

PREPRESENTATIVE FOR PETITIONER:
Balwinder Singh, Manager

REPRESENTATIVE FOR RESPONDENT:
Christopher J. Ward, Local Government Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SK-PK Management, LLC,)	Petition Nos.: 18-003-13-1-4-00011
)	18-003-13-1-4-00012
Petitioner,)	
)	Parcel Nos.: 18-11-04-378-22.000-003
)	18-11-04-378-23.000-003
v.)	
)	County: Delaware
)	
Delaware County Assessor,)	Township: Center
)	
Respondent.)	Assessment Year: 2013

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

Issue Date, 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 parcels’ assessments should be reduced?

PROCEDURAL HISTORY

2. On September 27, 2013, the Petitioner appealed the 2013 assessments for parcels 18-11-04-378-22.000-003 (“Parcel 22”) and 18-11-04-378-23.000-003 (“Parcel 23”). On May 13, 2014, the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations. The Petitioner then timely filed Form 131 petitions with the Board.
3. On November 17, 2015, our designated administrative law judge, Jennifer Bippus (“ALJ”), held a hearing on the petitions. Neither she nor the Board inspected the parcels.
4. Balwinder Singh, manager of SK-PK Management, LLC, and Christopher J. Ward, representative for the Respondent,¹ were sworn as witnesses.
5. The Petitioner offered the following exhibit:

Petitioner Exhibit 1: Beacon property record cards for subject parcels, showing 2011-2015 valuation history.
6. The Respondent offered the following exhibits:

Respondent Exhibit 1: 2013 subject property record cards,
Respondent Exhibit 2: Map showing locations of properties used in sales-comparison analysis,
Respondent Exhibit 3: Sales-comparison analysis,
Respondent Exhibit 3A: Property record card for 15801 West Commerce Road with photograph and aerial view of property,
Respondent Exhibit 3B: Property record card for 1900 South Tillotson Avenue with photograph and aerial view of property,
Respondent Exhibit 3C: Property record card for 2923 South Madison Street with photograph and aerial view of property,

¹Mr. Ward is a certified tax representative and he may also qualify as a local government representative, although he did not file the verification required by our procedural rules. *See* 52 IAC 1-1-3.5 (laying out verification requirements for local government representatives). Thus, if authorized by the Respondent to do so, Mr. Ward may appear in a representative capacity before us. *See* 52 IAC 1-2-1; 2-2-4. He did not file a power of attorney as our rules require. 52 IAC 2-3-2(a). Nonetheless, the ALJ allowed the hearing to continue, and we have little doubt that Mr. Ward was authorized to represent the Respondent. Thus, we will treat him as the Respondent’s representative for purposes of this determination. We remind Mr. Ward to comply with our rules in the future.

- Respondent Exhibit 3D: Property record card for 3300 East Jackson Street with photograph and aerial view of property,
 Respondent Exhibit 4: JSO Valuation Group, Ltd., *Convenience Stores and Gas Stations: Roads to Valuation, Part One*,
 Respondent Exhibit 5: Multiple Listing Service (“MLS”) listing for subject parcels,
 Respondent Exhibit 6: Four photographs of the subject parcels,
 Respondent Exhibit 7: *Horizon Properties, LLC v. Grant County Ass’r*, pet. nos. 27-015-06-1-4-00600, etc. (IBTR June 17, 2015),
 Respondent Exhibit 8: October 14, 2015 letter from Abby McDaniel to Mr. Singh and certified mail receipt.

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

- Board Exhibit A: Form 131 petitions,
 Board Exhibit B: Hearing notice,
 Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal consists of two adjoining parcels located at 1631 North Wheeling Avenue and 1009 Centennial Avenue in Muncie. Unless otherwise indicated, we will refer to the parcels collectively as ‘the property’ or ‘the subject property.’

9. The PTABOA determined the following assessments:

Parcel	Land	Improvements	Total
Parcel 23	\$470,500	\$192,000	\$662,500
Parcel 22	\$41,800	\$44,200	\$86,000
Total			\$748,500

10. On the Form 131 petitions, the Petitioner requested the following assessments:²

Parcel	Land	Improvements	Total
Parcel 23	\$195,300	\$194,700	\$390,000
Parcel 22	\$21,800	\$43,300	\$65,100
Total			\$455,100

² At hearing, the Petitioner requested a total assessment of \$455,000.

OBJECTION

11. The Respondent objected to the Petitioner's sole exhibit—assessment information for the subject property from BeaconTM—on grounds that the Petitioner failed to identify and exchange the exhibit prior to the hearing. The Petitioner responded that it was offering the same exhibit it offered to the PTABOA. The ALJ took the objection under advisement.
12. The Petitioner brought its appeals under our standard procedures, which require each party to give all other parties (1) a list of its witnesses and exhibits at least 15 business days before a hearing, and (2) copies of its documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b). The procedures are designed to avoid unfair surprise and to promote organized, efficient, and fair consideration of appeals. We may exclude evidence based on a party's failure to comply with our exchange rule where it appears that admitting the exhibits would prejudice the opposing party. *See* 52 IAC 2-7-1(f). We may also waive the exchange requirements for materials submitted at the PTABOA's hearing. 52 IAC 2-7-1(d).
13. The Respondent did not dispute Mr. Singh's testimony that he submitted the same exhibit at the PTABOA hearing. The Respondent instead argued that the PTABOA hearing was a separate proceeding and that our rules do not allow parties to simply rely on evidence offered at other proceedings. The Respondent is correct that a party cannot rely on evidence offered at a PTABOA hearing without also offering it to the Board. But the Petitioner offered the contested exhibit at our hearing. The question is whether, having previously seen same exhibit at the PTABOA hearing, the Respondent can now claim to be surprised that the Petitioner would again rely on the exhibit at the next stage in the appeal process. The answer is no. Indeed, it is difficult to imagine how an assessor would ever be surprised or prejudiced by a taxpayer offering information about how the property under appeal was assessed. In any case, the exhibit contains much the same information as Respondent's Exhibit 1. For those reasons, we overrule the Respondent's objection.

PETITIONER'S CONTENTIONS

14. The property's assessment increased drastically between 2011 and 2012. As a result, the 2013 assessment of \$748,500 remains too high. The Petitioner bought the property in July 2010, for \$330,000. It should be assessed for \$455,000. *Singh argument and testimony; Pet'r Ex. 1.*

RESPONDENT'S CONTENTIONS

15. The property—which consists of two parcels totaling approximately 1.24 acres, a primary building, four other buildings, a detached canopy, paving, and fencing—was correctly assessed. Properties in Indiana are assessed based on their market value-in-use, and the Respondent correctly assessed the property based on its current use as a convenience store. The assessment actually decreased by \$1,900 between 2012 and 2013. *Ward argument; Resp't Exs. 1, 7.*
16. To support the assessment, the Respondent's representative and witness, Christopher Ward, analyzed sales of four comparable properties. He rated each property as similar, inferior, or superior to the subject property in terms of the following characteristics: primary building size, lot size, frontage, location (traffic light or other access), traffic count, canopy size, age (primary building), condition, and lot (commercial corner, residential corner, or "typical").
17. To explain why he focused on those characteristics, Mr. Ward pointed to an article from JSO Valuation Group, Ltd. The article is the first of a two-part series examining historical and current methods for valuing convenience stores. As Mr. Ward explained, the article discusses the importance of visibility, sufficient frontage (a minimum of 100 feet), building size, lot size (optimally 53,000 square feet) ease of access, traffic flow (including volume and speed, a 30-mile-per-hour limit is optimal), maneuverability around the site, and parking.

18. The subject property is in an excellent location at a four-way traffic light on the corner of Wheeling and Centennial Avenues. It is close to a major north-south artery and the very busy McGalliard corridor. It is in a 30-mile-per-hour zone and has 152 feet of frontage on Wheeling Avenue and 430 feet of frontage on Centennial Avenue.³ The daily traffic count is 14,000-20,000 vehicles. The primary building was built in 1992⁴ and is in good condition. *Ward testimony; Resp't Exs. 3-6.*

19. The following is a summary of Mr. Wheeling's rating of the four comparable properties as compared to the subject property:

- 15801 West Commerce, Chesterfield. It sold for \$662,772 or \$288.16/sq. ft. on June 13, 2012. Mr. Ward rated the lot size as similar to the subject property, and the primary building size, frontage, and canopy size as superior. He rated the location, age, condition, and lot as inferior. He did not know the traffic count.
- 1900 South Tillotson, Muncie. It sold for \$976,662 or \$288.16/sq. ft. on January 1, 2013. Mr. Ward rated the lot and lot size as similar to the subject property, and the location, traffic count, canopy size, and condition as inferior. He rated the primary building size, frontage, and age as superior.
- 2923 South Madison, Muncie. It sold for \$450,000 or \$416.67/sq. ft. on January 28, 2013. Mr. Ward rated the frontage, location, and lot as similar to the subject property, and the rest of the characteristics as inferior.
- 3300 East Jackson, Muncie. It sold for \$540,000 or \$252.45/sq. ft. on June 10, 2013. Mr. Ward rated the building size and condition as similar to the subject property, and the rest of the characteristics as inferior.

He included the presence or absence of additional buildings (the subject property has them, while most of the comparables do not) on his comparison grid, but he did not assign a comparative rating for that characteristic. *Ward testimony; Resp't Exs. 3-3D.*

³ Ward elsewhere indicated that the property had 340 feet of frontage. *See Resp't Ex. 3.*

⁴ That is the effective age listed on the property's record cards. Those cards list the year of construction as 1972. *Resp't Ex. 3.*

20. Mr. Ward did not assign an overall rating to the properties, nor did he rank them in comparison to the subject property. He did compute an average price per square foot both for the entire set of comparable properties and for the ones he believed were most similar to the subject property. Although he did not say which properties he believed were most comparable or how he made the determination, it appears he used the last three properties, which had more “similar” ratings than the first property.⁵ The average for the full set was \$320.71/sq. ft., while the average for the most similar properties was \$331.56/sq. ft. Parcel 23 was assessed for \$327.32/sq. ft. *Ward testimony; Resp’t Exs. 3-3D.*
21. Mr. Ward acknowledged that his comparable properties were between 3.32 and 16 miles away from the subject property. The most remote property was on a highway. He used that property because it was one of the few convenience stores that sold in 2013. It had the lowest sale price of all his comparables, and Mr. Ward testified that he did not use that sale as his most similar property.⁶ *Ward testimony.*

BURDEN OF PROOF

22. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving the existing assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule in two circumstances: (1) where the assessment currently under appeal represents an increase of more than 5% over the prior year’s assessment for the same property, and (2) where a successful appeal (other than one decided using the income capitalization approach) reduced the prior year’s assessment below the current year’s level, regardless of the amount. I.C. § 6-1.1-15-17.2. Even where those circumstances exist, the burden remains with the taxpayer if assessment that is the subject of the appeal was based on structural improvements, zoning, or uses that

⁵ The combination of those three properties is the only one that yields an average of \$331.56/sq. ft.: $\$325.55 + \$416.67 + \$252.45 = \$994.67 \div 3 = \$331.556$.

⁶ As explained above, it appears Mr. Ward did include that sale price in his average for the properties he considered most similar to the subject property.

were not considered in the assessment for the prior tax year. I.C. § 6-1.1-15-17.2(c). If an assessor has the burden of proving the assessment is correct and fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

23. The Petitioner argued that the Respondent should have the burden of proof. As things stood at the beginning of the hearing, the assessment had actually decreased between 2011 and 2012. For that reason, the ALJ preliminarily determined that the Petitioner had the burden of proof. The Petitioner, however, also appealed the property's 2012 assessment. *See SK-PK Management v. Delaware Co. Ass'r*, IBTR pet. nos. 18-003-12-1-4-00096 and -00096A. We issue separate findings and conclusions for those appeals in which we grant relief to the Petitioner and lower the 2012 assessment to \$455,100. Thus, the 2013 assessment represents an increase over the amount determined in the Petitioner's successful appeal for the prior year. I.C. § 6-1.1-15-17.2(d). And there is nothing to indicate that any of the exceptions under Ind. Code § 6-1.1-15-17.2(c) apply. Under those circumstances, we reverse the ALJ's preliminary determination and find that the Respondent has the burden of proof.

ANALYSIS

24. Real property is assessed based on its true tax value, which the Department of Local Government Finance defines 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." I.C. § 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, sales-comparison, and income approaches are three generally accepted methods to determine true tax value. *Id.* While assessing officials primarily use the cost approach, parties may offer other relevant evidence, including actual construction costs, sales or assessment information for the property under appeal or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *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).

25. The Respondent relied primarily on Mr. Ward's sales-comparison analysis. To effectively use the sales-comparison approach as evidence in an assessment appeal, one must show that the properties from which the sales data is derived are comparable to the property under appeal. Conclusory statements that the properties are "comparable" or "similar" do not suffice. *Long*, 821 N.E.2d at 470. Instead, one must (1) identify the relevant characteristics of the property under appeal and explain how they compare to the characteristics of the purportedly comparable properties, and (2) explain how any relevant differences between the properties affect their values. *Id.* at 471.
26. Mr. Ward compared the properties along many of the lines that at least one group of appraisers (JSO Valuation Group, Ltd.) believes are relevant to the market for convenience stores. His comparison was not exhaustive, however. For example, he ignored the importance of demographics in comparing locations—something the appraisal article he relied on identifies as significant. Nonetheless, he showed that his data was generally comparable to the subject property.
27. But general comparability is only part of the equation; Mr. Ward also needed to explain how relevant differences between the properties affected their values. That is where his analysis breaks down. He did not quantitatively adjust any of the sale prices to account for relevant differences. He instead qualitatively rated each property as inferior, superior, or similar to the subject property on a characteristic-by-characteristic basis.
28. We understand that qualitative analysis may be permissible, or even advisable, where the available data is insufficient to support quantitative adjustments. But Mr. Ward merely compared individual characteristics without identifying their relative importance or giving an overall comparative rating to the properties. He apparently felt that averaging the sale prices was an adequate substitute. He did calculate a separate average for the

three sales he believed were most similar to the subject property. But he selected that subset by simply counting the number of “similar” ratings, again without considering the relative importance of the characteristics being rated. Absent a persuasive explanation showing that such an analysis complies with generally accepted appraisal principles, we will not assume it does. Thus, while Mr. Ward’s comparative sales data was relevant, it does not show a specific value, or even a likely range of values, for the subject property.

29. The Respondent failed to make a prima facie case supporting the 2013 assessment, and the Petitioner is entitled to have the assessment reduced to \$455,100—the amount we determined in the Petitioner’s appeal of the 2012 assessment year.

SUMMARY OF FINAL DETERMINATION

30. The Respondent, who had the burden of proof, failed to make a prima facie case that the combined assessment for the two parcels under appeal was correct. The total assessment for those parcels must therefore be reduced to the previous year’s level of \$455,100.

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>>.