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

Petition No.: **29-006-12-1-4-02050**
Petitioner: **Mac's Convenience Stores, LLC**
Respondent: **Hamilton County Assessor**
Parcel No.: **15-14-10-00-00-036-000**
Assessment Year: **2012**

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

Procedural History

1. Mac's Convenience Stores, LLC ("Mac's Convenience Stores"), represented by certified taxpayer representative Milo Smith initiated an assessment appeal with the Hamilton County Property Tax Assessment Board of Appeals ("PTABOA") by written notice dated September 14, 2012.

2. The PTABOA mailed its notice of decision, Form 115, denying Mac's Convenience Stores relief on December 18, 2013.

3. Mac's Convenience Stores then filed a Form 131 petition with the Board on December 30, 2013, electing to have the appeal heard according to the small claims procedures.

4. The Board issued a notice of hearing to the parties dated February 7, 2014.

5. On April 8, 2014, the Board held an administrative hearing through its designated administrative law judge, Dalene McMillen ("ALJ"). Neither the Board nor the ALJ inspected the property.

6. Milo Smith, County Assessor Robin Ward, and Terry McAbee, the Assessor's director of commercial and industrial assessments, were sworn as witnesses, but Ms. Ward did not testify.

Facts

7. The property is a convenience market with gasoline pumps located on Allisonville Road. Although it has an Indianapolis address, the location is in Hamilton County.

8. The PTABOA determined the assessed value of the property is $1,053,000 for the land and $401,400 for the improvements (total assessed value is $1,454,400).

9. At one point during the hearing the Petitioner requested a total assessed value of $684,500 for the land and $401,400 for the improvements (total assessed value of $1,085,900). But at another point the Petitioner claimed the total assessment should be approximately $700,000.

Contentions

10. Summary of the Petitioner's case:

    a. The subject property was assessed at $486 per square foot of building area, which is significantly higher than other properties in the area. *Smith testimony; Petitioner Exhibit 1.* One of those properties (parcel 1514100000037101) is a 13,795 square foot building that was assessed for $3,199,900 or $232 per square foot of building area. *Smith testimony; Petitioner Exhibit 3.* The second property (parcel 1514100000037201) is a 32,303 square foot building that was assessed for $1,957,500 or $61 per square foot of building area. *Id.* According to Mr. Smith, these properties are located at the same intersection and are not being valued uniformly. *Smith testimony.*

    b. These comparables are a neighborhood shopping center and a Walgreens. The subject property is a convenience store. If the 74% obsolescence depreciation was removed from the neighborhood shopping center the assessed value per square foot would be approximately $230 per square foot. *Smith testimony.*

    c. Mac's Convenience Stores and the Assessor stipulated to a land value of $684,500 in 2009. According to Mr. Smith, that value can be carried forward to the 2012 assessment.[1] Senate Enrolled Act No. 266 states that stipulation agreements can be carried forward to the next assessment year. Mr. Smith argued that because the 2011 assessment was not appealed, Senate Enrolled Act No. 266 authorizes the 2009 stipulated value to be carried forward to 2012. *Smith testimony; Petitioner Exhibits 4, 5.*

11. Summary of the Respondent's case:

    a. The Form 131 states, "The subject land is assessed at 1,053,000 (900,000 per acre), even though the average land assessment located in the subject neighborhood (352400) for commercial parcels located on Allisonville Road is $187,981. The influence factor should be removed." The Petitioner should be limited to that issue. *Meighen argument.*

[1] Earlier in this hearing, the parties stipulated to land value of $684,500 and improvement value of $342,600 (total assessed value of $1,027,100) for the 2009 assessment.

b. Four convenience stores that sold in Hamilton County support the assessed value of the subject property. The Respondent presented a comparable sales analysis and four supporting property record cards. The comparable sales analysis shows the four properties sold between June 27, 2007, and January 5, 2011. Those buildings are similar in size to subject building. According to the comparable sales analysis, the comparables sold for an average of $483.37 per square foot. The subject property is assessed at $485.94 per square foot.[2] Based on the average sale price of convenience stores in the county, the subject property's assessment of $485.94 per square foot is appropriate. *McAbee testimony; Respondent Exhibit A.*

c. The Petitioner failed to make a prima facie case that the subject property is incorrectly assessed. Mr. Smith's analysis of two purportedly comparable assessments did not address significant differences, such as building use and size. He selected the comparables based only on location. *Meighen argument; McAbee testimony.*

d. Mr. Smith has submitted the same type of evidence in other appeals and it has been repeatedly found to be insufficient to establish market value-in-use. *Meighen argument* (*citing Kooshtard Property VIII LLC v. Shelby County Assessor,* Pet. 73-002-06-1-4-72425 & 73-002-07-1-4-10224 (Ind. Bd. of Tax Rev., Oct. 8, 2010) and *Robert Fleetwood v. Monroe County Assessor,* Pet. 53-005-10-1-4-00027 & 53-005-12-1-4-00102 (Ind. Bd. of Tax Rev., Jan. 16, 2014)). The Petitioner's evidence fails to establish the market value-in-use of the property under appeal. *Meighen argument* (*citing Westfield Golf Practice Center LLC v. Washington Twp. Assessor,* 859 N.E.2d 396 (Ind. Tax. Ct. 2007)).

e. In his comparable sales analysis, Mr. McAbee submited one convenience store that sold for $750,000 or $220.98 per square foot, while the subject property is valued at $485.94 per square foot. That comparable convenience store, however, was built in 1988 with an effective age of 1995, the building area is slightly larger at 3,394 square feet and the land size is smaller at 0.872 acre. The subject property was constructed in 2007, the building area is 2,993 square feet and the land size is 1.17 acres. According to Mr. McAbee, these points account for the difference in the price per square foot. *McAbee testimony; Respondent Exhibit A.*

Record

12. The official record for this matter contains:

a. The Form 131 petition with attachments,

b. The digital recording of the hearing,

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[2] Mr. McAbee testified that the $459.37 per square foot shown on Respondent Exhibit A is the assessment per square foot for 2009.

c. Petitioner Exhibit 1 – Subject property's 2012 property record card,
Petitioner Exhibit 2 – Not submitted,
Petitioner Exhibit 3 – Aerial map and two comparable property record cards for parcel no. 1514100000037101 and parcel no. 1514100000037201,
Petitioner Exhibit 4 – Senate Enrolled Act No. 266,
Petitioner Exhibit 5 – 2014 Bills sent to Governor's office,

Respondent Exhibit A – Analysis of four comparable properties and their property record cards for parcel no. 1811190000007004, parcel no. 1514020001007000, parcel no. 1315120034001000 and parcel no. 1713060012001000,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving the current assessment is incorrect and proving a correct value. *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).

14. Indiana Code § 6-1.1-15-17.2, 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 has the burden of proving 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).[3]

15. The total assessment increased from $1,374,900 in 2011 to $1,454,400 in 2012, an increase in excess of 5%. The Respondent argues that because the Petitioner only appealed the PTABOA's determination of the 2012 land value ($1,053,000), which is the same as the 2011 land value ($1,053,000), the assessment did not increase.

[3] 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." The record is silent regarding use of the income capitalization approach to value the subject property.

16. The Respondent offers no authority in support of applying the burden-shifting statute to only the land values.[4] Generally, the Board has treated the burden-shifting statute as a threshold issue. It determines which party has the burden of proof prior to any analysis of the grounds raised in an appeal. Indiana Code § 6-1.1-15-17.2 does not expressly contemplate a separate analysis for land-only appeals. In applying the burden-shifting statute, the Board tends to disregard piecemeal approaches. As recently explained by the Board:

> In the context of the burden-shifting statute, the Board has held that when parcels are "purchased together and are effectively used together," the Board "views the two parcels as a single property." *Grabbe v. Carroll County Assessor*, Ind. Bd. Tax Rev., Petition No. 08-14- 17-000-015.000-002, et. al. (May 10, 2012). Though one parcel did not increase 5%, when both parcels were considered together, the increase exceeded 5% and the burden shifted. The Board followed this rationale where "the house sits on both lots and could only be sold as a single property." *Budreau v. White County Assessor*, Ind. Bd. Tax Rev., Petition No 91-020-08-1-5-00058, et. al. (June 30, 2012). Similarly, the parcels will be grouped together if they are used and treated "as a single economic unit." *Waterford Dev. Corp. v. Elkhart County Assessor*, Ind. Bd. Tax Rev., Petition No. 0-015-08-1-4-00241, et. al. (Sept. 25, 2012).

James K. & Theresa D. Props, Ind. Bd. Tax Rev., Pet. No. 29-003-09-1-5-00088, et. al. (March 3, 2014). In *Props*, the Board extended this approach to parcels not on appeal: "The Board finds that all parcels that form a single unit, whether on appeal or not, may be considered for purposes of applying the burden-shifting statute." This rationale was similarly followed in *Koziarz v. Marshall County Assessor*, Ind. Bd. Tax Rev. Petition No. 50-017-12-1-5-00012 et. al. (May 22, 2014): "While the Petitioner only appeals the land assessments and not the improvement, he fails to rebut the Respondent's evidence that the parcels form a single economic unit." Based on the foregoing, the Board holds that the burden-shifting statute should be applied to the total assessments, and the Respondent has the burden.

Analysis

17. The Respondent did not make a prima facie case to support the existing assessment, but the Petitioner did not make a prima facie case for a further reduction.

    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. 2002 REAL PROPERTY ASSESSMENT MANUAL

[4] Later in the hearing, counsel for the Respondent obliquely referred to *Kooshtard VIII v. Monroe County Assessor* in support of applying the burden-shifting statute to only the land component. It appears the Respondent intended to cite *Kooshtard Property I LLC v. Monroe County Assessor*, Ind. Bd. Tax Rev., Pet. No. 53-017-10-1-4-00001 et. seq., (March 14, 2014)(pending before the Tax Court). In that case, the parties stipulated as to the burden, and only the land value was considered because "the Petitioner appealed the land valuation only, and the Respondent did not challenge this limited appeal." Id. at 17.

at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally use the cost, sales-comparison, and income approaches to determine value. Indiana assessing officials generally use a mass-appraisal version of the cost approach.

b. Market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5. A party may rebut that presumption with evidence that is consistent with the definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. In addition, a party may offer evidence of actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c. Alternatively, to accurately determine market-value-in-use, one may introduce evidence of the assessments of any relevant, comparable property. I.C. § 6-1.1-15-18(c). Under this statute, comparables in the same taxing district or within two miles of a boundary of the taxing district are preferred and "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *Id.*

d. Counsel for the Respondent stated that she would not present evidence, and the Respondent would accept the 2012 assessment reverting back to the 2011 values. The Respondent has not made a prima facie case. The burden now shifts to the Petitioner to prove a value lower than the 2011 assessment.

e. The Petitioner submitted assessment data for two properties showing the total assessments (land and improvements) were $232 per square foot of building area for one and $61 per square foot of building area for the other.[5] The total assessment of the subject property, however, is $486 per square foot of building area.

f. The Petitioner failed to establish the comparability of the selected properties. The Petitioner primarily relied on the fact that the subject property and the two comparable properties are located near each other. But the subject property is a convenience store and the comparables are a neighborhood shopping center and a Walgreens. The sizes of the comparable lots are 1.32 acres and 2.24 acres. The subject lot is 2.52 acres. The comparable buildings are 13,795 square feet and 33,266 square feet, while the subject building is only 2,993 square feet. Mr. Smith is "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Long,* 821 N.E.2d at 471. The attempted comparison failed to address the considerable differences between the subject property and the comparables.

[5] Mr. Smith testified that if the 74% obsolescence depreciation was removed from the neighborhood shopping center the building area would show an assessed value of approximately $230 per square foot, rather than $61.

g. Furthermore, the valuation numbers that the Petitioner compared are based on total land and improvements. The Petitioner failed to establish how they are relevant to the disputed land value or how they might prove a more accurate land value.

h. The Petitioner failed to provide probative evidence that the assessment should be changed. Therefore, the Respondent's duty to support the assessment with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Respondent failed to make a prima facie case to support the assessment, and the 2012 assessment reverts back to the 2011 assessment of $1,374,900. The Petitioner failed to make a prima facie case for any further reduction.

Final Determination

In accordance with the above findings of fact and conclusions of law, the assessment will not be changed.

ISSUED: November 14, 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>.