

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

Petition Nos.: 29-006-08-1-4-00085
29-006-08-1-4-00086
29-006-08-1-4-00087
Petitioner: Mac's Convenience Stores, LLC
Respondent: Hamilton County Assessor
Parcel Nos.: 15-11-31-00-00-032.000
15-11-31-00-00-034.003
15-11-31-03-03-001.000
Assessment Year: 2008

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

Procedural History

1. The Petitioner's representative, Milo Smith, on behalf of Mac's Convenience Stores, LLC, (the Petitioner), initiated assessment appeals for the 2008 tax year with the Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated August 3, 2009.
2. The PTABOA issued notice of its decision on November 20, 2009, for Parcel No. 15-11-31-00-00-032.000 and on December 7, 2009, for Parcel No. 15-11-31-00-00-034.003 and Parcel No. 15-11-31-03-03-001.000.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Smith filed Form 131 petitions with the Board on December 22, 2009. The Petitioner elected to have its appeals heard according to the Board's small claim procedures.
4. The Board issued notices of hearing to the parties dated July 19, 2011.
5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the Board held an administrative hearing on September 29, 2011, before the duly appointed Administrative Law Judge (ALJ) Dalene McMillen.
6. The following persons were present and sworn in at the hearing:

- a. For Petitioner: Milo Smith, Petitioner’s representative
- b. For Respondent:¹ Robin Ward, Hamilton County Assessor
Chad Miller, Hamilton County Deputy Assessor
Daniel A. Maynard, PTABOA member

Facts

- 7. The subject property is comprised of three contiguous properties operated as a gas station and convenience store located at 8896 and 8924 East 116th Street, Fishers, in Hamilton County. Parcel No. 15-11-31-03-03-001.000 (Parcel No. 1) and Parcel No. 15-11-31-00-00-034.003 (Parcel No. 34) are vacant lots and Parcel No. 15-11-31-00-00-032.000 (Parcel No. 32) is improved with a 4,366 square foot convenience store, a 1,172 square foot carwash and a service station canopy.
- 8. The ALJ did not conduct an on-site inspection of the properties.
- 9. For 2008, the PTABOA determined the assessed values of the Petitioner’s parcels to be \$423,800 for the land and \$658,500 for the improvements, for a total assessed value of \$1,082,300 for Parcel No. 32; \$810,500 for the land for Parcel 34; and \$144,500 for the land for Parcel No. 1.
- 10. For 2008, the Petitioner’s representative contends that the total assessed value of the Petitioner’s three parcels together should be \$925,000.

Issue

- 11. Summary of the Petitioner’s contentions in support of an alleged error in its properties’ assessments:
 - a. The Petitioner’s representative contends that the Petitioner’s properties are over-valued based on the Petitioner’s purchase of the properties. *Smith testimony*. According to Mr. Smith, the three parcels at issue in this appeal and the personal property associated with the properties were purchased for \$1,150,000. *Id.*; *Petitioner Exhibit 2*. In support of this contention, Mr. Smith offered a letter from Steven Hull, who is senior tax accountant for Circle K which states that “per our sales disclosure of 02/26/2006, Macs Convenience Stores LLC paid a total of

¹ Marilyn S. Meighen, Meighen & Associates, P.C., appeared as counsel for the Respondent. Robin Ward and Daniel Maynard were sworn as witnesses, but did not present any testimony.

\$1,150,000 for this location.”² *Petitioner Exhibit 1*. Further, Mr. Hull wrote, “for the land that consists of three parcels we paid \$925,000.00 and the equipment was \$225,000.00.” *Id.* According to Mr. Smith, this value is supported by the sales disclosure form which indicates the properties’ purchase price was \$1,150,000 with \$225,000 included in the sale for personal property. *Smith testimony; Petitioner Exhibit 2*. Mr. Smith did not dispute that the purchase of the subject properties was part of a larger multi-property sale, but he argues the Petitioner would be in the best position to allocate the sale price to each of the properties purchased. *Smith testimony*.

- b. Mr. Smith also argues that the properties’ assessed values are too high for the 2008 assessment year based on the assessed value of other convenience stores in Hamilton County. *Smith testimony*. According to Mr. Smith, the assessed values of eleven comparable convenience stores in Hamilton County ranged from \$92 to \$418 per square foot; whereas the Petitioner’s properties were assessed for \$473 per square foot.³ *Id.*; *Petitioner Exhibit 7*. In particular, Mr. Smith argues, two convenience stores are similar in size to the Petitioner’s store. *Id.* The first property, located at 710 Westfield Road, has a 4,638 square foot building and was assessed for \$241 per square foot. *Id.* The second property, located at 2299 Greenfield Avenue in Noblesville, has a 3,810 square foot structure and was assessed for \$205 per square foot. *Id.*
- c. Further, Mr. Smith argues the properties under appeal were assessed too high based on the sales ratio study submitted by the county to the DLGF. *Smith testimony*. Mr. Smith testified that the ratio study showed the sale prices of improved commercial properties ranged from \$37 to \$656 per square foot. *Smith testimony; Petitioner Exhibit 8*. While the ratio study shows twenty-four sales occurred in 2006 and 2007, Mr. Smith testified that he considered only five properties to be similar in size and location to the Petitioner’s property. *Id.* According to Mr. Smith, the buildings on the five properties ranged in size from 2,478 to 6,396 square feet, with sale prices that ranged from \$155 to \$240 per square foot. *Id.* Thus, he concludes, the Petitioner’s property was over-valued.

² While the sales disclosure form is dated February 24, 2006, it identifies a “contract date” of August 1, 2006. The August 1, 2006, date appears to be consistent with other evidence of the properties’ purchase. Therefore, the February 24, 2006, date may have been a typographical error or may have indicated an initial agreement for purchase that was executed on August 1, 2006. Further, the accountant’s letter suggests that the site is or was operated by “Circle K” as a gas station and convenience store. *Petitioner Exhibit 1*. However, the sales disclosure form refers to Equilon Enterprises, LLC, as the seller and Mac’s Convenience Stores, LLC, as the buyer. *Petitioner Exhibit 2*. It is not clear; however, whether Equilon Enterprises or Mac’s Convenience Stores operate the Circle K because the accountant’s letter states that “we” paid \$925,000 for the parcels suggesting the buyer operates the Circle K. *Id.*

³ Mr. Smith notes that one property he reviewed was assessed for the equivalent of \$2,644 per square foot, but he argues the improvement on that property was only 490 square feet and therefore the bulk of the property’s value was in the land.

Smith testimony. In response to questioning, however, Mr. Smith admitted that four of the five properties he used in his analysis were not convenience stores. *Id.*

- d. Finally, Mr. Smith argues that the county assessor may not have removed the road right-of-way from the Petitioner's land assessment. *Smith testimony.* According to Mr. Smith, if a land's legal description is described by metes and bounds it means the boundaries of the property go to the center of the road. *Id.* For this reason, Mr. Smith argues, the Petitioner's land value should be reduced to account for the road right-of-way if it was not. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent's witness, Mr. Miller, argues that the Petitioner's purchase of the properties was not a valid sale because it was part of a transaction in which multiple sites were purchased. *Miller testimony.* In support of this contention, the Respondent's representative submitted a webpage article reporting that the Petitioner purchased 32 former Shell Stations in the Indianapolis area in 2006. *Miller testimony; Respondent Exhibit D.* In addition, the Respondent's evidence shows six other properties in Hamilton County that were purchased by the Petitioner on August 1, 2006. *Respondent Exhibit E.*
- b. To support the Respondent's argument that the Petitioner's allocated price does not represent the properties' market value, the Respondent's witness submitted assessment and sales information for other Mac's Conveniences Stores located in Hamilton County. *Miller testimony; Respondent Exhibit E.* According to the Respondent's exhibit, the comparable properties have buildings which range from 850 square feet to 2,490 square feet; whereas the subject properties have a 4,366 square foot building located on the parcels. *Respondent Exhibit E.* The comparable properties also sit on smaller sites, except for one property that has 0.56 of an acre more land than the subject properties. *Id.* Further, the comparable properties have buildings that are all older than the subject property. *Id.* The building on the subject properties was constructed in 2001; whereas the six comparable properties' buildings were constructed between 1983 and 1995. *Id.* Despite the superiority of the subject properties, the Respondent's exhibit shows the allocated sales prices for the other convenience store properties were \$451.81 to \$1,558.82 per square foot; whereas the subject properties' allocated sale price was only \$211.86 per square foot. *Respondent Exhibit E.* Thus, Mr. Miller concludes, the Petitioner's allocated price for the subject properties is below the properties' market value. *Miller testimony.*
- c. Further, the Respondent's witness argues that land sales in the area support a conclusion that the Petitioner's allocated purchase price was below the properties' market value. *Miller testimony.* According to the Respondent's witness, three vacant land sales occurred in 2007 and 2008. *Id.; Respondent Exhibit C-1.* Those

properties sold for between \$671,739 and \$738,255 per acre, or an average of \$712,565 per acre. *Id.* Thus, Mr. Miller argues, the land alone on the Petitioner's properties is more valuable than the Petitioner's allocated purchase price for the land and improvements. *Id.* In addition, Mr. Miller argues that the land sales show that the Petitioner's land, which was assessed for \$689,400 per acre, was assessed correctly for the 2008 assessment year. *Miller testimony.*

- d. The Respondent's witness also contends that the subject properties' assessments were correct based on sale prices of other convenience stores in the area. *Miller testimony; Respondent Exhibit C-1.* In support of this contention, the Respondent's witness submitted a spreadsheet, a map and property record cards for three properties located in Hamilton County. *Respondent Exhibits C-1, C-2 and C-3.* According to Mr. Miller, the three convenience stores sold for between \$1,979,550 to \$2,630,000, or an average of \$570.83 per square foot. *Miller testimony; Respondent Exhibit C-1.* While two of the sales occurred in 2009 and 2011 respectively, Mr. Miller argues the sales are relevant to the properties' 2008 assessment because there were no "major" increases or decreases in sales or values in the area between 2007 through 2011. *Miller testimony.* Because the Petitioner's property was assessed for \$466.63 per square foot in 2008, Mr. Miller argues, the Petitioner's property was not assessed in excess of the properties' market values. *Id.; Respondent Exhibit C-1.*
- e. Finally, the Respondent's witness contends the boundaries of the Petitioner's properties do not go to the middle of the road. *Miller testimony.* In support of this contention, the Respondent's witness submitted a map showing the boundary lines of the Petitioner's parcels. *Respondent Exhibit B.* Thus, the Respondent's witness argues, the Petitioner is not entitled to a reduction in the properties' land assessments for any right-of-away. *Miller testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Form 131 petitions and related attachments.
 - b. The digital recording of the hearing.
 - c. Exhibits:⁴

⁴ The Petitioner's representative requested that exhibits 1 through 6 attached to the Petitioner's Form 131 petitions be incorporated as evidence for this appeal. *Board Exhibit A.* The Petitioner's representative also submitted exhibits 7 and 8 for the record at the Board hearing.

- Petitioner Exhibit 1 – Signed statement from Steven Hull, Senior Tax Accountant for Circle K #2284, dated March 26, 2008,
- Petitioner Exhibit 2 – Sales disclosure detail sheet for the Petitioner’s three parcels,
- Petitioner Exhibit 3 – Aerial map of the Petitioner’s three parcels,
- Petitioner Exhibit 4 – Excerpt of the 2002 Real Property Assessment Manual,
- Petitioner Exhibit 5 – Excerpt of the “Appeals” memorandum issued by the Department of Local Government (DLGF) and Indiana Board of Tax Review, dated August 24, 2007,
- Petitioner Exhibit 6 – Excerpt of the “Property Tax Assessment Appeals FACT SHEET” issued by the DLGF, dated October 2009,
- Petitioner Exhibit 7 – A spreadsheet of assessed values per square foot for convenience stores in Hamilton County,
- Petitioner Exhibit 8 – Excerpt of the “Delaware Township’s 2008 Sales Ratio Study approved by the DLGF” for commercial improved sales and statistics,
- Respondent Exhibit A – Petitioner’s properties’ 2008 property record cards,
- Respondent Exhibit B – Two aerial maps of the Petitioner’s properties,
- Respondent Exhibit C-1 – Spreadsheet of sale prices and property information for 146th Street & State Road 37, Noblesville, 9609 Olio Road, McCordsville, 14125 Mundy Drive, Noblesville and Michigan Road, Carmel,
- Respondent Exhibit C-2 – Property record cards for 146th Street & State Road 37, Noblesville, 9609 Olio Road, McCordsville, 14125 Mundy Drive, Noblesville and Michigan Road, Carmel,
- Respondent Exhibit C-3 – Street map of 146th Street & State Road 37, Noblesville, 9609 Olio Road, McCordsville, 14125 Mundy Drive, Noblesville and Michigan Road, Carmel,
- Respondent Exhibit C-4 – 2008 Town of Fishers 24 hour traffic count map,
- Respondent Exhibit D – CSP DAILY NEWS article, dated September 13, 2010,
- Respondent Exhibit E – 2006 and 2007 spreadsheet for Mac’s Convenience Stores in Hamilton County,

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed values of its properties. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- b. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- d. The Petitioner's representative first contends that the Petitioner's properties are over-valued based on the allocated sale price of the properties. *Smith testimony*. According to Mr. Smith, the Petitioner purchased the three parcels as one property on August 1, 2006, for \$1,150,000. *Smith testimony; Petitioner Exhibits 1 and 2*. That price included \$225,000 for the personal property. *Id.* Thus, Mr. Smith argues, the subject properties should be assessed for no more than \$925,000. *Smith testimony*.
- e. The purchase price of a property can be the best evidence of a property's value. See *Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). However, a sale does not necessarily indicate the market value of a property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. "Fair market value' is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977).
- f. Here, the purchase of the subject properties was one part of a multiple property purchase and the purchase price was allocated by the Petitioner to the properties. The Petitioner's representative, however, provided no information regarding how the purchase price was allocated. He merely asserted that the Petitioner was in the best position to allocate the purchase price to the subject properties. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board*

of *Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, without an explanation of how the sale price was allocated to the properties, the evidence submitted by the Petitioner's representative has little probative value. See *Grant Count Assessor v. Kerasotes Showplace Theatres*, 955 N.E.2d 876, 879 (Ind. Tax Ct. 2011) (Tax Court upheld the Board's determination that the Respondent's appraisal was less persuasive than the Petitioner's appraisal because the Respondent's appraiser's "reliance on the allocated value of \$7,821,835 was made without any consideration as to how, or what factors, were considered in arriving at that value."). The Board therefore finds that the Petitioner failed to raise a prima facie case based on the allocated purchase price of the subject properties.

- g. Even if the Board determined that the Petitioner's allocated purchase price was some evidence of the properties' market value, the Respondent rebutted that allocated value. Here, the Respondent showed that the sale price allocated to the subject properties was less than half of the price per square foot of the next lowest sale price and only 14% of the highest price per square foot, despite the fact that the subject properties had the largest and newest building and the second largest parcel of land. Thus, the Respondent sufficiently rebutted any argument that the properties' allocated sale price reflected the properties' actual market value-in-use.
- h. The Petitioner's representative also contends that its properties were over-valued based on the sale of comparable properties. *Petitioner Exhibit 7*. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. See *Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner's representative merely highlighted the differences in the square foot prices of each property. The Petitioner's representative made no attempt to show that the properties were comparable to the subject property other than to testify that all of the properties were convenience stores or other commercial properties located in Hamilton County. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. See e.g. *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Thus, the Petitioner failed to raise a prima facie case that its properties' values were over-stated based on the sale prices of other properties in Boone County.
- i. To the extent that the Petitioner's representative can be seen as arguing that other convenience stores were assessed differently than the Petitioner's properties, this argument also fails to show an error in the property's assessment. In *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax

Ct. 2007), the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the property's market value-in-use. *Id.* See also *P/A Builders & Developers*, 842 N.E.2d at 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct).

- j. Finally, the Petitioner's representative contends that the Respondent may not have removed the right-of-way from the Petitioner's land assessment. *Smith testimony.* Mr. Smith argues that if a land's legal description is described by metes and bounds it normally means the boundaries of the property go to the center of the road. *Id.* However, Mr. Smith failed to offer any documentation or evidence to establish that the properties were assessed to the center-line of the street. Again, statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). The Board notes, however, that contrary to the Petitioner's argument, the Respondent's evidence shows that the Petitioner's parcels are bounded by, but do not encompass any part of 116th Street or Commercial Drive.
- k. Where the Petitioner has not supported its claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to raise a prima facie case that its properties were over-valued for the March 1, 2008, assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the Petitioner's properties' assessed values should not be changed.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.