REPRESENTATIVE FOR PETITIONER:
Michael L. White, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Beth H. Henkel, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Pyramid Properties, Inc.,	)	Petition Nos.: 20-015-12-1-4-00169
	)	20-015-13-1-4-00694-16
Petitioner,	)	20-015-14-1-4-00692-16
	)	
	)	Parcel No.: 20-11-23-126-021.000-015
v.	)	
	)	Elkhart County
	)	
Elkhart County Assessor,	)	Elkhart Township
	)	
Respondent.	)	2012, 2013, and 2014 Assessment Years

Appeals from the Final Determinations of the
Elkhart County Property Tax Assessment Board of Appeals

September 19, 2016

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

ISSUE

1. Should the subject property's 2012, 2013, and 2014 assessments be reduced?

PROCEDURAL HISTORY

2. The Petitioner initiated 2012, 2013, and 2014 assessment appeals by filing Form 130 petitions with the Elkhart County Assessor.

3. The Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued separate determinations denying all three petitions.

4. The Petitioners then timely filed Form 131 petitions for 2012, 2013, and 2014 with the Board.

5. On June 22, 2016, the Board's administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on the petitions.[1] Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Tax representative Michael L. White and property owner Tony Macri appeared as witnesses for the Petitioner. Elkhart County Assessor Cathy Searcy was present, although she did not testify. All were sworn.

7. The Petitioner offered the following exhibits:

Petitioner Exhibit 1:	Letter and invoice addressed to Mr. Tony Macri, dated September 17, 2012,
Petitioner Exhibit 2:	Seventeen (17) pages from the 2011 Real Property Assessment Guideline; three (3) pages from *Marshall & Swift Valuation Services* (March 2014 ed.), sec. 64, pages 4-6,
Petitioner Exhibit 3:	Property record cards and photographs for the subject property and seven (7) other properties.

[1] The three petitions were scheduled for a single hearing. On its 2012 petition, the Petitioner elected the Board's small claims procedures. On its 2013 and 2014 petitions, the Petitioner elected to opt out of small claims in favor of the more formal standard procedures. *See generally* 52 IAC 2; 52 IAC 3. Both parties agreed that the procedural differences would not be relevant in this matter, and elected to proceed with a consolidated hearing held under the standard procedures.

8. The Respondent did not offer any exhibits.

9. 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 April 8, 2016,
Board Exhibit C:	Hearing sign-in sheets.

10. The subject property is a commercial car wash located at 1813 Lincolnway East in Goshen.

11. The PTABOA determined the following assessments:

<u>For 2012</u>		
Land: $86,500	Improvements: $160,000	Total: $246,500
<u>For 2013</u>		
Land: $86,500	Improvements: $169,400	Total: $255,900
<u>For 2014</u>		
Land: $86,500	Improvements: $174,100	Total: $260,600

PETITIONER'S CONTENTIONS

12. The petitioner contends the subject property's assessment is incorrect because the "grade" is too high. In 2012, the property contained one building. Another building was added in 2013. It was assessed in 2013 and 2014. While the Petitioner does not disagree with assessing the buildings using the GCM Car Wash model, it argues the grade should be lowered to "C."[2] *White argument; Pet'r Ex. 2.*

13. The original building, which was built in 2002, cost only $100,500 to build. It is an aluminum building with single-pane glass on a concrete slab. A plastic-like material was used for the roof and the bottom. There is no air conditioning, and only radiant-tube heating. There are no restroom facilities or electrical outlets. Mr. Macri called the

[2] For 2012, the current grade is "A+1" (180% factor) for the one building. For 2013 and 2014, both buildings were given a grade of "B+2" (140% factor). *White testimony; Pet'r Ex. 3.*

building an "erector set" because it can be put up or taken down in three days. He also posited that the building could be considered personal property for this reason. *White, Macri testimony; Pet'r Exs. 1, 3.*

14. The building added in 2013 is a "block building." There is no insulation, and there is only radiant heating that carries from the original building. It has wood trusses with a metal roof. *Macri testimony.*

15. The Petitioner paid $225,000 for the land, but was "willing to pay a little more money" because the Petitioner bought it from future business partners who were going to provide customers. *Macri testimony.*

16. The subject's grade also appears too high when compared to other properties. The Petitioner specifically pointed to several other car washes in the area, some with larger concrete block buildings, that all have a "C" grade. *White argument and testimony; Pet'r Ex. 3.*

17. Finally, while the Petitioner's grade and resulting assessment requests listed above do not change the buildings' life expectancies, they require different depreciation schedules, which would result in the following values:

<u>For 2012</u>		
Land: $86,500	Improvements: $80,000	Total: $166,500
<u>For 2013</u>		
Land: $86,500	Improvements: $112,000	Total: $198,500
<u>For 2014</u>		
Land: $86,500	Improvements: $115,100	Total: $201,600

White testimony; Pet'r Ex. 3.

RESPONDENT'S CONTENTIONS

18. The Petitioner's case is based on the application of the Guidelines, the cost of the land, and the cost of construction. The Petitioner offered nothing regarding the actual market

value-in-use of the property. Failure to comply with the Guidelines does not in itself show that the assessment is not a reasonable measure of true tax value. *Henkel argument* (citing *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006)).

19. While a party may apply an assessment comparison approach, doing so requires an analysis similar to an assessment ratio study. *Henkel argument.*

BURDEN OF PROOF

20. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). Here, the parties agreed that the assessment decreased from $256,200 in 2011 to $246,500 in 2012. Therefore, for 2012, the burden rests with the Petitioner. We address the later years after our analysis of 2012.

ANALYSIS

21. Real property[3] is assessed based on 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

[3] The Petitioner's witness made one comment that the improvements could be considered personal property because of the construction type. The Petitioner provided no support for this argument, nor does it appear the Petitioner included the improvements on a personal property return. Thus, we treat the improvements as real property.

approach, the sales comparison approach, 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 or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

22. 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). The valuation date for each assessment year was March 1 of that year.

23. We begin with the 2012 assessment year. As stated above, the Petitioner had the burden of proving that the assessment is incorrect. To that end, it offered evidence that it believes shows that the building's grade is too high.

24. Nevertheless, as the Respondent correctly argues, the Petitioner's evidence and argument failed to show that the assessment does not accurately reflect the property's market value-in-use. A party fails to sufficiently rebut the presumption that the assessment is correct by simply contesting the methodology used to compute the assessment. *See Eckerling*, 841 N.E.2d at 678. In arguing that the grade is incorrect, that is precisely what the Petitioner is doing.

25. The Petitioner also offered its cost to purchase the land and construct the original building. In particular, the Petitioner offered evidence that it paid $100,500 to construct the building in 2002. The Petitioner made no attempt to relate these costs to the the March 1, 2012 valuation date. Thus, those costs do not constitute probative evidence of the market value-in-use as of March 1, 2012.

26. Finally, the Petitioner compared its assessment to the assessments of other properties. While a party may offer evidence of comparable assessments to prove the market value-in-use of the property under appeal, the determination of comparability must be made "using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18(c). Thus, the party must explain how relevant characteristics of the other properties compare to those of the property under appeal and how any relevant differences affect values. *See Long*, 821 N.E.2d at 466, 471; *see also Indianapolis Racquet Club, Inc. v. Marion County Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).

27. Aside from demonstrating that the other properties are also car washes, the Petitioner did little to show the properties are comparable nor did it attempt to show how any relevant differences affected values. Again, it instead focused solely on comparing the grades of the properties. Under those circumstances, the Petitioner's comparative assessment evidence does not make a prima facie case for reducing the assessment.[4] For these reasons, the Petitioner failed to make a prima facie case for reducing the 2012 assessment. Thus, we order no change in the assessment.

28. In 2013, the assessment increased from $246,500 to $255,900, an increase of only 3.8%. There is also evidence in the record that the Petitioner added an additional building. Consequently, for the 2013 appeal, the burden again rests with the Petitioner to prove the assessment is incorrect. Besides the testimony about the additional building, the Petitioner submitted the same evidence as for 2012. For the same reasons we find that the Petitioner failed to make a prima facie case. Because the Petitioner failed to prove a reduction in the 2013 assessment is warranted, it will not be changed.

29. In 2014, the assessment increased from $255,900 to $260,600, only 1.8%. Again, the burden rests with the Petitioner. It relied on the same evidence, and for the same reasons, we find it failed to make a prima facie case of error in the 2014 assessment, and order no change.

[4] To the extent the Petitioner may have argued that its assessment violated the "uniform and equal" provisions of the Indiana Constitution, we note that it did not present the sort of statistical evidence required to receive an equalization adjustment. *See Thorsness v. Porter County Assessor*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014).

SUMMARY OF FINAL DETERMINATION

30. The Board finds for the Respondent for 2012, 2013, and 2014. The assessments will not be changed.

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 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>.