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

Petitions:	**03-009-13-1-4-00001**
	03-009-14-1-4-00372-17
	03-009-15-1-4-00151-15
	03-009-16-1-4-02126-16
Petitioner:	**Orville K. Fleetwood Asphalt, Inc.**
Respondent:	**Bartholomew County Assessor**
Parcel:	**03-05-26-220-001.000-009**
Assessment Years:	**2013, 2014, 2015 and 2016**

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

Procedural History

1. The Petitioner initiated its 2013 assessment appeal with the Bartholomew County Assessor on December 6, 2013.[1] On September 30, 2014, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on November 13, 2014.[2]

2. The Petitioner initiated its 2014 appeal on November 17, 2014. On March 28, 2017, the PTABOA issued its determination denying the Petitioner any relief. The Petitioner timely filed a Form 131 on April 6, 2017.

3. The Petitioner initiated its 2015 appeal on August 10, 2015. On September 4, 2015, the PTABOA issued its determination denying the Petitioner any relief. The Petitioner timely filed a Form 131 on September 28, 2015.

4. Finally, the Petitioner initiated its 2016 appeal on June 16, 2016. On November 18, 2016, the PTABOA issued its determination denying the Petitioner any relief. The Petitioner timely filed a Form 131 on December 5, 2016.

5. The Board issued notices of hearing on April 12, 2017.

6. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on May 16, 2017. She did not inspect the property.

[1] The record lacks any evidence to definitely establish when the Petitioner initiated its 2013 assessment appeal at the local level. The Board will assume the Petitioner initiated the 2013 appeal on the date the power of attorney was signed by Mr. Smith. *See Bd. Ex. A.* The issue was never raised by the Respondent, so the Board will not raise the issue *sua sponte.*

[2] The Petitioner elected the Board's small claims procedures for each year under appeal.

7. Tax Representative Milo Smith appeared for the Petitioner. County Representative Virginia Whipple appeared for the Respondent. Bartholomew County Assessor Lew Wilson was a witness for the Respondent. All of them were sworn.

Facts

8. The property under appeal is a warehouse located on US 31 in Columbus.

9. For 2013, the PTABOA determined a total assessment of $93,200 (land $70,400 and improvements $22,800).

10. For 2014, the PTABOA determined a total assessment of $90,500 (land $70,400 and improvements $20,100).

11. For 2015 and 2016, the PTABOA determined total assessments of $92,800 (land $70,400 and improvements $22,400) for each year.

12. For each year under appeal, the Petitioner agrees with the portion of the assessment associated with the improvements, but requests the land portion of the assessment be reduced to $24,600 for each year.

Record

13. The official record for this matter is made up of the following:

    a) Form 131s with attachments,

    b) A digital recording of the hearing,

    c) Exhibits:

Petitioner Exhibit 1:	2013 subject property record card,
Petitioner Exhibit 2:	2014 subject property record card,
Petitioner Exhibit 3:	2015 subject property record card,
Petitioner Exhibit 4:	2016 subject property record card,
Petitioner Exhibit 5:	Geographical Information System (GIS) aerial map,
Petitioner Exhibit 6:	Spreadsheet summarizing Petitioner Exhibit 5,
Petitioner Exhibit 7:	Email from Mr. Smith to Ms. Whipple dated May 4, 2017.
Respondent Exhibit A:[3]	Curricula Vitae for Lew Wilson and Virginia Whipple,
Respondent Exhibit B:	"Statement of Professionalism,"
Respondent Exhibit C:	Subject property record card,
Respondent Exhibit D:	Subject property record card,

[3] The Petitioner offered one set of exhibits applicable to all four years under appeal. The Respondent submitted the same exhibits for each year, but the content of Respondent's Exhibits C and D is specific to the year under appeal.

Respondent Exhibit E:	Aerial photograph of subject property,
Respondent Exhibit F:	"2013 comparison sorted by construction,"
Respondent Exhibit G:	Property record cards for the various properties listed in Respondent Exhibit F,
Respondent Exhibit H:	Sales disclosures for 2045 West Lewis Place and 8800 North US 31,
Respondent Exhibit I:	Photographs of the subject property,
Respondent Exhibit J:	Email from Mr. Smith to Ms. Whipple dated May 4, 2017.
Board Exhibit A:	Form 131s with attachments,
Board Exhibit B:	Notices of hearing dated April 12, 2017,
Board Exhibit C:	Notice of County Assessor Representation, Power of Attorney, and Application for Certification as a professional Appraiser for Virginia Whipple,
Board Exhibit D:	Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

14. Summary of the Petitioner's case:

a) The subject property's land assessment is excessive. The subject property's location is erroneously listed on the property record card, and for this reason the property is over assessed "based on location." The Property "is actually located on Random Court, which is adjacent to US 31, but it does not front US 31." *Smith argument; Pet'r Ex. 5.*

b) In an attempt to prove a more accurate value for the land, Mr. Smith examined sales and assessments of nearby properties. The first property, an unimproved lot once owned by the Petitioner, sold in 2011 for $10,000 and again in 2014 for $20,000. In 2013, this property was assessed at $10,500. According to his analysis, Mr. Smith valued this property at $20,000. *Smith testimony; Pet'r Ex. 5, 6.*

c) A second property, located at 2045 West Lewis Place was purchased by an "adjacent property owner" in 2011 for $109,900 in 2011. The property sold again in 2014 for $100,000. Originally, this property consisted of "mini-warehouses" but at "some point" the buildings were torn down. In 2013, this property had a total assessment of $103,000.[4] By utilizing the "abstraction methodology" and subtracting the improvement value from the sale price, Mr. Smith argues the "site value" should be $29,100. *Smith argument; Pet'r Ex. 5, 6.*

d) A third property, located at 8800 North US 31, was assessed in 2013 for $148,000.[5] This property sold on November 14, 2014, for $93,637. Because this property

[4] The land was assessed at $23,100 and the improvements were assessed at $79,900.
[5] The land was assessed at $76,000 and the improvements were assessed at $72,000.

"fronts" US 31 it is "more valuable." When the "abstraction method" is applied, the "site value" should equate to $21,637. *Smith argument; Pet'r Ex. 5, 6.*

e) By properly applying the "abstraction methodology" to the subject property, the land should be assessed at $24,600 for each year under appeal. *Smith argument (citing Appraisal of Real Estate, 13th Add.).*

15. Summary of the Respondent's case:

a) The subject property is currently under assessed. The total assessment should "revert back" to the 2012 value of $94,900. *Whipple argument; Resp't Ex. F.*

b) In an effort to prove the property is under assessed, the Respondent offered a "2013 comparison sorted by construction." According to this analysis, the average price per square foot of the properties in the immediate area was $25.39. The subject property is assessed at $22.84 per square foot. Granted, one property utilized in the analysis "faces US 31," but this fact should be immaterial because none of the properties are "high-end retail businesses that require a good view from, or access to, US 31." *Whipple argument; Resp't Ex. F.*

c) The Petitioner submitted flawed evidence because the sales disclosures are "suspect." Specifically, the West Lewis Place sale was not an arms-length transaction because it was not listed on "the open market." Instead, it was a "change of money" between two parties. The 8800 North US 31 sale was the result of a foreclosure. And the "vacant ground" sale is an "invalid comparison" because the subject property is an improved property. *Whipple argument (referencing Pet'r Ex. 5, 6); Resp't Ex. H.*

Burden of Proof

16. 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 amended by P.L. 97-2014 creates two exceptions to that rule.

17. 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).

18. 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." 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 was effective March 25, 2014, and has application to all appeals pending before the Board.

19. Here, the parties agree that the total assessed value of the subject property decreased from $94,900 in 2012 to $93,200 in 2013.[6] Further, the Petitioner failed to offer any argument that the burden should shift to the Respondent for the 2013 appeal. Thus, the Petitioner has the burden for the 2013 assessment year. The burden for each subsequent year will be determined by the results of the immediately preceding year's appeal.

Analysis

20. The Petitioner failed to make a prima facie case that the assessments should be reduced.

    a) Real property is assessed based on its 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

    b) Regardless of the method used, a party must explain how the evidence relates to 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 Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2013-2015 assessments, the valuation date was March 1 of each respective year. *See* Ind. Code § 6-1.1-4-4.5(f). For the 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.

    c) Here, the Petitioner offered evidence and arguments in an attempt to prove its land assessment was too high. More specifically, the Petitioner's representative, Mr.

[6] While the Petitioner argues the appeals at issue are for the land portion of the assessments only, neither party raised the argument that the burden-shifting statute should be applied only to the land assessment. On several occasions, the Board has addressed whether Ind. Code § 6-1.1-15-17.2, can be applied piecemeal to only land assessments or only improvement assessments, or whether that statute must be applied to the whole property. The Board has repeatedly held that the statute does not expressly contemplate piecemeal approaches, but was intended to apply to an entire "economic unit." *See Vern R. Grabbe v. Carroll Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. Nos. 08-002-10-1-1-00001, et al. (May 10, 2012); *Rebecca Budreau v. White Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. Nos. 91-020-08-1-5-00058, et al. (July 30, 2012); *Waterford Dev. Corp. v. Elkhart Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. Nos. 20-015-08-1-4-00241, et al. (September 25, 2012); *Mac's Convenience Stores, LLC v. Hamilton Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. No. 29-006-12-1-4-02050 (November 14, 2014).

Smith, offered argument and his own analysis attempting to prove the land assessment should be reduced to $24,600 for each year under appeal.

d) The overriding purpose of a real property assessment in Indiana is to determine the market value-in-use of the entire property. Indeed, the 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 by a similar user, from the property." MANUAL at 2. Further, "true tax value may be considered as the price that would induce the owner to sell the real property, and the price at which the buyer would purchase the real property for a continuation of the use of the property for its current use." *Id.* Here, the Petitioner's warehouse is situated on the land. Thus, while the Petitioner's assessment includes a separate value for the land, the land value alone is somewhat immaterial as the Petitioners could not sell only their land. Generally, the Board does not consider the land and improvements in a piecemeal manner when the property forms a single economic unit. *See Koziarz v. Marshall Co. Ass'r,* Ind. Bd. Tax Rev. Pet. No. 50-017-12-1-5-00012 et.al. (May 22, 2014) ("[W]hile 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.")

e) The Petitioner did not attempt to rebut the fact that the subject property forms a single economic unit. However, even if the Board were inclined to consider only the land value, the Petitioner failed to make a case for reducing the assessment. At least to some extent, the Petitioner appears to have relied on a sales-comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales-comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable properties that have sold in the market.") 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 do not constitute probative evidence of comparability of the two properties. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.*

f) It appears the purportedly comparable properties are similarly located, but there is little, if any, evidence on the record regarding other factors of comparability. Whether the properties are similar enough to be considered "comparable" depends on a number of factors including the size, shape, topography, accessibility and use of the properties. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972) ("[O]ne need only examine the multitudinous factors which make separate tracts of land similar or dissimilar to realize that the variation in the character of land is limitless. No two tracts of land are identical.") Moreover, there is insufficient evidence on record regarding the facts surrounding the sales of these purportedly comparable properties. In fact, when questioned if the 2045 West Lewis Place sale was an "arm's-length

transaction" and properly listed "on the open market," Mr. Smith responded by stating the "owner of the property right next door" purchased it. Consequently, the Board cannot determine if this was in fact a valid sales transaction.

g) Further, the Board finds little probative value in the Petitioner's final value conclusion. The Petitioner submitted sales information for three properties. Two of the properties include improvements, while the other property is "unimproved." For the two "improved" properties, the Petitioner used the assessed values of the improvements and subtracted the improvement value from the sales price to arrive at the purported market value of the land only. This calculation resulted in "site values" of $29,100 and $21,637, respectively. The Petitioner did not make any adjustments to the "unimproved" parcel sale price of $20,000. The Petitioner proceeded to calculate a mean of $21,637 and an average of $23,579. Yet, the Petitioner requested a land assessment of $24,600 for all four years under appeal. This requested value is conclusory. Thus, even if the Board considered a piecemeal approach to valuing the property, the Petitioner's evidence does not convince us what a more accurate value would be.

h) Consequently, the Petitioner failed to make a prima facie case that the 2013 assessment is incorrect. For each subsequent year at issue, the burden remained with the Petitioner. And for the same reasons as noted above, the Petitioner failed to make a case that any of the subsequent years assessments are incorrect.

i) Generally, where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003). Nevertheless, the Respondent requested the Board to increase the assessments back to the 2012 level of $94,900. To the extent the Respondent seeks an increase, the Respondent has the burden of proving that value. To that end, the Respondent offered an analysis entitled "2013 comparison sorted by construction."

j) In presenting this analysis, the Respondent essentially relies on an assessment comparison. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district boundary. Ind. Code §6-1.1-15-18(c)(1).

k) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must establish the comparability of 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 value-in-use. *Id.* Here,

the Respondent failed to provide any of the required analysis. Thus, the Respondent's evidence lacks probative value.

l) Consequently, the Respondent failed to make a prima facie case for increasing assessments.

Conclusion

21. The Petitioner failed to make a prima facie case for reducing the assessments. Likewise, the Respondent failed to make a prima facie case for increasing the assessments. The current assessments will not be changed.

Final Determination

In accordance with these findings and conclusions, the 2013, 2014, 2015 and 2016 assessments will not be changed.

ISSUED: August 14, 2017

_____
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 of 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>.