

REPRESENTATIVE FOR PETITIONER:

Derik A. Edwards, DuCharme, McMillen & Associates, Inc.

REPRESENTATIVE FOR RESPONDENT:

Heather Scheel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Nahum Enterprises LLC)	Petition Nos.: 48-003-14-1-3-00374-17
)	48-003-15-1-3-00373-17
Petitioner,)	48-003-16-1-3-01257-17
)	
)	Parcel No. 48-12-20-300-005.000-003
v.)	
)	County: Madison
)	
Madison County Assessor,)	Township: Anderson
)	
Respondent.)	Assessment Years: 2014, 2015 & 2016

Appeal from the Final Determination of the
Madison County Property Tax Assessment Board of Appeals

Issued: March 1, 2018

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

PROCEDURAL HISTORY

1. Nahum Enterprises LLC (“Petitioner”) initiated its 2014 appeal on December 29, 2014, its 2015 appeal on December 30, 2015, and its 2016 appeal on November 21, 2016. The Madison County Property Tax Assessment Board of Appeals (“PTABOA”) issued its Notifications of Final Assessment Determination for 2014 and 2015 on March 20, 2017. The PTABOA issued its Notification of Final Assessment Determination for 2016 on July 24, 2017. Petitioner then filed Form 131 petitions with the Board for 2014 and 2015 on April 5, 2017, and for 2016 on August 8, 2017.
2. On October 5, 2017, Dalene McMillen, the Board’s designated administrative law judge (“ALJ”), held a hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The property under appeal is a manufacturing warehouse facility located at 2812 East 38th Street in Anderson.
4. Derik Edwards of DuCharme, McMillen & Associates and Sara Coers of Pillar Valuation Group, Inc. were sworn and testified for Petitioner. Attorney Heather Scheel represented Respondent and Anthony Garrison of Nexus Group was sworn and testified for Respondent.
5. Petitioner offered the following exhibit:

Petitioner Exhibit 1 – Real Estate Appraisal Report prepared by Sara Coers of Pillar Valuation Group, Inc. dated September 27, 2017.
6. Respondent offered the following exhibits:

Respondent Exhibit 1A – Subject 2014 property record card (“PRC”),
Respondent Exhibit 1B – Subject 2015 PRC,
Respondent Exhibit 1C – Subject 2016 PRC,

- Respondent Exhibit 2 – Respondent’s sales comparison analysis,
- Respondent Exhibit 3 – Sales disclosure form and PRC for 55740 Currant Road in Mishawaka,
- Respondent Exhibit 4 – Sales disclosure form and PRC for 1299 East Essex Road in Vincennes,
- Respondent Exhibit 5 – Sales disclosure form and PRC for 1425 South Curry Pike in Bloomington,
- Respondent Exhibit 6 – U.S. Department of Labor Bureau of Labor Statistics Consumer Price Index for All Urban Consumers and Urban Wage Earners and Clerical Workers (“CPI”),
- Respondent Exhibit 7 – Respondent’s income approach,
- Respondent Exhibit 8 – Multiple listing sheet (“MLS”) for 2201 East Loew Road in Marion,
- Respondent Exhibit 9 – MLS for 1305 West 29th Street – Raceway Industrial Park – Plant 9 in Anderson,
- Respondent Exhibit 10 – CoStar listings for 5100 South Indianapolis Road in Whitestown and 12602 Global Drive in Fort Wayne,
- Respondent Exhibit 11 – MLS for 1827 North Bendix Drive in South Bend,
- Respondent Exhibit 12 – 3rd quarter 2015 and 2nd quarter 2016 RealtyRates.com Investor Survey cap rates and 1st quarter 2014 Indianapolis 1Q14 Industrial Market Report pages 1-6.

7. The following additional items are part of the record:

- Board Exhibit A – Form 131 petitions and attachments,
- Board Exhibit B – Hearing notices,
- Board Exhibit C – Hearing sign-in sheets.

8. The PTABOA determined the following values:

Year	Land	Improvements	Total
2014	\$463,500	\$2,950,000	\$3,413,500
2015	\$463,500	\$2,671,700	\$3,135,200
2016	\$463,500	\$2,695,800	\$3,159,300

9. Petitioner requested the following values:¹

Year	Total
2014	\$1,310,000
2015	\$1,350,000
2016	\$1,350,000

BURDEN OF PROOF

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. 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 tax 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 to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 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,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest

¹During Petitioner's closing statement, Mr. Edwards said “We are respectfully requesting the Board adjust the appealed assessed values to the trended sale price less the excess acreage associated with the four adjacent parcels” for values of \$1,310,000 for 2014, and \$1,350,000 for 2015 and 2016. Mr. Edwards also stated “In the event the Board finds the appraised value more persuasive, we respectfully request the value of \$1,600,000 to all appeal years.” \$1,600,000 is the value to which Ms. Coers concluded for each year using the sales comparison approach in her appraisal.

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).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The parties agreed that the assessment increased by more than 5% between 2013 and 2014 and that Respondent has the burden of proof for 2014. The burden with regard to 2015 and 2016 depends on the prior years’ resolutions and will be addressed in turn. To the extent Petitioner seeks an assessment below the previous year’s level for any of the years at issue, however, it bears the burden of proving those lower values.

SUMMARY OF RESPONDENT’S CONTENTIONS

15. Anthony Garrison of Nexus Group testified for Respondent. He is a certified Level III Assessor/Appraiser with a bachelor’s degree in accounting from Ball State University. In his general overview of the subject property, he indicated that it is graded at “D+2” which indicates below average construction. He explained that in or around 2012, the property was sold to a party who intended to rehabilitate the building to make it operational. That rehabilitation was subsequently completed on September 17, 2014. *Garrison testimony.*
16. Mr. Garrison testified that he knew the property under appeal along with four additional parcels recently sold. However, he said he did not give that purchase price any weight because the sale agreement was signed by a liquidator which is a condition that, according to Mr. Garrison, might sometimes raise questions with regard to such a transaction. *Garrison testimony.*
17. Mr. Garrison presented a sales comparison analysis that compares three purportedly similar properties from various counties to the subject property. To support each purported comparable property, Respondent presented sales disclosure forms and PRCs.

- Comparable #1 is located at 55740 Currant Road in Mishawaka. It is a 259,059 square foot average quality warehouse with an effective year built of 1980. It sold on April 23, 2012, for \$2,175,000. Mr. Garrison adjusted the sale price upward by 2% per year to March 1, 2014, for an adjusted sale price of \$2,262,000.
- Comparable #2 is located at 1299 East Essex Road in Vincennes. It is a 267,188 square foot average quality manufacturing facility with an effective year built of 1971. It sold on February 25, 2014, for \$1,350,000. The sale price included \$23,550 of personal property, so the amount attributable to the building is \$1,326,500.
- Comparable #3 is located at 1425 South Curry Pike in Bloomington. It is a 449,000 square foot average quality manufacturing facility with an effective year built of 1965. It sold on September 25, 2015, for \$3,200,000. The sale price included \$500,000 of personal property, so the amount attributable to the building is \$2,700,000. Mr. Garrison adjusted the sale price downward by 2% per year to March 1, 2014, for an adjusted sale price of \$2,596,000.

Garrison testimony; Resp't Exs. 2-5.

18. Next, Mr. Garrison purports to adjust the comparable sales for size, quality, land, and age. The final adjusted sale price for Comparable #1 was \$2,390,000, the final adjusted sale price for Comparable #2 was \$1,324,500, and the final comparable adjusted sale price for Comparable #3 was \$2,347,000. *Garrison testimony; Resp't Ex. 2.*
19. Mr. Garrison determined the overall indicated value of the subject property for 2014 to be \$2,375,000. For 2015, he applied a negative CPI of 0.86% to the 2014 indicated value to arrive at a rounded value \$2,355,000. For 2016, he applied a negative CPI of 0.11% to the 2015 indicated value to arrive at a rounded value of \$2,352,000. *Garrison testimony; Resp't Exs. 2 & 6.*
20. Mr. Garrison also developed an income approach based on five industrial warehouse leases from various counties. The building sizes range from 204,104 square feet to

340,000 square feet. In that approach, he applied a median rental rate of \$2.50 per square foot to the actual square footage of the subject property of 336,662 square feet. He applied a vacancy and collection rate of 35% which yielded an effective gross income of \$547,076. He then made an additional adjustment of 35% for expenses which resulted in a net operating income of \$355,599. After consulting RealtyRates.com Investor Survey, he finally applied a loaded capitalization rate of 12% which resulted in a value of \$2,963,000 for each year at issue. *Garrison testimony; Resp't Exs. 7-12.*

21. In reconciling his sales comparison approach and income approach, Mr. Garrison afforded more weight to the income approach. Consequently, he determined values of \$2,845,000, \$2,841,000, and \$2,840,000 for 2014, 2015, and 2016 respectively. *Garrison testimony; Resp't Ex. 7.*

SUMMARY OF PETITIONERS' CONTENTIONS

22. Petitioner engaged Sara Coers, the senior vice-president of Pillar Valuation Group, to appraise the property. Coers certified that she prepared her appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Coers is a certified general appraiser, MAI and a Level II Assessor/Appraiser. She has been an appraiser for approximately 14 years and, in the last five years, has completed between 100 and 125 market value-in-use appraisals. *Coers testimony; Pet'r Ex. 1.*
23. Coers identified the subject property as an approximately 336,000 square foot manufacturing warehouse situated on 59.087 acres.² The property was constructed in 1972 with additions in 1974 and 1985. She rated the property as fair to poor and indicated that, as of the dates of value, it suffered from deferred maintenance including roof leaks, over-grown landscaping, non-functioning sprinklers, HVAC and electrical issues, significant refuse accumulation, and raccoon infestation. *Coers testimony; Pet'r Ex. 1.*

² The 59.087 acres is spread over five parcels, however, only one parcel is under appeal. The excluded four land parcels total 26.726 acres, therefore the subject parcel is 32.361 acres.

24. Petitioner, an entity of S&S Steel, originally purchased the property from the City of Anderson in 2010. Dustin Looper of Resource Commercial Real Estate listed the property (including all five parcels) in 2016 for \$2,250,000. Looper entertained four offers ranging from \$1,500,000 to \$1,750,000. After considering all four offers, the property was eventually purchased in 2017 by Zhisu Anderson, LLC (“Zhisu”) for \$1,500,000 for the five parcels. Coers contends that the sale amounted to an arm’s length transaction because the parties were unrelated and both were acting in their best interests.³ *Coers testimony; Pet’r Ex. 1.*
25. Coers trended the \$1,500,000 purchase price to the 2014, 2015, and 2016 assessment dates. She determined the seller’s motivation to be \$250,000 for an adjusted 2017 sale price of \$1,750,000. Next, she considered changes in market survey overall rates and CPI rates for each year under appeal. Coers observed that prices were relatively flat during the assessment date periods. For 2014, she applied a trending factor of 1.0645 to the adjusted sale price of \$1,750,000, which indicates a 2014 trended sale price of \$1,640,000. For 2015 and 2016, she applied a trending factor of 1.0440 to the adjusted sale price of \$1,750,000 for each year, which resulted in a trended sale price of \$1,680,000 for each of those years. *Coers testimony; Pet’r Ex. 1.*
26. Coers used four comparable land sales to calculate the contributory land value of the four lots not under appeal. The four parcels ranged in size from 3.81 acres to 90 acres. The properties sold between March of 2013 and September of 2015. No adjustments were made to the comparable sale prices. The sale prices ranged from \$60,000 to \$3,285,000. The unit prices ranged from \$15,748 per acre to \$36,500 per acre. Coers stated the front contributory parcel of 14.812 acres had the best frontage and most utility based on its shape. Therefore, she applied \$16,000 per acre to that parcel for a value of \$236,992. For the remaining three contributory parcels which consist of 11.914 acres of parking, she applied \$8,000 per acre for a value of \$95,312. As a result, Coers determined that the

³ In response to questioning, Coers did acknowledged that Zhisu was aware that S&S Steel had at one point been in bankruptcy.

total contributory value of the land for the parcels not under appeal was approximately \$330,000 for each year. *Coers testimony; Pet'r Ex. 1.*

27. When the \$330,000 contributory land value for the four additional parcels is subtracted from the trended sale prices for each year, the 2014 adjusted sale price is \$1,310,000 and the 2015 and 2016 adjusted sales prices are \$1,350,000 each. As mentioned, these are the values Petitioner initially requested in its closing statement. *Coers testimony.*
28. With regard to the three traditional approaches to value, Coers believed the sales comparison approach was a better indicator of the property's value than the cost approach or income approach. Coers explained that the income approach was not considered because there was limited lease data and virtually no capitalization rate data to support such an approach. She further explained the cost approach was not developed because the subject property is older and the depreciated cost would not be considered by market participants. *Coers testimony; Pet'r Ex. 1.*
29. For her sales comparison approach, Coers considered eight industrial warehouses located primarily in northern Indiana markets. The comparable properties sold between April of 2011 and October of 2015. She adjusted the comparable sale prices for various conditions. *Coers testimony; Pet'r Ex. 1.*
30. For 2014, Coers used five of the eight comparable sales that sold between April of 2011 and May of 2014. The adjusted unit values ranged from \$5.40 per square foot to \$11.14 per square foot. For 2015, Coers used four of the eight comparable sales that sold from September of 2012 to March of 2015. The adjusted unit values ranged from \$5.30 per square foot to \$10.84 per square foot. For 2016, she used five of the eight comparable sales that sold from January of 2014 to October of 2015. The adjusted unit values ranged from \$5.21 per square foot to \$10.55 per square foot. For all three years under appeal, Coers determined the retrospective market value-in-use to be \$5.75 per square foot or \$1,930,000. Next, she subtracted the contributory land value of \$330,000. As a result, under the sales comparison approach, she determined the 2014, 2015, and 2016 values to be \$1,600,000 for each year. *Coers testimony; Pet'r Ex. 1.*

Analysis

31. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. 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). To show a property’s market value-in-use, a party 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. Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005) Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id; see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
32. Regardless of the method used to prove a property’s true tax value, 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. Dep’t of Local Gov’t Fin.*, 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). The valuation date for a 2014 assessment was March 1, 2014. The valuation date for a 2015 assessment was March 1, 2015. The valuation date for a 2016 assessment was January 1, 2016. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
33. As discussed, Respondent had the burden to prove the assessments were correct. In his analysis, Garrison developed the sales comparison approach and the income approach. While Garrison assigns the greatest weight to the income approach, the Board will examine both approaches.
34. To effectively use the sales comparison approach as evidence in a property tax appeal, 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 sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

35. On its face, Garrison’s analysis does not appear to differ significantly from one made by a certified appraiser in an appraisal report. However, while Garrison attempted to account for differences between the subject property and the purportedly comparable properties by making adjustments for certain items, the adjustments are problematic given the fact that he failed to adequately support them. He attempted to explain those differences to some extent, but his adjustments inappropriately mix elements of the 2011 Real Property Assessment Guideline’s cost approach and the sales comparison approach. Furthermore, a certified appraiser’s assertions are backed by his education, training, and experience, as well as certification that the analysis conforms to generally accepted appraisal principles and USPAP. Here, Garrison did not certify that he complied with USPAP in performing his analysis. Given the failure to adequately support his adjustments, the mixing of approaches, and the lack of USPAP certification, the Board finds his sales comparison approach is insufficiently reliable.
36. Garrison’s income approach similarly fails to comply with generally accepted appraisal principles. First, Garrison attempted to develop a market rent using properties from all over Indiana. However, because he failed to make any adjustment for location, size, or any other factor, it is unclear how those rent rates are relevant to the subject property. Similarly, Garrison failed to adequately explain his vacancy and collection loss, expenses, and capitalization rate. For example, Garrison included a 20% addition to the typical vacancy and collection adjustment of 15% without adequate explanation. In light of such considerations, the Board is unable to determine if Garrison’s calculations are representative of the market. For these reasons, the Board finds Garrison’s opinions unreliable.

37. In light of these conditions, the Board finds that Respondent failed to establish a prima facie case that the 2014 assessed value is correct. Because Respondent failed to meet the burden of proof, the 2014 assessment must be reduced to the previous year's level of \$2,356,400. That, however, does not end the Board's inquiry because Petitioner requested an additional reduction. As explained above, Petitioner has the burden of proving that it is entitled to any such additional reduction. The Board therefore turns to Petitioner's evidence.
38. Here, Petitioner argues that the property was over-valued based on a 2017 sale price. According to Coers, there was no evidence of an unusual relationship between the seller and buyer and there was no indication of inappropriate sales conditions. Moreover, Coers testified that she found the property was adequately marketed and the seller and buyer were knowledgeable participants.
39. Coers trended the subject property's 2017 sale price back to the relevant valuation dates. She also made an adjustment for the buyer's willingness to close prior to year-end in the amount of \$250,000, for an adjusted 2017 sale price of \$1,750,000. She considered changes in the market survey overall rates and CPI in developing her trending factors. She then applied those factors to the property's adjusted sales price. Last, she subtracted the land value of the additional parcels and valued the property at \$1,310,000 for the 2014 assessment year, and \$1,350,000 for the 2015 and 2016 assessment years.
40. In contrast, Coers also presented an opinion of value under a USPAP-compliant sales comparison approach. This analysis resulted in a value of \$1,600,000 for all three years after subtracting the value of the additional parcels. The question for the Board is whether the trended values or the sales-comparison approach is more persuasive.
41. The sale of a subject property is often the best evidence of the property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). Petitioner argued that

the subject property sold in a valid arm's length transaction and trended the sale price for the years at issue.

42. While Coers made a convincing case in both her appraisal and testimony as to why the sale as a whole constituted an arm's length transaction, she did, nonetheless, make an adjustment (characterized as "seller motivation") to account for the buyer's willingness to close prior to year's end. Under these circumstances, Coers' USPAP-compliant sales comparison approach provides the more persuasive evidence of the correct values for each year at issue. Thus, the Board finds that Petitioner presented a prima facie case that the property's market value-in-use was \$1,600,000 for 2014, 2015, and 2016.
43. Once a 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). To rebut or impeach a petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Respondent unsuccessfully sought to impeach Petitioner's sale price by implying that the subject property was sold under duress and was not an arm's length transaction. Her basis for this implication seems to be a result of the fact that the sales agreement surrounding the sale was signed by a liquidator which can sometimes raise questions with regard to a sale. However, conclusory statements, unsupported by factual evidence, are not sufficient to establish an error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Additionally, Respondent did not provide probative evidence that Petitioner's sales comparison analysis was in error. Consequently, Respondent failed to impeach Petitioner's case for a reduction for the years under appeal.⁴

⁴ Because Petitioner presented probative evidence for all three years, and Respondent failed to rebut them, the burden-shifting statute does not affect the outcome of this case.

SUMMARY OF FINAL DETERMINATION

44. Respondent failed to make a prima facie case that the 2014, 2015 and 2016 assessments were correct. Petitioner made a prima facie case for lower amounts for 2014, 2015 and 2016 and Respondent failed to adequately rebut those cases. Therefore, as discussed herein, the assessments for 2014, 2015, and 2016 must each be reduced to \$1,600,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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>>.