

REPRESENTATIVE FOR PETITIONER:
Jeffrey Baker, Vice President, Lafayette Rentals Inc.

REPRESENTATIVE FOR RESPONDENT:
Eric Grossman, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lafayette Rentals Inc.,	)	Petition No.:	79-004-13-1-5-00009
)		
Petitioner,	)	Parcel No.:	79-11-09-252-011.000-032
)		
v.	)	County:	Tippecanoe
)		
Tippecanoe County Assessor,	)	Township:	Wea
)		
Respondent.	)	Assessment Year:	2013

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

Issued: April 1, 2016

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Lafayette Rentals, Inc. claims its 2013 assessment was too high in light of the price it paid to buy the property on September 29, 2011. Because Lafayette Rentals did not

explain how that sale price related to the property's value as of the relevant valuation date, it failed to make a prima facie case for changing the assessment.

PROCEDURAL HISTORY

2. On September 23, 2013, Lafayette Rentals filed a notice for review contesting the assessment of its property at 3667 Braddock Drive in Lafayette.¹ On May 30, 2014, the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations upholding the assessment. Lafayette Rentals responded by filing a Form 131 petition with the Board.
3. On December 8, 2015, our designated administrative law judge, Dalene McMillen (“ALJ”), held a hearing on the petition. Neither she nor the Board inspected the property.
4. Jeffrey Baker, vice president of Lafayette Rentals, Max Campbell, project manager for the Tippecanoe County Assessor, and Eric Grossman, Tippecanoe County Assessor, testified under oath.
5. Lafayette Rentals offered Petitioner’s Exhibit 1, a September 29, 2011, sales disclosure form for the property.
6. The Assessor offered the following exhibits:
 - Respondent Exhibit A: Valuation Description of 3667 Braddock Dr.,
 - Respondent Exhibit B: Income Evaluation Report,
 - Respondent Exhibit C: 2013 property record card for the subject property,
 - Respondent Exhibit D: Assessment Equitability Analysis of Mill Creek Plaza,²
 - Respondent Exhibit E: Sales Comparison Analysis for Mill Creek Plaza,
 - Respondent Exhibit F: Time Trend for Indiana Office with Respect to Mill Creek Plaza.

¹ Lafayette Rentals also appealed the denial of an exemption for part of the property (*Lafayette Rentals, Inc. v. Tippecanoe County Ass’r*, pet. no. 70-032-13-2-8-0001). We issue separate findings and conclusions in that appeal.

² Lafayette Rentals operates under the name of Mill Creek Plaza.

7. The following additional items are part of the record:
 - Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet.
8. The PTABOA determined a total value of \$1,378,300.
9. On its Form 131 petition, Lafayette Rentals requested an assessment of \$1,000,000.

BURDEN OF PROOF

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving the existing assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment currently under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the prior year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If he fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
11. The assessment increased only 3.4% between 2012 and 2013, going from \$1,333,400 to \$1,378,300. And the parties agreed that Lafayette Rentals did not appeal the 2012 assessment. Thus, the burden-shifting statute does not apply, and Lafayette Rentals has the burden of proof.

OBJECTION

12. Lafayette Rentals objected to Respondent's Exhibit F—a statistical analysis showing the “time trend” for statewide sales of office properties since January 1, 2010—on grounds that it includes sales from after the 2013 assessment date. The Assessor did not respond

to the objection, and the ALJ took it under advisement. The objection goes more to the weight that should be given to those particular sales than to the exhibit's admissibility. Therefore, we overrule the objection.

PETITIONER'S CONTENTIONS

13. Lafayette Rentals bought the property for \$800,000 on September 29, 2011. The assessment is too high in light of that sale price. *Baker testimony and argument; Pet'r Ex. 1.*

ASSESSOR'S CONTENTIONS

14. Since 2009, the property has been assessed using the income approach. The Assessor's office uses a third-party vendor, IncomeWorks, to supply aggregate market data on vacancies, expenses, and capitalization rates. The office validates that data through other sources. The Department of Local Government Finance ("DLGF") verifies and calibrates the Assessor's values through annual ratio studies. *Campbell testimony; Resp't Ex. A.*
15. The Assessor's office used the aggregate data to prepare a pro-forma income and expense statement with rent set at \$11.28/sq. ft., a vacancy rate of 20%, and expenses equaling \$4/sq. ft. It capitalized the net operating income using a rate of 9%, which yielded an assessment of \$1,378,251, or \$55.82/sq. ft. The analysis omitted 2,000 square feet from the building, which made the net operating income a little lower than it should have been. The Assessor's office discovered the measurement error when it examined the property in connection with a general reassessment. When the correct building size is used, the assessment actually translates to \$51.63/sq. ft. *Campbell testimony; Resp't Ex. B.*
16. The Assessor's project manager, Max Campbell, performed what he described as an "equitability study" for the property, comparing its assessment to the assessments of similar properties. He described the property as a multi-tenant building with a mix of office and retail space located near the intersection of Veterans Memorial Parkway South (also known as 350 South) and South 18th Street. According to the Tippecanoe County

Area Planning Commission, approximately 18,000 cars travel along 350 South near that intersection every day, which makes it the busiest thoroughfare on Lafayette's south side. The daily traffic count for 18th Street is about 9,000. *Campbell testimony; Resp't Ex. D.*

17. Mr. Campbell then identified a competitive market set for the property. Properties used predominately for retail were typically located directly on 350 South and were assessed for an average of \$86.80/sq. ft., which was much higher than the assessments for multi-tenant office buildings. Because of the obvious disparity, Mr. Campbell omitted those retail facilities from his study. He settled on five multi-tenant office facilities located within 1.9 miles of the subject property. In 2013, those facilities were assessed at values ranging from \$52.69/sq. ft. to \$71.42/sq. ft., or an average of \$58.84/sq. ft. In 2014, the assessments ranged from \$51.01/sq. ft. to \$75.82/sq. ft., with an average of \$62.11/sq. ft. *Campbell testimony; Resp't Ex. D.*
18. Next, Mr. Campbell examined 75 office leases. They had a five-year average rent of \$12.75/sq. ft., with an average of \$12.74/ft. for 2013. The five-year average vacancy rate was 18.79%, with an average of 18.48% for 2013. Similar data from CoStar showed five-year average rent of \$13.07/sq. ft. and a vacancy rate of 18%. Those rents were higher than what the Assessor's office used in the subject property's pro forma, and the vacancy rates were slightly lower. Thus, the equitability study and model validation argue against reducing the assessment. *Campbell testimony; Resp't Ex. D.*
19. Mr. Campbell also examined sales data for comparable properties. He used sales of three multi-tenant office properties from Lafayette. The sales occurred between October 24, 2013, and August 6, 2015. Because he believed the comparable properties were located in areas that were similar, or slightly inferior, to the subject property's location, he did not adjust any of the sale prices for that characteristic. He adjusted for age using the difference between each building's replacement cost new ("RCN") as of March 1, 2013, and its RCN if it had been built in 2000, like the subject building. *Campbell testimony; Resp't Ex. E.*

20. To adjust for differences in the market between the sale dates and the March 1, 2013 valuation date, Mr. Campbell used what he described as a “time trend” analysis. He based that analysis on 171 sales of office properties throughout Indiana. The sales occurred from January 1, 2010 to November 28, 2015. Mr. Campbell viewed any sales below \$20/sq. ft. or over \$200/sq. ft. as outliers and excluded them from his analysis. He derived a value for each year using a second-degree polynomial function and compared those indications from year to year. He measured total appreciation of 7.9% during the period. The subject property’s assessment, by contrast, increased less than 1% between March 1, 2011, and March 1, 2015. *Campbell testimony; Resp’t Exs. E-F.*
21. Finally, the Assessor contends that his assessment and Mr. Campbell’s analyses more accurately reflect the property’s true tax value than does the price Lafayette Rentals paid. According to the Assessor, Indiana “is a market value state, as opposed to an acquisition cost state.” That makes valuations based on aggregate data, such as the assessment and Mr. Campbell’s analyses, more relevant than an individual purchase price. *Grossman testimony.*

ANALYSIS

22. Indiana assesses real property based on true tax value, which the 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 by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); I.C. § 6-1.1-31-6(c). A party 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. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005) Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See id; 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).

23. In any case, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *See Long v. Wayne Twp Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2013 assessments, the valuation date was March 1, 2013. *See* I.C. § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
24. Lafayette Rentals relied solely on the subject property's \$800,000 sale price from September 29, 2011. But that sale occurred more than 15 months before the relevant valuation date, and Lafayette Rentals did not even attempt to explain how it related to the property's value as of that date. The Assessor offered Mr. Campbell's "time trend" statistical analysis of office sales throughout Indiana, but he did little to explain the theory underlying that analysis, much less how it related to the local market. Lafayette Rentals did not supply the missing explanations; to the contrary, it objected to the analysis even being admitted into evidence. Under those circumstances, the analysis does not sufficiently relate the September 2011 sale price to the value as of the March 1, 2013 valuation date.
25. Because Lafayette Rentals did not show how the sale price related to the value as of March 1, 2013, that price does not make a prima facie case for reducing the assessment. *See Long* 821 N.E.2d 471.

SUMMARY OF FINAL DETERMINATION

26. Lafayette Rentals failed to make a prima facie case for reducing the assessment. We find for the Assessor and order no change.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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 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>>.