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

**Petition:** **10-009-15-1-4-00867-16**
**Petitioner:** **Mac's Convenience Stores LLC**
**Respondent:** **Clark County Assessor**
**Parcel:** **10-19-03-300-128.000-009**
**Assessment Year:** **2015**

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

### Procedural History

1. Mac's Convenience Stores, LLC, challenged its 2015 assessment. On March 9, 2016, the Clark County Property Tax Assessment Board of Appeals ("PTABOA') issued its determination upholding the assessment. Mac's then filed a Form 131 petition with the Board, electing our small claims procedures.

2. On November 29, 2016, our designated administrative law judge, Gary Ricks ("ALJ") held a hearing. Neither he nor the Board inspected the property.

3. Milo E. Smith appeared as Mac's certified tax representative. Heather A. Scheel appeared as counsel for the Clark County Assessor. Smith and Ken Surface, certified level III assessor-appraiser, testified under oath.

4. The subject property is a 1.18-acre vacant lot located at the intersection of Veterans Parkway and Hamburg Pike in Jeffersonville. The PTABOA determined the property's assessment at $737,500. Mac's asked for an assessment of $236,000—the amount for which the property was assessed in 2014.

5. The official record of the hearing consists of the following:

   a. A digital recording of the hearing.

   b. Exhibits:

| | |
|---|---|
| Petitioner Exhibit 1: | 2014 property record card ("PRC") for the subject property, |
| Petitioner Exhibit 2: | 2015 PRC for the subject property, |
| Petitioner Exhibit 3: | Form 11 notice for the subject property, |
| Petitioner Exhibit 4: | 50 IAC 2.4, |
| Petitioner Exhibit 5: | Sales disclosure form for the subject property, |

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|---|---|
| Petitioner Exhibit 6: | GIS map, |
| Petitioner Exhibit 7: | 2011 Real Property Assessment Manual, p. 1. |
| | |
| Respondent Exhibit A: | Aerial photograph of the subject property, |
| Respondent Exhibit B: | Form 131 petition for the subject property for 2014, |
| Respondent Exhibit C: | Form 131 petition for the subject property for 2015, |
| Respondent Exhibit D: | 2014 PRC for subject property, |
| Respondent Exhibit E: | 2015 PRC for subject property, |
| Respondent Exhibit F: | Sales disclosure form for subject property, |
| Respondent Exhibit G: | Plat map showing comparable property, |
| Respondent Exhibit H: | Map showing location of three comparable properties, |
| Respondent Exhibit I: | Sales disclosure form, warranty deed, and PRC for parcel 10-21-03-300-710-000-009, |
| Respondent Exhibit J: | Sales disclosure form, Release of Judgment, and PRC for parcel 10-21-03-300-300.000-009, |
| Respondent Exhibit J1: | PRC for 10-21-03-300-300.000-009, |
| Respondent Exhibit K: | Sales disclosure form and PRC for parcel 10-21-03-300-298.000-009, |
| Respondent Exhibit K1: | PRC for parcel 10-21-03-300-298.000-009. |
| | |
| Board Exhibit A: | Form 131 petition with attachments, |
| Board Exhibit B: | Hearing notice, |
| Board Exhibit C: | Notice of Appearance for Heather Scheel, |
| Board Exhibit D: | Hearing sign-in sheet. |

c. These Findings and Conclusions.

## Summary of the Parties' Contentions

### A. The Assessor's Case

6. The property was originally part of a 21-acre plot. Nine acres were split off and divided into four separate tracts. Those four tracts are known collectively as Veterans Station Crossing. *Surface testimony.*

7. The subject property sold for $750,000 in June 2012. It was assessed for $236,000 when it sold. The Assessor had two reasons for not changing the assessment at that point: (1) she did not want to engage in sales chasing, and (2) the sale price could have been an aberration. *Surface testimony;*

8. After more properties from the area sold, the Assessor created a new assessment neighborhood with a base rate of $625,000 per acre. That raised the subject property's assessment to $737,500, which is still lower than its 2012 sale price. *Surface testimony.*

9. Ken Surface, who works for the company that contracted to perform assessment services for the Assessor, identified three sales of vacant lots that were used to determine the new base rate. All three properties are located near the subject property and are in the same assessment neighborhood along Veterans Parkway:

| **Sale** | **Size** | **Date** | **Price** |
|---|---|---|---|
| Sale 1 (*Resp't Ex. I*) | .91 acres | July 9, 2015 | $775,000 |
| Sale 2 (*Resp't Ex. J*) | 1.09 acres | September 20, 2013 | $674,145 |
| Sale 3 (*Resp't Ex. K*) | 1.19 acres | August 12, 2013 | $743,729 |

*Surface testimony; Resp't Exs. I-K.*

10. When asked on cross examination whether Sale 1 should have been used, given that it was after the assessment date, Surface responded that the sale occurred before the new base rate was finalized, and that it "solidified" what the Assessor had done based on the other two sales. The Assessor also argued that the Tax Court has approved using sales from after an assessment date. *Surface testimony; Scheel argument.*

11. Surface recognized a potential issue with Sale 3. Some members of the seller, Koetter Five Star Properties Indiana, LLC, were also members of the buyer, Koetter Northgate Properties, LLC. In fact, the same person signed the disclosure form for both parties. The disclosure form shows that the Assessor marked Sale 3 as invalid for trending purposes. The word "relationship" appears in the space provided for identifying "any additional special circumstances relating to validation of sale." *Surface testimony; Resp't Ex. K.*

12. In Surface's view, the sale's invalidity for purposes of trending and preparing ratio studies does not preclude it from being a valid indicator of market value. Assessing officials identify sales between related parties as possibly being invalid when they submit their ratio studies to the Department of Local Government Finance ("DLGF") for approval, although the standards of the International Association of Assessing Officers ("IAAO") do not automatically make such sales invalid. Many sales that are marked invalid are ultimately arm's-length transactions and are useful for establishing market value. Under IAAO standards, sales can be trimmed as outliers when conducting ratio studies. According to Surface, that is what happened in this case. After doing some research, however, someone (Surface did not say who) determined that Sale 3 was at market value. *Surface testimony*.

13. Thus, the sales data supports the assessment. A property's sale price on or around the relevant valuation date is often the best evidence of its value. Here, the subject property's sale price of $750,000 is supported by three later sales that were used in determining the base rate for the neighborhood. *Surface testimony; Scheel argument.*

**B. Mac's Case**

14. This assessment increased by 212% between 2014 and 2015. The increase was unjustified, and the assessment is too high. *Smith testimony.*

15. Two of the Assessor's three purportedly comparable sales should be disregarded. Sale 1 was from after the assessment date and therefore could not have been used in determining the neighborhood's base rate. Similarly, Sale 2 involved related parties and was deemed invalid for purposes of trending and preparing a ratio study. That leaves one sale, which is inadequate to justify raising the base rate so drastically. *Smith argument.*

16. In any case, assessments in the area are not uniform. According to the 2011 Real Property Assessment Manual, "[w]hatever mass-appraisal method(s) and model(s) a county chooses, they must be capable of producing accurate and uniform values throughout the jurisdiction and across all classes of property." That is not the case here, as shown by summaries of the assessments for eight nearby vacant parcels, all of which, like the subject property, are zoned "C2: Medium to Large Scale General Commercial." The four most relevant properties, which Mac's representative and witness, Milo Smith, testified were almost exactly like the subject property, are adjacent to each other and are owned by the same entity. Although those four properties were assessed using the same base rate the Assessor used for the subject property, they all had a 65% influence factor. The influence factor reduced their assessments to $5.02/sq. ft. The subject property, which did not get an influence factor, was assessed for almost three times that amount ($14.35/sq. ft). *Smith testimony and argument; Pet'r Exs. 6-7.*

17. Because the Assessor failed to meet her burden of proof, the subject property's assessment should revert to the previous year's level of $236,000. *Smith argument.*

**Burden of Proof**

18. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value 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, among other circumstances, the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* Ind. Code § 6-1.1-15-17.2(b).

19. In light of the substantial increase in the property's assessment between 2014 and 2015, the parties agreed that the Assessor had the burden of proof.

## Analysis

20. The Assessor failed to make a prima facie case that the 2015 assessment was correct.

a) Real property Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF").4 I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e); I.C. § 6-1.1-31-5(a). The DLGF defines "true tax value" as "market value-in-use, which it in turn defines as "[t]he 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.

b) Parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP-compliant market-value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct). They may also offer sales information for the property under appeal, sales or assessment information for comparable properties, and any other evidence that conforms to generally accepted appraisal principles. *Id.; see also,* I.C. § 6-1.1-15-18.

c) Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. Otherwise, the evidence lacks probative value. *Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. *See* I.C. § 6-1.1-4-4.5(f).

d) The Assessor relied on the sale price of the subject property as well as the sale prices for three nearby properties. We agree that a property's sale price on or near the relevant valuation date may be compelling evidence of its true tax value, at least if the sale was at arm's length and other indicia of a market-value sale were present. But the subject property sold almost three years before the relevant valuation date. Because the Assessor did not offer any evidence to explain how that sale price relates to the subject property's value as of March 1, 2015, it lacks probative weight.

e) The same is true for two of the three sale prices (Sales 2 & 3) the Assessor used to determine the neighborhood's base rate. Those sales occurred roughly 1 ½ years before the relevant valuation date. Once again, the Assessor failed to explain how the sale prices relates to the subject property's value as of March 1, 2015.

f) There is a second problem with Sale 3. As noted on the sales disclosure form, the buyer and seller appear to be related. Indeed, the same person signed the form for both entities. The form shows that the Assessor invalidated the sale for trending purposes because of that relationship, not through the process of trimming as Surface

testified. We give no weight to Surface's vague testimony that research later showed the sale was at market value. He did not identify who did the research or what it entailed. And his explanation for why the sale would be valid to use in determining the neighborhood's base rate (or in a sales-comparison analysis), but invalid for purposes of trending or conducting a ratio study, is not credible. Again, contrary to Surface's testimony, the sale was invalidated for use in trending because of the parties' relationship, not through trimming. In any case, Surface offered nothing to support the notion that the sale-to-assessment ratio for that property could reasonably be viewed as an outlier.

g) That leaves one timely arm's-length sale—Sale 1 from July 2015. Putting aside the question of whether a single comparable sale is enough to support a sales-comparison analysis, Surface did not sufficiently explain how the property from Sale 1 compared to the subject property in terms of relevant characteristics that affect value. At most, he showed that the two properties are near each other and are similar in size and shape. But he did not even attempt to explain how any relevant differences affected the properties' relative values. Thus, while the Assessor's sales data and other information is a good start, it is not sufficiently probative to show the subject property's value. *See Long*, 821 N.E.2d at 470-71 (holding that the taxpayers' comparative sales data lacked probative value where they did not compare the purportedly comparable properties' characteristics to their property or explain how any relevant differences affected values).

h) This case illustrates why the burden of proof is important. The subject property might be worth significantly more than the amount for which it was assessed in 2014. But without sufficient probative evidence to show its actual value, or even a likely range of values, we cannot say that the current assessment is correct. Nor can we say what the correct assessment should be. That leaves us with no choice but to order that the assessment revert to the 2014 level of $236,000.

**Summary of Final Determination**

21. The Assessor failed to make a prima facie case that the 2015 assessment was correct. The assessment must therefore be reduced to the previous year's level of $236,000.

Issued: May 12, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 within 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>.