

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

**Petition No.:** 29-018-09-1-4-00369  
**Petitioner:** Mac's Convenience Stores, LLC  
**Respondent:** Hamilton County Assessor  
**Parcel No.:** 1609360402005000  
**Assessment Year:** 2009

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

**Procedural History**

1. On November 9, 2009, Mac's Convenience Stores, LLC appealed the subject property's assessment to the Hamilton County Property Tax Assessment Board of Appeals ("PTABOA"). On July 22, 2011, the PTABOA mailed notice of its decision denying Mac's relief.
2. On September 6, 2011, Mac's filed a Form 131 petition with the Board, electing to have its appeal heard under the Board's small claims procedures.
3. On April 8, 2014, the Board held a hearing through its designated administrative law judge, Dalene McMillen. Neither she nor the Board inspected the property.
4. The following people were sworn in at the hearing: Milo Smith;<sup>1</sup> Robin Ward, Hamilton County Assessor; and Terry McAbee, the Assessor's director of commercial and industrial assessments.<sup>2</sup>

**Facts**

5. The property contains a convenience market with gasoline pumps and a carwash. It is located at 1230 Rangeline Road South in Carmel.
6. The PTABOA determined the following assessment:  
Land: \$900,600      Improvements: \$141,000      Total: \$1,041,600.

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<sup>1</sup> Mr. Smith also appeared as Mac's certified tax representative.

<sup>2</sup> Ms. Ward did not testify.

7. Mac's requested a land assessment of \$881,000 per acre.

### **Summary of the Parties' Contentions**

8. Mac's case:
  - a. The subject property is 0.86 acres. Its 2009 land assessment of \$900,600 therefore translates to \$1,047,210 per acre. According to Mac's the land is not assessed uniformly with other land at the same intersection. The 2009 per-acre land assessments for those properties translate to \$595,000, \$881,043, and \$1,062,464, respectively. *Smith testimony; Pet'r Exs. 1-2.*
  - b. Mac's witness, Milo Smith, did not explain how the other properties compared to the subject property aside from offering a grainy aerial photograph and property record cards from 2013. All four properties were assessed using the same base rate in 2013—\$900,000 per acre. It is unclear what base rate was used in 2009. The only property for which Mac's offered a 2009 property record card was the subject property. That card shows a base rate of \$850,000. Mr. Smith testified that he could not get 2009 property record cards for the other properties. *Smith testimony; Pet'r Exs. 1-3.*
  - c. In 2013, one property had a negative 30% influence factor and another had a positive 25% influence factor. The subject property had no influence factor for 2013, but it had a positive 10% influence factor in 2009. Of the four properties, only the subject property is less than one acre. Its 2013 record card shows an adjustment of 1.12 to the base rate under the column for depth factors. Its 2009 card lists "1.0" in that column, but the calculations show that the same 1.12 factor was applied. The other cards have "1.0" in the depth-factor column and the calculations show no adjustment. *Smith testimony; Pet'r Exs. 1-2.*
  - d. Mr. Smith also compared the overall assessments of the subject property and one of the comparable properties—a convenience store owned by Barnes Investment Company. The Barnes property was assessed at \$275 per square foot of building area, and its land was assessed at \$881,000 (rounded) per acre. By contrast, the subject property was assessed at \$1,042 per square foot of building area, while its land was assessed at \$1,047,210 per acre. *Smith testimony; Pet'r Exs. 2-3.*
  - e. According to Mr. Smith, the subject land should not be assessed 20% higher than another convenience store at the same intersection. Mac's therefore requested a land assessment equaling \$881,000 per acre. *Smith testimony.*

9. The Assessor's case:
- a. Mac's failed to make a prima facie case for changing the assessment. Mr. Smith selected his comparable properties based only on their location. He did not analyze the differences between those properties and the subject property, such as differences in size, the presence or absence of influence factors, actual and effective age, or building types and uses. *Meighen argument*.
  - b. In fact, Mac's evidence showed that the Assessor used the same land base rate to assess all four properties in 2013. *Meighen argument*.

### **Record**

10. The official record for this matter comprises:
- a. The Form 131 petition,
  - b. A digital recording of the hearing,
  - c. Exhibits:<sup>3</sup>
    - Petitioner Exhibit 1: Aerial map, and 2013 property record cards for the subject property, 1301 Rangeline Road, 1221 Rangeline Road South, and 1224 Rangeline Road South, all with handwritten notations,
    - Petitioner Exhibit 2: Subject property's 2009 property record card with handwritten notations,
    - Petitioner Exhibit 3: 1221 Rangeline Road South's property record card with handwritten notations,
  
    - Board Exhibit A: Form 131 petition,
    - Board Exhibit B: Hearing notice,
    - Board Exhibit C: Hearing sign-in sheet,
  - d. These Findings and Conclusions.

### **Burden of Proof**

11. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. 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).

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<sup>3</sup> The Assessor did not submit any exhibits.

12. Indiana Code § 6-1.1-15-17.2, as amended,<sup>4</sup> creates an exception to that general rule and shifts the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor must prove that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The Assessor also has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase ...." *See* I.C. § 6-1.1-15-17.2(d).<sup>5</sup>
13. Neither of those circumstances applies here. The subject property's land assessment was the same in the year currently under appeal (2009) and the immediately preceding year (2008). And the overall assessment decreased during that interval. Mac's therefore has the burden of proof.

### Analysis

14. Mac's did not make a prima facie case for reducing the assessment. The Board reached this decision because:
  - a. Indiana assesses real property based on its true tax value, which is "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. Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Assessors normally use a mass-appraisal version of the cost approach from the Real Property Assessment Guidelines for 2002 – Version A.
  - b. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). A party 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 be probative. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A party may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information

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<sup>4</sup> The amendments to Ind. Code § 6-1.1-15-17.2 became effective with the Governor's signature on March 25, 2014. *See* P.L. 97-2014. The statute, as amended, applies to "all appeals or reviews pending on the effective date of the amendments ...." *Id.*; I.C. § 6-1.1-15-17.2(e) (2014).

<sup>5</sup> By its terms, Ind. Code § 6-1.1-15-17.2(d) "does not apply for an assessment date if the real property was valued using the income capitalization approach in the appeal." It does not appear that the PTABOA used the income capitalization approach to value the subject property.

compiled according to generally acceptable appraisal principles. MANUAL at 5; I.C. § 6-1.1-15-18.

- c. Mac's claims that the subject property was assessed for more than comparable properties. Whether properties are comparable, however, must be determined "using generally accepted appraisal and assessment practices." I.C. § 6-1.1-15-18. When using sale prices for other properties to show the true tax value for a property under appeal, a taxpayers are "responsible for explaining to the . . . Board the characteristics of their own property, how those characteristics compare[] to those of the purportedly comparable properties, and how any differences affect[] the relevant market value-in-use of the properties." *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The same is true when comparing assessments.
- d. Mac's did not follow that mandate; it instead offered only a superficial comparison. Mac's witness, Mr. Smith, compared the subject land to three other parcels based on one main characteristic—location. One might also infer some other comparisons from the aerial photographs, such as access and shape, although Mr. Smith did not walk the Board through those comparisons.
- e. But Mr. Smith did not explain how relevant differences affected the properties' values. For example, the subject parcel is smaller than the comparable parcels. The Guidelines recognize that as the size of smaller tracts increases, the price per unit decreases. See GUIDELINES, ch. 2 at 71-73, 93. The Guidelines therefore provide an adjustment table for tracts of less than one acre and instruct assessors to include that factor in the "Depth Factor" column on a property's record card. *Id.* at 93. The 1.12 factor applied to the subject property corresponds to the entry for a 0.86-acre lot. *Id.* at 73, Table 2-11. Yet Mr. Smith did not account for size differences between his comparable parcels and the subject parcel.
- f. He similarly ignored how influence factors affected the respective land assessments. Two of his comparable properties had influence factors on their 2013 property record cards, although it is unclear whether they had them in 2009. The subject property also had an influence factor in 2009. But Mr. Smith did not explain the characteristics those factors were assigned to account for. See GUIDELINES, ch. 2 at 89 (explaining that influence factors are adjustments to value for "conditions peculiar to specific tracts within a neighborhood that must be analyzed on an individual basis.").
- g. Finally, Mr. Smith did nothing to account for differences between the subject property and the Barnes property when comparing overall assessments.<sup>6</sup> He instead merely computed a price per square foot of building area for each property.

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<sup>6</sup> It is not clear why Mr. Smith offered calculations about the properties' overall assessments. Mac's Form 131 petition references only land. And its request for relief at the hearing was for a per-acre land assessment equaling \$881,000 per acre.

- h. Because Mr. Smith did not show that his analysis complied with generally accepted appraisal or assessment practices, Mac's failed to make a prima facie case for changing the assessment.

### **Conclusion**

15. Mac's failed to make a prima facie case for a changing the subject property's assessment. The Board therefore finds for the Assessor.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: July 7, 2014

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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 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>>.