2017, an increase of slightly less than 1%. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

ANALYSIS

21. Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
22. Regardless of the method used, a party must explain how the evidence relates to 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
23. Here, the Petitioner challenged the square foot value applied to the subject property, arguing that because the property has limited frontage on Veteran's Memorial Parkway, it should be reduced from \$54.27 to \$48.98, consistent with a nearby property. But the Petitioner failed to offer any market-based evidence to substantiate that value, or any other value.

24. To the extent the Petitioner intended to argue the Respondent simply computed the base rate incorrectly, that argument amounts to an attack on the methodology used to compute the assessment. Attacking the methodology of the assessment is not sufficient to make a prima facie case. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a prima facie case by simply focusing on the Assessor's methodology instead of offering market value-in-use evidence).
25. Even though the Petitioner offered only one purportedly comparable property, the Board infers the Petitioner may have been attempting to employ an assessment-comparison approach. Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1). The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words the proponent must provide the type of analysis that *Long* contemplates for the sales comparison approach. *Id.*; see also *Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affect the value).
26. Again, the Petitioner offered only one purportedly comparable property, and failed to explain how the relevant differences between the properties affected value. For these reasons, the Petitioner's evidence lacks probative value.
27. Finally, to the extent the Petitioner wished to argue the assessment is not uniform and equal, it likewise failed to make a case. As the Tax Court has explained, "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 Practice Center v. Washington Twp. Ass'r, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. See *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. See *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

28. When a ratio study shows a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. See *Dep't of Local Gov't Fin v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter Co. Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).
29. Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner failed to offer a ratio study that indicates the subject property is assessed above the common level of assessment. There is not sufficient evidence to establish that the assessment violated the requirements of uniformity and equality.
30. For these reasons, the Petitioner failed to make a prima facie case for reducing the assessment. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

31. The Board finds for the Respondent and orders no change to the 2017 assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>.