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

Petition No.: **03-005-15-1-3-00097-16**
Petitioner: **Russell Properties, LLC**
Respondent: **Bartholomew County Assessor**
Parcel No.: **03-95-02-310-000.500-005**
Assessment Years: **2015**

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 2015 assessment appeal with the Bartholomew County Assessor on August 10, 2015.

2. On November 25, 2015, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board electing the Board's small claims procedures.

4. On August 10, 2018, the Board's Administrative Law Judge (ALJ) Patti Kindler held an administrative hearing. She did not inspect the property.

5. Certified tax representative Milo Smith appeared for the Petitioner. Bartholomew County Assessor Lew Wilson appeared for the Respondent. Local government representative Virginia Whipple and certified appraiser York Pollert were witnesses for the Respondent. All of them were sworn.

Facts

6. The property under appeal is an industrial building located at 4775 Progress Drive in Columbus.[1]

7. The PTABOA determined the total 2015 assessment is $754,200 (land $217,500 and improvements $536,700).

[1] While the subject property is situated on two parcels, the total assessment is listed on property record card 03-95-02-310-000.500-005. The parcel listed as 03-95-02-340-001.200-005 has a total assessment of $0.

8. At the hearing, the Petitioner requested the 2015 assessment remain the same.

Record

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

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioner Exhibit 1:	Email correspondence dated August 9, 2018, between Mr. Smith and Terry Coriden,
Petitioner Exhibit 2:	2016 subject property record card,
Petitioner Exhibit 3:	Photograph of the subject property,
Petitioner Exhibit 4:	Aerial plat map of the property attached to a July 5, 2016, e-mail from Jeff Lucas to Mr. Smith,
Petitioner Exhibit 5:	2011 Real Property Assessment Manual page 3,
Petitioner Exhibit 6:	2011 Real Property Assessment Manual page 15,
Petitioner Exhibit 7:	Summary of the appraiser's four comparable sales along with property record cards,
Petitioner Exhibit 8:	Summary of four comparable sales selected by the Petitioner along with property record cards,
Petitioner Exhibit 9:	*Karen A. Love and Terrence E. Kiwala v. Porter Co. Ass'r,* Pet. No. 64-025-07-1-5-00008 (Ind. Bd. Tax Rev. Sept. 14, 2011),
Petitioner Exhibit 10:	*L&R Enterprises, LLC v. Hancock Co. Ass'r*, Pet. Nos. 30-009-15-1-4-012612-16, et. seq. (Ind. Bd. Tax Rev. July 2, 2018),
Petitioner Exhibit 11:	*Lee and Sally Peters v. Lisa Garoffolo, Boone Co. Ass'r, and the Ind. Bd. of Tax Rev.*, Cause No. 49T10-1207-TA-42 (Ind. Tax Ct. 2015),
Petitioner Exhibit 12:	Geographic Information System (GIS) color-coded map for two neighboring parcels along with property record cards,
Petitioner Exhibit 13:	GIS color-coded map for two adjoining parcels along with property record cards,
Petitioner Exhibit 14:	GIS color-coded zoning map for Progress Park,
Petitioner Exhibit 15:	Indiana Code § 6-1.1-13-6.
Respondent Exhibit A:	Curricula Vitae for Virginia Whipple, Lew Wilson, and York Pollert,
Respondent Exhibit B:	"Statement of Professionalism,"
Respondent Exhibit C:	2014 subject property record card,
Respondent Exhibit D:	2015 subject property record card,

Respondent Exhibit E:	2015 property record card for parcel 03-95-02-340-001.200-005,
Respondent Exhibit F:	Aerial map of the subject property,
Respondent Exhibit G:	Certified appraisal report of the subject property prepared by Mr. Pollert, MAI, with an effective date of March 1, 2015.

c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Respondent's Motion to Compel, Petitioner's Request to Withdraw the Petition, and Respondent's Subsequent Objection

10. On July 16, 2018, the Respondent sent an e-mail to the Board along with a Motion to Compel, arguing Mr. Smith "has refused the appraiser entrance to the property to perform an appraisal for the appeal." The Respondent requested the Board compel the Petitioner to allow the appraiser timely access for purposes of inspection. On July 18, 2018, the Board sent an Order compelling the Petitioner to allow the Respondent's appraiser access to the property within five days of the Board's Order.

11. On July 24, 2018, Mr. Smith sent a facsimile to the Board attempting to withdraw the appeal. In response, the Respondent sent an email to the Board that same day contesting the withdrawal. In his response, the Respondent stated the county had already hired an appraiser and scheduled an inspection of the subject property prior to the Petitioner's request to withdraw. The Respondent opined that appraisers "may quit wanting to do business" with the Respondent because of their "lost time." On July 25, 2018, the Board sent an email to both parties advising them the Board would allow ten days to file formal objections and responses to the withdrawal request.

12. On July 26, 2018, the Respondent filed a Formal Objection via e-mail objecting to the withdrawal of the appeal. In his motion, he argued the Petitioner had three years to withdraw the appeal and only withdrew when he became aware that the Respondent ordered an appraisal that could potentially increase the value of the property. On July 30, 2018, Mr. Smith sent the Board an e-mail arguing that the appeal should be withdrawn. Mr. Smith stated that after reviewing the appeal, he agreed with the current assessment. Mr. Smith also argued that if the Respondent had evidence that the property's value should be higher than its current assessment that information should be provided to the Board "as soon as possible." On August 1, 2018, the Board sent the parties an Order Denying Withdrawal of Petition. According to the Board's Order, the Respondent provided sufficient information for the Board to infer that substantial expense and effort by the Assessor had been expended in preparation of the hearing on this appeal and therefore the Petitioner's request to withdraw is denied.

13. At the hearing, Mr. Smith stated he sought the advice of legal counsel from Terry Coriden in regard to his withdraw petition. Mr. Smith presented an email outlining Mr. Coriden's "thoughts" on the matter. Mr. Coriden was not present at the hearing and his "thoughts" failed to offer any legislative precedent or legal authority supporting Mr. Smith's position. Without more, the e-mail from Mr. Coriden fails to prove the Board's refusal to allow Mr. Smith to withdraw the petition is improper. *Smith testimony; Pet'r Ex. 1.*

14. The Board considered a similar request in *Props v. Hamilton Co. Ass'r,* Pet. Nos. 29-003-09-1-5-00088, et. seq. (Ind. Bd. Tax Rev. March 3, 2014) finding guidance from *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs,* 684 N.E.2d 1189 (Ind. Tax Ct. 1997). In that case the taxpayer sought to withdraw the appeal after learning that the State Board intended to raise the assessment. *Joyce Sportswear Co.,* 684 N.E.2d at 1190. At the time of the appeal, the State Board of Tax Commissioners had the "plenary authority to reassess the property at a value higher than the one appealed by correcting errors in the original assessment." *Id.* at 1194. The Tax Court found that a counterclaim was "analogous to the State Board's statutory right to assess the property." *Id.* at 1195. It noted that "[h]ad the petition been dismissed, the State Board would have suffered legal prejudice, i.e., the inability to arrive at the correct assessment," because the statute of limitations had expired for the State Board to act sua sponte. *Id.* It held that "if the State Board [could] demonstrate either substantial expenses or legal prejudice, the taxpayer's petition to withdraw [would be] properly denied" as inappropriate under a Trial Rule 41(A) voluntary withdrawal. *Id.* at 1193. In *Props,* the Board found that a taxpayer's last-minute request to withdraw should be granted over the assessor's objection because the assessor did not seek to raise the assessment and did not present evidence of substantial expense.

15. Here, the Respondent is seeking to raise the assessment and a substantial expense has been incurred. According to the Respondent's Formal Objection, the Respondent argued his appraiser and vendor have "spent time, which equates to dollars, processing this appeal and trying to complete the appraisal tasks." He also argued that "the Petitioner has had three years to withdraw the appeal and is only doing so now because he knows an appraisal has a good potential to increase the value of the property." Here, the Board finds the Respondent has made a showing of prejudice and a voluntary withdrawal would be inappropriate. Accordingly, the Respondent's objection to the Petitioner's withdrawal is sustained and the Board will issue its final determination based upon the merits of the case.

Summary of the Parties' Contentions

16. The Petitioner's case:

    a. The Petitioner initiated this appeal because the assessment increased from $652,000 in 2014 to $754,200 in 2015. *Smith argument; Pet'r Ex. 2.*

b. The subject property is encumbered by a "legal drain" that encompasses "at least" .805 acres. According to a Bartholomew County GIS map the "legal drain" encompasses 1.4 acres, more than half the size of the lot. Under Indiana law a legal ditch cannot be assessed. According to the appraisal presented by the Respondent, Mr. Pollert did not account for the legal ditch and valued the entire 2.71-acre parcel as if it were all usable.[2] *Smith testimony (referencing Resp't Ex. G); Pet'r Ex. 2, 3, 4.*

c. The Indiana Tax Court has previously held that when an assessor assesses land and improvements pursuant to the Guidelines, the assessment is presumed to be accurate. The Petitioner appealed an assessment that the Assessor thought was correct and after consideration, the Petitioner agrees the current assessment is correct. There is no requirement in the law that an appraisal be presented either to support or to rebut an assessment. Instead the validity of the assessment shall be evaluated on the basis of all relevant evidence presented. The plain language of the Manual says that the "assessment is supposed to be based on the property's true tax value." *Smith testimony; Pet'r Ex. 5, 6, 11.*

d. The Petitioner offered a "summary sheet" of the four purportedly comparable properties utilized in the Respondent's appraisal. According to Mr. Smith, these properties "are not even comparable when you look at how they are assessed." For example, the first purportedly comparable property is assessed at $40 per square foot but sold for $49 per square foot. The second purportedly comparable property is assessed at $56 per square foot and it sold for $56 per square foot. The third purportedly comparable property is assessed at $55 per square foot and it sold for $54 per square foot. The fourth purportedly comparable property is assessed at $34 a square foot but it sold for $50 per square foot. Accordingly, these properties are not assessed in a uniform manner. The subject property is currently assessed at $35 per square foot. The Respondent's appraisal erroneously values the subject property at $54 per square foot. *Smith testimony; Pet'r Ex. 7.*

e. Recent sales in the neighborhood indicate the subject property's assessment is not uniform with other assessments. The purported comparable sales include:

- 4840 Progress Drive sold on February 26, 2016, for $43 per square foot. This property is currently assessed at $39 per square foot. The assessment falls within 90% of its sale price.

- 4850 Progress Drive sold on August 20, 2015, for $68 per square foot. The property is currently assessed at $58 per square foot. The assessment falls within 85% of its sale price.

[2] The land devoted to the "legal ditch" was not shown on the subject property record card until 2016 and was then assessed at $0. *Pet'r Ex. 2.*

- 4567 Progress Drive sold on May 20, 2014, for $44 per square foot. This property is assessed at $46 per square foot, falling within 104% of its sale price.

- 4615 Progress Drive sold on November 20, 2013, for $26 per square foot. The current assessment is $26 per square foot, falling within 101% of its sale price.

These sales indicate the neighborhood assessments are currently not uniform and will be even "less uniform" if the assessment is raised to the value indicated in the Respondent's appraisal. *Smith testimony (referencing Resp't Ex. G); Pet'r Ex. 8, 14.*

f. The Respondent has assessed commercial properties and industrial properties that are zoned the same in a different manner. The land base rate is substantially higher for commercial properties than it is for industrial properties even when they are located adjacent to each other and are zoned the same. For example, two properties that are located in the same neighborhood and zoned the same, Indiana Western Express and Southeastern Indiana Medical, are assessed with different base rates. The industrial land owned by Indiana Western Express is assessed at $2 per square foot while the commercial land owned by Southeastern Indiana Medical is assessed at $7.25 per square foot. Another example are the Marion Day and Coutar Remainder properties. These properties are zoned the same, but Coutar Remainder's commercial land is assessed at $304,900 per acre while Marion Day's industrial land is assessed at $43,600 per acre. *Smith testimony; Pet'r Ex. 12, 13.*

g. If the subject property's assessment is increased by "almost 50% in value" then it is not being "treated as all other industrial assessments." Therefore the Petitioner's assessment would not be uniform and equal. For that reason, the appraisal, no matter how qualified the appraiser is, should "not be accepted" because of the "difference in how industrial properties are assessed in comparison to commercial properties." *Smith testimony (referencing Resp't Ex. G).*

h. Finally, the Petitioner argued prior Board decisions support its position. For example, the Board has previously held that "a ratio study indicates when given properties are assessed above a common level, the property owner is entitled to an equalization adjustment." The Board can "determine what an equalization adjustment should be" and accordingly should leave the 2015 assessment as it is. There is no evidence that the Respondent's cost approach approved by the Department of Local Government Finance (DLGF) as uniform and equal was performed in error. *Smith testimony; Pet'r Ex. 9, 10.*

17. The Respondent's case:

a. The subject property is currently under assessed. In an effort to support this argument, the Respondent offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by certified general appraiser York Pollert. Mr. Pollert performed a retroactive appraisal valuing the property as of March 1, 2015, for $1,150,000. The 2015 assessment should be increased to this amount. *Whipple argument; Pollert testimony; Resp't Ex. G.*

b. In valuing the subject property, Mr. Pollert relied on the sales comparison approach to value and the income approach to value. He did not develop the cost approach because "the buyer" would either be "an investor" or an "owner/occupant looking at other sales of properties." The cost approach with its "lack of data" in estimating the cost, depreciation and land value would not have added "credibility" to the appraisal. *Whipple argument; Pollert testimony; Resp't Ex. G.*

c. In developing his sales comparison approach, Mr. Pollert found four "truly comparable" sales of industrial properties located in Bartholomew County. The comparable properties sold between April 2013 and June 2015. Although the June 2015 sale is after the appraisal's effective date, it "certainly would have been a pending sale as of the effective date of value." Mr. Pollert determined the unadjusted range of comparable sales to be $48.61 per square foot to $56.00 per square foot. He made "minimal" adjustments based on "common sense and experience" to the comparable sales to account for differences in location, gross building area, age, condition, land-to-building ratio, and visibility. After the adjustments were calculated, the resulting sales ranged from $54.81 per square foot to $54.55 per square foot. Mr. Pollert reconciled a value of $54.00 per square foot for the subject property and arrived at a final value of $1,150,000.[3] *Pollert testimony; Resp't Ex. G.*

d. Mr. Pollert performed a market rent analysis in developing his income approach. Although requested lease information for the subject property was not provided, Mr. Pollert was able to find several comparable leases, three in the subject property's industrial park and one from a property located in Greenwood. While it was appropriate for the property, the market rent came in at $6 per square foot and is "actually well below the market, or well below the average and median of our adjusted comparable leases." A 10% vacancy allowance that was derived from the local market was applied. The capitalization rate analysis included several sales of other industrial leased properties in central Indiana. Mr. Pollert also examined investor surveys and a band-of-investment analysis to develop a "reasonable" 8.5%

[3] Mr. Pollert noted there was a 396 square foot upper level office area that he did not see listed on the subject property record card, but included this in his appraisal report. The Petitioner argued this area was priced as a mezzanine on the property record card. Regardless of whether the finished upper area was included on the property record card or not, Mr. Pollert explained that it "did not affect the appraisal." *Pollert testimony; Resp't Ex. D, G.*

capitalization rate for the property. This approach yielded a final value of $1,130,000. *Pollert testimony; Resp't Ex. G.*

e. While the leases Mr. Pollert examined were "all credible" and he was familiar with typical expenses, Mr. Pollert concluded that the sales comparison approach was more credible and the best indication of value for the subject property. *Pollert testimony; Resp't Ex. G.*

f. Under cross examination, Mr. Pollert stated the drainage ditch has little impact on the property's site value.[4] Mr. Pollert went on to opine that it is typical for industrial sites to have similar types of easements that preclude partial development. While the size of the site does impact its value, Mr. Pollert testified most appraisers are not "looking at land value necessarily." Instead, most appraisers look at the market value-in-use of the property as a whole. Nevertheless, Mr. Pollert adjusted the comparable sales' land sizes by comparing their land-to-building ratios rather than square footage. Mr. Pollert also testified that he did not make adjustments to account for differences in the type of construction because the market does not warrant them. *Pollert testimony; Resp't Ex. G.*

g. The Petitioner's evidence is flawed. The Petitioner presented 2018 assessment data and failed to relate that data to the relevant valuation date. The Petitioner is "blowing smoke and mirrors" in attempting to make a uniformity claim. The county's ratio studies have been approved by the DLGF for "at least the past four years." The Petitioner's case "has nothing to do" with rebutting the appraisal prepared by Mr. Pollert. *Whipple argument (referencing Pet'r Ex. 5, 6, 12, 13, 15).*

Burden of Proof

18. 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.

19. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

[4] The Petitioner's GIS map indicates the "drain is being used by the taxpayer." The maps indicate paving and lined parking is situated in the legal drain right-of-way. *Pet'r Ex. 12, 13, 14.*

20. 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 for 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.

21. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2014 to 2015. In fact, the total assessment increased from $652,000 in 2014 to $754,200 in 2015. The Petitioner argued the burden should shift to the Respondent and the Respondent did not object. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove that the 2015 assessment is correct.

Analysis

22. The Respondent made a prima facie case for increasing the assessment.

    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 type of evidence offered, a party must explain how that evidence relates to the 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). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).

    c. The burden was on the Respondent to prove the current assessment is correct. The Respondent's burden in seeking an increase in the assessment is to prove both the current assessment is incorrect, and what the correct assessment should be. *Meridian Towers,* 805 N.E.2d 475, 478. In an effort to support increasing the assessment, the Respondent offered a USPAP compliant appraisal report performed by Mr. Pollert an Indiana Certified General appraiser. In developing his final opinion of value, Mr. Pollert utilized both the sales comparison approach and the income capitalization

approach. Mr. Pollert determined the subject property's market value-in-use to be $1,150,000 as of March 1, 2015. Generally, an appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers,* 805 N.E.2d at 479.

d. In an effort to discredit the appraisal, the Petitioner argued the appraisal is flawed because Mr. Pollert failed to deduct "at least .805-acres encumbered by a legal ditch." In response, Mr. Pollert testified he relied on a land-to-building ratio in determining the value of the land in his sales comparison approach. Mr. Pollert also testified it is "typical for industrial sites to have easements" which limit the full utility of their sites. Furthermore he stated adjustments were made to his comparable sales to account for the subject property's smaller land-to-building ratio.

e. The Petitioner also questioned why Mr. Pollert failed to make any adjustments to account for the differences in the gauge of metal, steel, or the quality of construction in his purportedly comparable sales. Mr. Pollert testified that "it does not make a major difference in terms of value" if the comparable sales are "light buildings" or steel construction when developing the sales comparison approach. The Petitioner failed to offer any evidence to rebut Mr. Pollert's testimony. Thus, he failed to discredit Mr. Pollert's USPAP compliant appraisal.

f. In sum, although there are a few minor questions regarding Mr. Pollert's appraisal, it is probative of the subject property's true tax value. Therefore, the Respondent met its burden of proof that the assessment should reflect the market value-in-use as determined by Mr. Pollert.

g. The Board's inquiry does not end there because the Petitioner offered its own valuation evidence. The Petitioner alleged a lack of uniformity and equality in assessments. In support of that position the Petitioner offered assessment and sales data for four properties in an attempt to show the assessments were not "uniform." The Petitioner also presented assessments of commercial and industrial properties arguing disparate land assessments. But the presentation of the purportedly comparable assessments does not point to a specific value for the subject property.

h. The Board will infer because the Petitioner offered sales information for several properties it was attempting to present a sales-comparison analysis. 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.* The only information the Petitioner provided regarding the sales of the purportedly comparable

properties is the sale date and the sale price per square foot. The Board cannot conclude these properties are in fact similar to the subject property. The Petitioner's sales data lacks probative value.

i. The Petitioner also presented assessment data for several properties. A taxpayer may offer evidence of comparable properties' assessments to show the market value-in-use of a property under appeal. Ind. Code § 6-1.1-15-18. But "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18(c). At most, the inclusion of comparable assessments might show that they are generally comparable to the subject property. However, accepted appraisal and assessment practices require more than general comparability. One must explain how relevant differences between the properties affect value. *See Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers needed to explain how any relevant differences between their property and purportedly comparable properties affected values). Here, the Petitioner failed to provide the type of analysis required by *Long.* Accordingly, the neighboring assessments lack probative value.

j. The Board now turns to the Petitioner's claim the subject property's assessment is not uniform and equal compared to other assessments. First the Petitioner presented a summary of the comparable sales utilized in Mr. Pollert's appraisal arguing "the ratio of assessed value to sales price ranged widely from 68% to 102%." The Petitioner argued the sales used in the appraisal report are "not even comparable when you look at how they are assessed." Next the Petitioner presented four assessments of properties located on Progress Drive, focusing on the price per square foot of the assessments compared to the price per square foot of the sale prices. The Petitioner also offered the land assessment base rates for four properties located in Columbus. Mr. Smith pointed to the base rate for the industrial land owned by Indiana Western Express currently assessed at $2 per square foot and compared that to the base rate for the neighboring commercial land owned by Southeastern Indiana Medical assessed at $7.25 per square foot. The Petitioner also presented the base rate value for the commercial land owned by Coutar Remainder currently assessed at $304,900 per acre and compared that to the base rate for the adjacent industrial land owned by Marion Day assessed at $43,600 per acre.

k. Simply because a property is located in a neighboring area does not mean it is comparable. The lot size, topography, visibility, traffic count, location, age, size of improvements, quality of construction, conditions and amenities all play a role in the value of the property. *See Long,* 821 N.E.2d at 470-71. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Id.* 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.* The Petitioner

failed to offer any meaningful testimony relating each property's specific features and characteristics to the subject property. Thus, the type of analysis and related adjustments required for a probative comparison are lacking.

l. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs,* 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

m. When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter Co. Ass'r,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John,* 702 N.E.2d 1034, 1040 (Ind. 1998).

n. Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner failed to explain how the purportedly comparable properties are sufficient to draw any meaningful inference about the uniformity or equality of assessments within an assessing jurisdiction. The only market based evidence the Petitioner relied on was the price per square foot of the purportedly comparable properties. The Petitioner failed to provide any other objectively verifiable data, such as a market value-in-use appraisal. Instead, the Petitioner wanted the Respondent to use the same methodology to assess the subject property as used to assess the purportedly comparable properties. The Tax Court has rejected that type of claim. *See Westfield Golf,* 859 N.E.2d at 398-399 (rejecting taxpayer's uniformity and equality claim where taxpayer argued that its golf-ball landing area was assessed using a different base rate than the base rates used to assess landing areas at other driving ranges). For these reasons, the Petitioner failed to make a prima facie case showing a lack of uniformity and equality in assessments.

o. Finally, the Petitioner argued the Respondent failed to follow the Guidelines in assessing the subject property. In support of this, the Petitioner mainly focuses on the methodology used to assess the property. To successfully make a case, the Petitioner needed to offer probative evidence regarding the actual market value-in-use of the subject property. *O'Donnell,* 854 N.E.2d at 90, 95; *Eckerling,* 841 N.E.2d at 764, 768. In other words, the Petitioner needed to present market-based evidence that the appraised value does not accurately reflect the property's market value-in-use. Here, the Petitioner failed to present any market evidence to rebut the Respondent's prima facie case.

p. Ultimately, the Petitioner has done little more than challenge the Respondent's methodology in computing the assessment. The Petitioner failed to offer any market-based evidence to rebut the certified appraisal offered by the Respondent. Because the Respondent's appraisal is the most persuasive evidence of the property's true tax value, the assessments should reflect the value indicated in the appraisal. While the Board is generally reluctant to increase an assessment, the Petitioner was aware this could happen when the appeal was filed. We therefore order the 2015 assessment to be changed to the value indicated on the appraisal.

Conclusion

23. The Respondent had the burden of proof and established a prima facie case the assessment should be increased to $1,150,000. The Petitioner attempted to rebut the Respondent's case but failed.

Final Determination

In accordance with the above findings and conclusions, the 2015 assessment must be increased to $1,150,000.

ISSUED: November 8, 2018

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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>.