REPRESENTATIVE FOR PETITIONERS:
Ronald E. Milliken, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Frank J. Agostino, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

RONALD E. & CHRISTINE MILLIKEN,	)	Petition Nos.: 71-029-12-1-5-10000
	)	71-029-13-1-5-00001
Petitioners,	)	
	)	Parcel No.: 71-02-26-402-001.000-029
v.	)	
	)	County: St. Joseph
ST. JOSEPH COUNTY ASSESSOR,	)	Township: Warren
	)	
Respondent.	)	Assessment Years: 2012 and 2013

April 30, 2015

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Respondent had the burden to prove that the subject property's March 1, 2012, assessment was correct. Did the Respondent prove the 2012 assessment was correct? The Board's determination on the 2012 assessment will determine who has the burden of proof for the 2013 assessment year.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2012 and 2013 appeals by filing Form 130 petitions with the St. Joseph County Assessor on October 24, 2012, and November 7, 2013, respectively. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) failed to act on the Petitioners' Form 130s. Thus, the Petitioners sought review with the Board. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor).

3. The Petitioners filed Form 131 petitions with the Board on May 14, 2013, and May 4, 2014, respectively.

4. On December 3, 2014, the Board's administrative law judge, Patti Kindler (ALJ), held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. The following people were sworn and testified:

For the Petitioners:	Ronald Milliken.
For the Respondent:	Patricia St. Clair, St. Joseph County Deputy Assessor.

6. The Petitioners offered the following exhibits:

Petitioners Exhibit 1:	Subject property record card,
Petitioners Exhibit 2:	Property record card for RPM/CLM Family Enterprises,
Petitioners Exhibit 3:	Property record card for Five S Corp.

7. The Respondent offered the following exhibits:

Respondent Exhibit 1:	2012 land cost schedules for apartments and multi-family classifications 401 through 405,
Respondent Exhibit 2:	Commercial, industrial, and multi-family apartment acreage and square footage price ranges,

Respondent Exhibit 3:	2012 land pricing schedules for commercial classifications 491 through 495.

8. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 131 petitions with attachments,
Board Exhibit B:	Hearing notices, dated October 22, 2014,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance for Frank Agostino.

9. The subject property is a vacant commercial lot located at 26552 US-20 in South Bend.

10. The subject property had a land assessment of $13,200 for both 2012 and 2013.

11. The Petitioners requested a land assessment of $9,800 for both 2012 and the 2013.

OBJECTIONS

12. The Petitioners made several objections. First, Mr. Milliken objected to the admittance of Respondent Exhibit 1 on the grounds that the exhibit was not relevant to the subject property. Mr. Agostino explained the exhibit's relevance, repeating Ms. St. Clair's testimony that the subject property was erroneously assessed utilizing Respondent Exhibit 1. The ALJ took the objection under advisement. Mr. Milliken's objection goes to the weight of the evidence rather than its admissibility. Thus, Respondent Exhibit 1 is admitted.

13. Next, Mr. Milliken, during his cross examination of Ms. St. Clair, objected to her testimony that the subject property was assessed in the same category as neighboring commercial properties. He argued that the properties were treated differently. The ALJ took the objection under advisement. While Mr. Milliken may disagree with Ms. St. Clair's testimony, she was only responding to his line of questioning. Again the Petitioners' objection goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules Mr. Milliken's objection.

14. Mr. Milliken also made several similar objections to testimony and portions of documentary evidence that he opposed. For example, he objected to Ms. St. Clair's testimony regarding land pricing categories, arguing that they are not based on market data. He objected to his property being arbitrarily placed "in the middle" of a category. He also objected to the acreage listed on the property record card for Five S Corp, which he offered as evidence. The Board will not exclude evidence from the record simply because a party disagrees with it. Mr. Milliken was free to offer evidence to rebut anything he does not agree with. To the extent the Board views Mr. Milliken's remarks as objections; they are overruled, as they go to the weight of the evidence rather than its admissibility.

15. Finally, Mr. Milliken objected to Mr. Agostino's line of questioning regarding the values on the subject property record card. Mr. Milliken claimed that Mr. Agostino was trying to insult his intelligence by going through it in detail. Mr. Agostino responded by stating he was attempting to help Mr. Milliken understand the property record card. The ALJ allowed Mr. Agostino to continue with this line of questioning and took Mr. Milliken's objection under advisement.

16. The Board sustains Mr. Milliken's objection. While Mr. Milliken did argue that the Assessor had not explained the basis of his property's increase in assessed value, it is unclear how verifying the accuracy of the math on the property record card alleviates that issue. Moreover, Mr. Milliken's understanding, or lack thereof, of the numbers on the property record card does nothing to prove the subject property's market value-in-use. Thus, Mr. Agostino's questions and Mr. Milliken's responses in that regard are stricken from the record.[1]

17. Mr. Agostino also made several objections. First, he objected to a portion of Mr. Milliken's cross-examination of Ms. St. Clair, arguing that it was beyond the scope of direct examination. Specifically, Mr. Milliken stated that the assessments are supposed

[1] The stricken testimony and argument also includes Mr. Milliken's claim that Mr. Agostino was "being really redundant," which Mr. Agostino objected to.

to be based on market value and "you've compared me to things that even in your own testimony, you say is not equal." He followed that with questions regarding neighboring assessments. The ALJ took the objection under advisement.

18. The Board agrees that Mr. Milliken's cross-examination was overly argumentative. To the extent that Mr. Milliken asked questions, the Board finds none that were outside the scope of direct examination. Regarding the specific comment that resulted in Mr. Agostino's objection, however, the objection is sustained, and Mr. Milliken's comment is stricken.

19. Mr. Agostino also objected to Mr. Milliken's testimony that the Cities of South Bend and Mishawaka sold large parcels of land "for as low as $1.00" on the grounds that it is not relevant to the subject property, which is located in Warren Township. Mr. Milliken responded by stating that the sold properties used to determine the assessments were not located in Warren Township, either. Mr. Agostino's objection goes more to the weight of the evidence rather than its admissibility. Therefore the Board overrules the objection.

20. Given the above rulings, the Board notes that none of them have any impact on the outcome of this appeal.

JURISDICTIONAL FRAMEWORK

21. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

22. The subject property's 2012 and 2013 assessment is too high. The Petitioners have repeatedly filed appeals because the property's assessment increases without explanation. For the 2012 assessment year the Respondent increased the subject property's land assessment by 35% over the agreed upon 2011 value. To make matters worse, because the Petitioners filed their appeals, the Respondent allegedly found an error she claims she made in assessing the parcel. This error would increase the subject property's 2012 and 2013 assessments from $13,200 to $18,000. *Milliken testimony; Pet'rs Ex. 1.*

23. The subject property's assessments are also higher than the assessments of neighboring properties. The neighborhood assessments are anything but uniform. While the subject property and a neighboring property, Five S Corp., are both assessed as commercial parcels with an average location, Five S Corp. saw a $5,000 reduction in its land assessment between 2011 and 2012. Meanwhile, the subject property's assessments increased by $3,500 during that same assessment period. Moreover, Five S Corp. is a developed commercial property. If anything, its assessment should have increased while the subject property's vacant land assessments should have decreased. The Five S Corp. property is far superior to the subject property. However, both properties have the same "average" classification. *Milliken argument; Pet'rs Ex. 1, 3.*

24. Another property located just east of the subject property, RPM/CLM Enterprises LLC, saw its assessment also decrease between 2011 and 2012. RPM/CLM Enterprises LLC's assessment dropped from $13,600 in 2011 to $12,100 in 2012. *Milliken testimony; Pet'rs Ex. 2, 3.*

25. There has been no demand for commercial properties in Warren Township for the last 25 years. Accordingly, all of the sales utilized by the Respondent were in other parts of the county, and not from Warren Township. Furthermore, buyers are not interested in a commercial property without a public water hookup, such as the subject property. And a site without public water available does not warrant an "average location rating." Thus,

the subject property should be assessed under the "495 classification" for properties located in a poor location rather than under the "493 classification" for properties located in an average location. *Milliken argument.*

26. The Respondent has not shown how the subject property or the Petitioners' comparable assessments were calculated. The Respondent was not able to indicate where the comparables' base rates were specifically listed on the pricing schedules. The pricing schedules merely show a range of commercial prices. The Respondent claims she used the midpoint of each range to assess the neighborhood properties. However, assessments are to be based on the sales of similar properties, rather than on averages of undocumented high and low sales in St. Joseph County. Furthermore, the Respondent failed to provide any of the properties that were used to develop the range of sale prices listed on her pricing schedules. Thus, there is no evidence of the market value for a property without water access in an undesirable commercial location. *Milliken argument (referencing Resp't Ex. 2, 3).*

27. Further, the city of South Bend is "giving away" properties to developers that are similar to the subject property. For example, South Bend sold a downtown parcel for one dollar to developers, and in another transaction the city "sold acres of prime downtown real estate" for $10,000. Even the City of Mishawaka "gave" a whole block away for $20,000. *Milliken argument.*

28. Under cross-examination, Mr. Milliken testified that he had inquired from a "couple of developers" about trading the subject property for a property in one of their developments. Mr. Milliken went on to state that while he sought a price above $32,000 for the subject property, he was only interested in an exchange of properties rather than list it on the open market. Nevertheless, none of the developers were interested in the Petitioners' proposal. Further, an asking price does not indicate market-based value nor does it indicate that the property is worth anywhere near $32,000. *Milliken testimony.*

29. Finally, the Petitioners argue that the parcel's size, as indicated on the property record card, is wrong and .0041 acres should be deducted. *Milliken argument; Pet'rs Ex. 1.*

RESPONDENT'S CONTENTIONS

30. The subject property's assessment increased between 2011 and 2012 because of the 2012 general reassessment. The 2011 assessment was based on sales from 1999, while the 2012 assessment was based on 2011 and 2012 sales. *St. Clair testimony.*

31. In fact, the subject property is actually assessed too low. The assessment should be increased to $18,000 for both years under appeal. The property is currently classified as multi-unit apartment buildings (Code 403). While the proper classification should be usable undeveloped (Code 493). According to pricing schedules developed by a local real estate appraiser, sales for comparable properties in the usable undeveloped classification ranged from $10,890 to $24,829 per acre.[2] *Agostino argument; St. Clair testimony; Resp't Ex. 1, 2, 3.*

32. The two neighboring properties offered by the Petitioners as purportedly comparable assessments are not assessed under the same classification as the subject property. The first property, Five S Corp, is assessed as a primary developed commercial site while the subject property is assessed as useable undeveloped. Five S Corp also benefits from an adjustment because it has less than one acre of land, while the subject property exceeds an acre. The second property presented by the Petitioners, RPM/CLM Family Enterprises LLC, is not comparable to the subject property, either. It is assessed as a residential vacant lot. *St. Clair argument (referencing Pet'rs Ex. 1, 2, 3).*

33. The fact that the subject property's assessment increased while neighboring properties decreased does not prove that the assessment is wrong. The Petitioners failed to offer

[2] The midpoint of the range of sales is $17,860. Apparently the Respondent rounded up to $18,000. Mr. Agostino argued that even after removing .0041 acres from the lot size, the assessment for both 2012 and 2013 should still be $18,000. *Agostino argument; Respondent Exhibit 2.*

probative evidence to prove the market value-in-use of the property. Furthermore, Mr. Milliken's testimony that he sought "at least $32,000 in value" to sell or trade the property supports a higher assessment. *Agostino argument; St. Clair argument.*

BURDEN OF PROOF

34. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

35. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

36. Second, Ind. Code section 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

37. Here, the parties agreed that the assessment increased by more than 5% from 2011 to 2012. Further, the Respondent went on to state that "the burden for the 2012 year lies with the Respondent." Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the burden rests with the Respondent for the 2012 assessment year. However, the determination as to which party has the burden for 2013 depends on the Board's determination for the 2012 appeal. Ind. Code § 6-1.1-15-17.2(b).

ANALYSIS

38. Real property is assessed for its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id*. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id*. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

39. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the assessment and valuation date were March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). And for 2013 assessments, the assessment and valuation date were March 1, 2013. *Id*.

40. The record in this matter applies to both 2012 and 2013. However, as discussed above, the determination as to who has the burden for 2013 depends on the outcome of the 2012

appeal. Thus, the Board will first examine the evidence as it relates exclusively to the 2012 assessment.

41. The current March 1, 2012, assessment is $13,200. At the hearing, the Respondent argued that the assessment should be increased to $18,000. The Respondent explained how she arrived at both figures. In short, a local certified appraiser provided the Respondent with pricing schedules for different classifications of property. Those schedules contained ranges for each classification and location. The prices went up in 2012 coinciding with the reassessment, which resulted in an increase in the subject property's 2012 assessment. The current $13,200 assessment results from choosing the approximate midpoint of the range of sales for multi-unit apartment properties. Now, the Respondent contends the correct assessment should be $18,000, which is based on the approximate midpoint of the range of sales for usable undeveloped property.

42. Thus, the Respondent's defense of the current assessment, and the assessment it now seeks, is based on following state regulations and guidelines, and the use of proper methodologies. However, the Respondent failed to provide any authority or substantial explanation for the conclusion that its mass appraisal pricing schedules and methodology establish that an individual assessment listed on those pricing schedules is correct. In fact, the guidelines and case law provide exactly the opposite. Indeed, the important question is not whether the Respondent followed certain guidelines and methodologies, but whether the resulting assessment is an accurate measure of a property's "true tax value." 50 IAC 2.4-1-1(c); *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax 2006). Just as it is not enough for a Petitioner to simply challenge the methodology used to compute the assessment, it is not enough for a Respondent to rely on methodology to defend an assessment. *Id.* Instead, the Respondent was required to rely on market-based evidence to prove that the assessed value reflects the property's market value-in-use, which she failed to do.

43. Furthermore, in regards to the "pricing schedule" utilized by the Respondent, the Respondent failed to show how this data is probative. The Respondent did not even

attempt to present the sales she considered comparable. For comparable sales to be probative, the sold properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long*, 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect the relative market values-in-use. *See id*. at 471. Here, the Respondent failed to provide any qualitative or quantitative analysis of any differences that existed between the subject property and her purportedly comparable properties. In fact, she didn't present any evidence for a meaningful comparison. Further, the Respondent failed to present any evidence as to how the "local real estate appraiser" who created the "pricing schedule" arrived at her value, nor any assurance that her method of valuation complies with generally accepted appraisal principles. Thus, her evidence lacked the type of analysis contemplated by *Long*. Therefore, the data presented lacks probative value.

44. The Respondent also attempted to argue that the Petitioners' desire to sell or trade the property for "at least $32,000" indicates the property is undervalued. This fact is of little value in determining the market value-in-use, because the property did not actually sell. Consequently, the Respondent failed to offer any market-based evidence of the property's value.

45. For these reasons the Respondent did not prove the 2012 assessment was correct. Nor did the Respondent prove an increase in the 2012 assessment. Thus, she failed to make a prima facie case that the 2012 assessment is correct. The Petitioners are entitled to have their assessment returned to its 2011 level of $9,800.[3] Ind. Code § 6-1.1-15-17.2. This

[3] The parties alluded to a .0041-acre section that may still be inaccurately included in the subject property's assessment. In examining the bottom-left corner of the subject property record card, it appears that this portion may have already been deducted. *See Pet'rs Ex. 1.* In any event, the Petitioners requested an assessment of $9,800, and they failed to adequately explain any further reduction.

ends the Boards inquiry as to the 2012 appeal because the Petitioners only requested the assessment be reduced to its 2011 level.

46. Because the Petitioners prevailed in their 2012 appeal, the Respondent also has the burden for the 2013 appeal. Thus, the same evidence is applied to the 2013 appeal as it was for the 2012 appeal. For the same reasons as discussed above, the final result is the same. The Petitioners are entitled to have their 2013 assessment reduced to $9,800 as well. Ind. Code § 6-1.1-15-17.2. Again, the Petitioners only requested the assessment be reduced to its 2011 level.

SUMMARY OF FINAL DETERMINATION

47. The Board finds for the Petitioners. The Board orders the subject property's 2012 and 2013 assessments be reduced to $9,800.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

_____
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>.