

REPRESENTATIVE FOR PETITIONER: Milo Smith, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Ronald K. Stansifer	)	Petition:	53-005-12-1-4-00118
	)		53-005-13-1-4-00114
Petitioner,)		
	)	Parcel:	53-05-32-413-054.000-005
v.)		
	)	County:	Monroe
Monroe County Assessor,)		
	)	Township:	Perry
Respondent.)		
	)	Assessment Years:	2012, 2013

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

December 8, 2014

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

1. The Respondent, having the burden of proof for the 2012 tax year, argued that the subject property's assessment should be raised based on its 2013 sale price time adjusted back to 2012. The Petitioner argued that the property should not receive a 100% influence factor on the land and the assessment should be lowered because other properties in the same neighborhood and even on the same intersection do not receive that influence factor. The Board finds the Respondent's evidence regarding the sale of the property more persuasive

and finds for the Respondent. Consequently, for 2013 the Petitioner has the burden of proof. Both parties offered similar evidence, the Respondent again asked for an increase in assessment and the Petitioner asked for a decrease. The Board reaches the same conclusion and finds for the Respondent.

PROCEDURAL HISTORY

2. The Petitioner timely filed Form 130 petitions with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) for the 2012 and 2013 assessment years.
3. The PTABOA issued determinations for each of the years under appeal.
4. The Petitioner timely filed Form 131 petitions with the Board for the 2012 and 2013 assessment years.
5. On June 18, 2014, the Board's designated administrative law judge, Andrew Howell (ALJ), held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. The subject property consists of a convenience store, gas station, and accompanying land located at 503 West Kirkwood Avenue in Bloomington.
7. The following people were sworn in as witnesses: Milo Smith, Certified Tax Representative; Ken Surface, Senior Vice President for Nexus Group and Level 3 Certified Assessor/Appraiser; Wayne Johnson, Certified General Appraiser.
8. Ronald K. Stansifer submitted the following exhibits, all of which were admitted into evidence:

Petitioner's Ex. 1: Property Record Card for the Subject Property,

- Petitioner's Ex. 13: GIS Map and Comparable Assessment Analysis with attached Property Record Cards for each parcel numbered on the GIS map,
- Petitioner's Ex. 2011: Copy of 2011 Real Property Assessment Manual Page 9 of 20,
- Petitioner's Ex. 2m: Copy of Ind. Code § 6-1.1-15-18,
- Petitioner's Ex. CA19: Copy of IAAO Mass Appraisal Textbook, Page 19,
- Petitioner's Ex. CA164: Copy of IAAO Mass Appraisal Textbook, Page 164.

9. The Assessor presented the following exhibits, all of which were admitted into evidence:

- Respondent's Ex. A: Property Record Card for the Subject Property,
- Respondent's Ex. B: Sales Disclosure Form for the Subject Property with a conveyance date of November 12, 2013,
- Respondent's Ex. C: Sales Comparison prepared by Ken Surface,
- Respondent's Ex. D: Sales Disclosure Forms and Property Record Cards for properties in Respondent's Ex. C,
- Respondent's Ex. E: Bloomington Indiana Sale Price Trends Report,
- Respondent's Ex. F1: Stansifer's answers to Assessor's discovery for Tax Year 2012,
- Respondent's Ex. F2: Stansifer's answers to Assessor's discovery for Tax Year 2013.

10. The Board recognizes the following additional items as part of the record:

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

11. The PTABOA determined the following assessments:

2012: Land: \$439,600	Improvements: \$98,800	Total: \$538,400
2013: Land: \$439,600	Improvements: \$82,600	Total: \$522,200

SUMMARY OF THE CONTENTIONS

A. Assessor's Case

- 12. The subject property is a convenience store that is located on a corner lot on West 5th Street (also known as Kirkwood Avenue). This is one of the main downtown streets. It has 4 gas pumps. *Surface testimony.*
- 13. The Petitioner sold the subject property on November 12, 2013 for \$600,000, which was \$77,800 more than the assessed value at the time. The buyer was Mac's Convenience

Stores, an entity that was previously leasing the property and operating the business on it. The Sales Disclosure Form for this sale indicates that it was a transfer for valuable consideration, and was a valid sale for trending purposes. *Surface testimony; Resp't Ex. A, B.*

14. According to Wayne Johnson, an Indiana licensed appraiser with extensive experience and qualifications, the Indiana commercial real estate market has exhibited 2-3% appreciation in real estate prices from 2008-2013. *Johnson Testimony; Resp't Ex. E.*
15. He supported this opinion with a variety of evidence. The enrollment at Indiana University Bloomington has trended up, which has an effect on the real estate market. The increase in value of properties that have sold and resold in this time period supports a 2-3% appreciation figure. The price per square foot of land sales has been steadily increasing between 2008 and 2014. It was Mr. Johnson's conclusion as an appraiser that this evidence supports a positive time adjustment of 2-3% for the last 2-3 years. His opinion was reached in accordance with USPAP standards. *Johnson Testimony; Resp't Ex. E.*
16. Secondary data also supports that conclusion. From 2011 forward, building permit activity has been up, as well as residential building permits as measured by construction cost. Sales prices have also increased in Monroe County according to the Department of Local Government Finance sales data. Indiana Association of Realtors data shows that the median price of houses has been trending up. If the housing market is doing well, commercial properties tend to mirror that effect. The 2013 Indiana Housing Report from the Indiana Business Research Center shows an average change in sale prices of 2.3% from June 2012 to June 2013. The report also shows an increase in housing permits of 54.8% between 2011 and 2012. The Bloomington Economic Development Corporation reports increasing home sales and sale prices, with a slight dip in 2011, and an increase in average sale price of 1.5% in 2013. All of this data supports the conclusion of a 2-3% time adjustment. *Johnson Testimony; Resp't Ex. E.*

17. Using a 2% time adjustment, the November 12, 2013 sale of the property for \$600,000 can be trended back to the valuation dates of March 1, 2012 and March 1, 2013. Trending back to March 1, 2012 yields a value for the property of \$580,000. Trending back to March 1, 2013 yields a value of \$591,000. *Johnson Testimony; Resp't Ex. E.*
18. None of the parcels in Petitioner's Ex. 13 are convenience stores. They all have different uses than the subject property. This makes a difference in a market value-in-use system. Two of the parcels were also valued on a per front foot rate instead of a square footage rate. All but three of the parcels are in the same neighborhood and have the same base rate of \$15 per square foot. However, the base rate is just the starting factor. There are variances from that base rate, and there are adjustments, both positive and negative. *Surface testimony; Pet'r Ex. 13.*
19. The method of valuing a property is less important than arriving at the correct value of that property. There are some instances where assessors or vendors have to adjust assessments in order to arrive at a property's market value-in-use, which is the standard Indiana uses to value real property. Use is the sole basis of the system. *Surface testimony.*
20. An influence factor is one way to account for a unique or particular condition of a property. An influence factor could be applied to land, and could be positive or negative. The subject property received a positive influence factor because of its corner location and the use of the property. *Surface testimony; Resp't Ex. A.*
21. Sales of three convenience stores in 2007, 2008, and 2009 also provide additional evidence of value. These properties are not identical to the subject property, though one of them is similar in a number of characteristics. The current assessment of the property has been roughly the same dating back several years, and these sales support the assessment at that time. *Surface Testimony; Resp't Ex. C, D.*
22. The Indiana Board and the Tax Court have previously rejected the Petitioner's argument that the subject property's influence factor should be removed because neighboring

properties do not have a similar influence factor. *See Kooshtard Prop. VIII, LLC v. Shelby County Assessor*, 987 N.E.2d 1178 (Ind. Tax Ct. 2013). This argument is going toward the methodology of the assessment rather than the bottom line value of the land. In a market value-in-use system the bottom line value is the important factor. *Meighen argument*.

23. The best evidence of the market value-in-use of the subject property is the sale on November 12, 2013. This is direct evidence of how the buyer and seller value the utility of the property. Because the sale occurred after the valuation dates for the years under appeal, Wayne Johnson, an MAI certified appraiser, has trended back that sale to those dates. Using his figure of 2% appreciation per year, he calculated a value of \$580,000 as of March 1, 2012, and \$591,000 as of March 1, 2013. The Respondent requests that the Board assign those values to the subject property. *Meighen argument*.

B. Petitioner's Case

24. Ind. Code § 6-1.1-15-18 states that one of the ways to determine market value-in-use is to use relevant comparable properties. Petitioner's Ex. 13 was prepared with that in mind. It consists of 11 parcels. The first 8 parcels are in the same neighborhood as the subject property. Each of the first 8 parcels is assessed at \$15 per square foot while the subject property is assessed at \$27 per square foot. Four of the parcels are corner lots and an additional 2 parcels are corner lots on the same intersection as the subject property. None of those parcels have an influence factor on the land. *Smith testimony; Pet'r Ex. 13*.
25. The International Association of Assessing Officers textbook on Mass Appraisal of Real Property says how the mass appraisal methods and models can be used to determine assessed values. It also describes mass appraisal estimates and the probable selling prices based on fiscal and location characteristics. The cost approach looks at land and building estimates separately. These methods were used in this comparison. *Smith testimony; Pet'r Ex. CA 19, CP 164*.
26. The Respondent has not proven that the 2012 assessed value is correct, but instead has only justified a 2-3% appreciation rate per year. This is insufficient to prove the bottom

line value of the property. If the correct assessment is \$318,600, then a 2% increase would raise it to \$338,600. *Smith argument.*

27. In order to have a uniform assessment of similar properties in the neighborhood the subject property's 100% influence factor on the land should be removed. After the removal of the influence factor, the 2012 assessment should be \$219,800 for land and \$98,800 for improvements, for a total of \$318,600. For 2013 the assessment should be \$219,800 for land and \$82,600 for improvements, for a total of \$302,400. *Smith testimony/argument.*

BURDEN OF PROOF

28. 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 recently amended by P.L. 97-2014 creates two exceptions to that rule.
29. 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).
30. Second, Ind. Code § 6-1.1-15-17(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 the 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(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

31. These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
32. Here the parties agreed, and the property record card confirms, that the Respondent has the burden of proof for the 2012 assessment year.
33. The Board finds for the Respondent in 2012. The burden of proof for the 2013 assessment year depends on the Board’s determination for 2012.

ANALYSIS

34. 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 (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. Ind. Code § 6-1.1-15-18.
35. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Ass’r*,

821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. *Id.* The valuation date for a 2013 assessment was March 1, 2013. *Id.* Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.

36. The Respondent has the burden for the 2012 assessment year. The Assessor argues that the best evidence of the value of the property is the November 12, 2013, sale of the property trended back to the March 1, 2012, valuation date. The Board agrees. The Sales Disclosure Form indicates that it was a transfer for valuable consideration. There is no evidence to suggest that the sale price might not accurately reflect the market value of the property. Moreover, the Petitioner did nothing to rebut the assertion that both he and the buyer valued the property at \$600,000 as of November 12, 2013.
37. As the sale was approximately 21 months after the valuation date, a time adjustment was necessary as required by *Long*. The Respondent presented considerable evidence that a rate of 2-3% annual appreciation was appropriate for the Bloomington market. Respondent's witness pointed to, among other things, sales and resales in the county, commercial land sale trends, and housing trends. He also gave his opinion as an experienced certified appraiser that 2-3% annual appreciation was correct.
38. The Respondent's witness then time adjusted the sale from November 12, 2013 to March 1, 2012. Rounding the total, he calculated \$580,000 for the 2012 assessment year. Though he chose to use 2% appreciation rather than 3% in these calculations, the Board accepts this figure as the Petitioner did not contest this choice. The opinion of the appraiser is sufficient to relate the sale price back to the valuation date as required by *Long*. Therefore, the Board finds that the Respondent has made a prima facie case that the 2012 assessment should be \$580,000.
39. Once the Respondent establishes a prima facie case, the burden shifts to the Petitioner to rebut the Respondent's evidence. Ind. Code 6-1.1-15-17.2(b). The Petitioner must offer

evidence that impeaches or rebuts the Assessor's evidence. *Meridian Towers*, 805 N.E.2d at 479.

40. The Petitioner did little to impeach the Respondent's case. He did argue that the Respondent presented evidence of a sale and trending rather than an actual appraisal of the property for the tax year at issue. While an actual appraisal may have been more persuasive evidence of the value, this argument fails to rebut the analysis presented by the Respondent's witness.
41. The Petitioner presented evidence of the land assessments of neighboring and nearby properties to support his argument that the subject property's land assessment is too high. He believes that the subject property should not receive a 100% influence factor on the land because most neighboring properties, including some on the same intersection, do not. He relies on Ind. Code § 6-1.1-15-18 which states that a taxpayer may introduce evidence of assessments of comparable properties to determine market value-in-use.
42. While there is some probative value in the Petitioner's evidence, the Board must weigh it against the evidence presented by the Respondent. The sale of the subject property is the more persuasive evidence. The sale represents how the buyer and seller value the utility of the property. The Petitioner's evidence of comparable assessments shows that other nearby properties received differing assessments, but fails to account for the many differences in the characteristics of the properties.¹
43. To the extent the Petitioner raises a claim that the property did not receive a uniform and equal assessment, *Kooshtard Prop. VIII, LLC v. Shelby County Assessor*, 987 N.E.2d

¹ The Tax Court has recently addressed how evidence of other assessments must be analyzed:

While the land assessments . . . might have been an appropriate starting point for the [taxpayer] in its appeal preparation, they were just that — a starting point. Indeed, the [taxpayer] needed to provide some sort of explanation or analysis as to what factors made the value of the land at those properties comparable to its own; likewise, if there were any distinguishing characteristics that would affect the land values, the [taxpayer] needed to account for those by making adjustments. *See, e.g., Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005) (explaining that statements that properties "are similar" is not probative evidence; rather, specific reasons must be provided as to why one believes a property is similar), *review denied. See also* Ind. Code § 6-1.1-15-18(c)(2) (2012).

Indianapolis Racquet Club, Inc. v. Marion County Assessor, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).

1178, 1181 (Ind. Tax Ct. 2013) is dispositive. In that case, the taxpayer made virtually the same argument as the Petitioner here, and the Tax Court rejected it citing *Westfield Golf Practice Center v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). The Tax Court upheld the Board's determination that a "[taxpayer's] argument that its land was not uniformly assessed because comparable land was not assessed in the same manner was insufficient to raise a prima facie case," and noted that a taxpayer must "present to the Indiana Board some type of relevant market based evidence to support its claim." *Kooshtard Prop. VIII*, 987 N.E.2d at 1181. The Petitioner has failed to present market-based evidence in support of this claim.

44. Because the Respondent's evidence of the sale of the property, time adjusted back to the valuation date, was the most persuasive evidence, the Board finds the correct value for the 2012 assessment is \$580,000.
45. Because the PTABOA's 2013 assessment is \$522,200, and the Board's determination for 2012 is \$580,000, the 2013 burden rests with the Petitioner.
46. The Petitioner relied on the same evidence and arguments for 2013 as for 2012, but requested a value of \$302,400. The Respondent also relied on substantially the same evidence, but time adjusted the November 12, 2013, sale back to March 1, 2013, which resulted in a value of \$591,000.
47. For the reasons explained above, the Board finds the Respondent's evidence more persuasive, and the Board finds the correct value for the 2013 assessment is \$591,000.

SUMMARY OF FINAL DETERMINATION

The Respondent presented persuasive evidence sufficient to warrant a change in value for both the years under appeal. The Petitioner did not successfully impeach or rebut this evidence. The Board orders the 2012 assessment changed to \$580,000 and the 2013 assessment changed to \$591,000.

This 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>>.