

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

Petition No.: 10-009-16-1-4-02075-16
Petitioner: Mac's Convenience Stores LLC
Respondent: Clark County Assessor
Parcel No.: 10-19-03-300-128.000.009
Assessment Year: 2016

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 ("Petitioner") filed a Form 130 with the Clark County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA issued notice of its determination as follows:

Year	Land	Improvements	Total
2016	\$737,500	\$0	\$737,500

2. The Petitioner timely filed the Form 131 petition with the Board, electing to have its appeal heard under the Board's small claims procedures. The Assessor did not elect to remove. On September 15, 2017, our designated administrative law judge, Timothy Schuster ("ALJ"), held a hearing. Neither he nor the Board inspected the property.

Record

3. The following individuals testified under oath: Milo Smith, certified tax representative; Charles Ray Mills, Jr., MAI; and Ken Surface.
4. Milo Smith appeared as the tax representative for the Petitioner. Heather Scheel appeared as counsel for the Clark County Assessor.
5. The Petitioner offered the following exhibits:

Petitioner's Exhibit 1: *Mac's Convenience Stores LLC v. Clark County Assessor* (IBTR May 12, 2017);
Petitioner's Exhibit 2: 2016 Property Record Card for the subject property;
Petitioner's Exhibit 3: An excerpt from the 2011 REAL PROPERTY ASSESSMENT MANUAL, Article 2.4;

- Petitioner's Exhibit 4: A summary of 8 neighboring unimproved properties, a GIS zoning map, and property record cards for each of the 8 parcels;
- Petitioner's Exhibit 5: An excerpt from the 2011 REAL PROPERTY ASSESSMENT MANUAL, pg. 11;
- Petitioner's Exhibit 6: *Love v. Porter County Assessor* (IBTR September 14, 2011).

6. The Assessor offered the following exhibits:

- Respondent Exhibit 1: Appraisal Report prepared by Charles R. Mills, Jr., MAI;
- Respondent Exhibit 2: Form 131 for Assessment Year 2016;
- Respondent Exhibit 3: 2016 Property Record Card for the subject property;

7. The record also includes the following: (1) all pleadings and documents filed in the current appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) the digital recording of the hearing.

Findings of Fact

8. The property under appeal is located at the southeast corner of Hamburg Pike and Veterans Parkway. It does not have a specific street address, but its location is approximately 1900 Veterans Parkway in Jeffersonville, Indiana, 47130. Jeffersonville is across the Ohio River from Louisville, Kentucky and it is part of the Louisville Metropolitan Statistical Area. The subject property consists of approximately 1.18 acres of vacant land and is located directly east of the Jeffersonville Town Center. *Mills testimony*.

Objections

9. Smith objected to the Mills Appraisal on the basis "it wasn't available to the Assessor when they issued the Form 11." He did not point to any rule of evidence or legal authority for this objection. We overrule the objection and admit the Mills appraisal into evidence.

Contentions

10. Summary of the Assessor's case:

- a. The Assessor presented an appraisal prepared by Charles R. Mills, Jr., a certified general appraiser. He holds a number of designations including the MAI. Mills holds appraisal licenses in Indiana, Kentucky, Ohio, and West Virginia and has extensive experience appraising commercial properties. He is also a member of various professional organizations where he has served in a number of leadership positions. Mills certified that his appraisal conformed to the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Resp't Ex. 1 at 3; Mills testimony*.

- b. Overall, Mills found the market to be trending positively based on data from the CB Richard Ellis Group. He found that due to economic growth vacancy in the Louisville market was at a 10-year low. He also noted that sales of single-tenant properties in the metropolitan area remain strong. Mills also found that area surrounding the subject property has had substantial commercial growth over the past 15 years. *Resp't Ex. 1 at 33-36, 45; Mills testimony.*
- c. Mills valued the fee simple interest of the subject property. He considered all three approaches to value, but only developed the sales-comparison approach for his appraisal. He found the cost approach was not applicable due to lack of improvements on the land. He did not develop the income approach because there were insufficient leased land sales. Mills determined that retail commercial was the highest and best use for the property as vacant. Mills also testified that he "couldn't justify" the subject property's recent sale price of \$750,000. *Resp't Ex. 1 at 45-47; Mills testimony.*
- d. Mills selected five comparable sales of vacant land. All properties, including the subject property, are located in a tax increment financing ("TIF") district. He considered factors such as location, conditions of sale, financing, and physical attributes. He chose five comparable properties, all from Jeffersonville, IN:
- Sale 1: 1.194 acres that sold for \$808,208/acre in April 2016.
 - Sale 2: 0.910 acres that sold for \$851,648/acre in July 2015.
 - Sale 3: 0.800 acres that sold for \$850,000/acre in March 2015.
 - Sale 4: 1.115 acres that sold for \$627,803/acre in July 2016.
 - Sale 5: 1.510 acres that sold for \$629,139/acre in May 2012.

Mills testimony; Resp't Ex. 1 at 48-57, 60.

- e. Mills made market conditions adjustments to each sale ranging from -1% to 8%. He also considered location adjustments for each comparable. Mills adjusted Comparable #1 down by 10% because it was closer to I-65 than the subject property. Comparables #2, #3, and #5 all received 5% negative adjustments for their proximity to I-65 and superior access. Mills made a 5% positive adjustment to Comparable #4 for its inferior location relative to I-65. *Resp't Ex. 1 at 58-60; Mills testimony.*
- f. Mills also made size adjustments to each property because he found buyers generally pay less per acre for larger properties. In addition, Comparables #1-3 and #5 received significant downward adjustments for drainage provided by the Jeffersonville Town Center. All five comparables received a 10% negative adjustment for fill and infrastructure. *Id; Resp't Ex. 1 at 58-60; Mills testimony.*
- g. The adjusted sale prices per acre ranged from \$584,233 to \$660,198. Mills found that Comparable #1 was most similar to the subject property, followed by Comparables #4

- and #5. He considered these sales, as well as the median sale price per acre and median sale price per square foot. Mills reconciled this information to a total value of \$682,000 for the subject property's 1.18 acres. *Mills testimony; Resp't Ex. 1 at 59-61.*
- h. Ken Surface testified on behalf of the Assessor regarding the assessments of neighboring properties used in the Petitioner's assessment comparison analysis. Surface testified that those properties received negative influence factors in order to bring their assessments to agreed settlement values. *Surface testimony.*
11. Summary of the Petitioner's case:
- a. The Petitioner argued that the subject property does not receive a uniform and equal assessment when compared to the surrounding properties as required by the 2011 REAL PROPERTY ASSESSMENT MANUAL. Smith testified that the subject property is valued at three times more than its neighboring properties despite being almost identical. He also noted that Mills did not consider whether his appraisal would result in a uniform assessment with other properties in the neighborhood. *Smith testimony/argument.*
- b. In support of this claim, Smith presented an assessment comparison analysis of eight nearby parcels. He pointed to various factors in which the parcels were similar to the subject including zoning, topography, location, and size. Two of the parcels were assessed as agricultural land. Smith identified the base rates and influence factors of the remaining parcels. Four of the parcels were assessed using the same base rate as the subject property, but with a negative 65% influence factor. *Smith testimony.*
- c. The Petitioner argued those four properties were almost identical to the subject, and that it was not uniform and equal for them to be assessed differently. For that reason, the Petitioner asked that a negative 65% influence factor be applied to Mills' conclusion, which would result in a total value of \$238,700. *Smith testimony/argument.*
- d. Smith emphasized that the settlement agreements for neighboring properties #5-8 do not appear on the corresponding property record cards. Smith admits that he did not point to any errors on the property record cards, but he also argued that there is a requirement for settlement agreements to be "stated on the property record card." *Smith testimony/argument.*

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.

13. 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 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 previous 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 or she 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).
14. The Assessor conceded the burden of proof. We agree with the Assessor's concession. Therefore, the burden of proof shifts to the Assessor. *See Scheel argument.*

Analysis

A. Mills Appraisal

15. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("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 a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* I.C. § 6-1.1-31-6(c). Parties 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 actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. I.C. § 6-1.1-15-18.
16. As stated above, the Assessor presented a USPAP-compliant appraisal prepared by an MAI appraiser. Mills used the sales-comparison approach to develop a value of \$682,000 for the subject property. We find his appraisal persuasive evidence of the subject property's market value-in-use. The Petitioner did not point to any errors or otherwise impeach it. In fact, the Petitioner's tax representative stated, "I've read through the report, I think it is a good report. My only objection I would have to its submission is that it wasn't available to the Assessor when they issued the Form 11." Smith also used the Mills report as the starting point for his requested result.

B. Smith Rebuttal

17. The Petitioner primarily argued that the assessment was not "accurate and uniform" as required by the 2011 REAL PROPERTY ASSESSMENT MANUAL. But, the manual actually requires that any mass appraisal model an assessor uses "must be capable of producing accurate and uniform values..." *Id at 21.* In this case, the Assessor is not attempting to

justify her mass appraisal model or an assessment derived from it, instead she has admitted that the assessment was too high and has presented the Mills appraisal in support of a lower value.

18. Nevertheless, we will examine whether the Petitioner has proven that applying the value from the Mills appraisal to the subject property would violate the uniform and equal provisions of I.C. § 6-1.1-2-2 or the Indiana Constitution. According to the Tax Court, “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, LLC v. Washington Township Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies must be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Ratio studies must also be based on a statistically reliable sample of properties that actually sold. *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)).
19. When a ratio study shows that a given property is assessed above the common level of assessment, that 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 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 the property assessments so “they bear the same relationship of assessed value to market value as other properties within that jurisdiction.” *Thorsness v. Porter County 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).
20. Although not entirely clear, it appears that the Petitioner is asking the Board to apply an equalization adjustment to Mills’ conclusion of value. The Petitioner quantified its requested adjustment by pointing to the 65% negative influence factor the Assessor applied to four neighboring parcels.
21. We first note that Surface testified that the Assessor applied those negative influence factors because of a settlement agreement. The Indiana Tax Court has looked with disfavor on the use of settlements as evidence. *See Boehning v. State Bd. of Tax Comm’rs*, 763 N.E.2d 502 (Ind. Tax Ct. 2001) (holding that treating a settlement agreement as an admission would have a chilling effect on the ability of assessing officials to resolve future cases). The Petitioner asserted that the Assessor failed to note the settlement agreement on the property record cards, but pointed to no authority for why that failure would make the use of that evidence acceptable. We do note that in

contrast to *Boehning*, in this case the Assessor did not explicitly request that the evidence be excluded. Thus, we will examine its value.

22. As discussed above, an equalization adjustment should make a property's assessed value bear the same relationship to its market value as other properties in the assessment jurisdiction. Normally this is done through a statistical analysis that compares sale prices (market-based evidence) to assessed values. Rather than present such an analysis, the Petitioner simply points to the negative influence factors and asks us to apply the same 65% reduction to the Mills appraisal.
23. This is insufficient. At a minimum, the Petitioner needed to present evidence that neighboring properties were assessed at a different rate as compared to their market values than the subject property. But there is no evidence in the record of the market values of the neighboring parcels. In essence, the Petitioner asks us to assume that the neighboring parcels were assessed at market value before the application of the negative influence factor. We cannot make that assumption.

CONCLUSION

24. The Assessor established a prima facie case that the subject property's true tax value should be \$682,000. The Petitioner failed to rebut this value with reliable evidence.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the subject property's 2016 assessment is reduced to \$682,000.

ISSUED: December 13, 2017

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>>.