

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

Petition No. 71-007-10-1-4-0001
Petitioner: Anant J. Patel
Respondent: St. Joseph County Assessor
Parcel No.: 71-03-25-152-008.000-007
Assessment Years: 2009, 2010, 2011

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 his assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) for 2009 on February 20, 2009. The record does not indicate that the PTABOA took any action on the Form 130 Petitioner filed for 2009.
2. The Petitioner filed his Form 130 for assessment year 2010 on May 9, 2011. The PTABOA issued its final determination on February 17, 2012.
3. The Petitioner filed his Form 130 for assessment year 2011 on May 21, 2012. The record does not indicate that the PTABOA took any action on the Form 130 for 2011.
4. The Petitioner then filed his Form 131 petition with the Board on April 19, 2012. The Form 131 listed years 2009, 2010, and 2011 as being under appeal. The Petitioner elected the Board’s small claims procedures.
5. On May 10, 2012, A Notice of Defect in Completion of Assessment Appeal Form was sent to Petitioner, informing him that his Form 131 was inadequate for the following reasons:
 1. A copy of the determination from the Property Assessment Board of Review (Form 115) must be attached to the Form 131.
 2. A copy of the written document (or Form 130) initiating the appeal at the county level must be attached to the Form 131.
 3. If multiple years are being appealed, Petitioner must complete a Form 131 for each year and attach a Form 130 and a Form 115 for each year. *Board Ex. B.*
6. Petitioner’s deadline to correct the defects was June 11, 2012. On June 19, 2012, Petitioner responded to the Notice of Defect in writing, saying he had not received the Notice of Defect until June 12, 2012 and requesting a hearing date be set. *Board Ex. C.*

7. On April 16, 2014, the Board held an administrative hearing through its designated Administrative Law Judge (“ALJ”), Tom Martindale on the appeals for 2009, 2010, and 2011.
8. Anant J. Patel appeared *pro se* with witnesses Norman Patel and appraiser Phil Krause. County Assessor Rosemary Mandrici and Susan Tramberg, Appeals Coordinator for the St. Joseph County PTABOA, appeared for Respondent. Appraiser John Leader attended the hearing as a witness for Respondent but did not testify. All were sworn as witnesses.

Facts

9. The subject property consists of retail and storage space located at 247 Dixie Way North in South Bend, Indiana.
10. The PTABOA determined the following value for the subject property for 2010:

Land: \$63,200	Improvements: \$745,500	Total: \$808,700
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11. On his Form 131, Petitioner requested the following value for his property for 2009, 2010, and 2011:

Land: \$30,000	Improvements: \$200,000	Total: \$230,000
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12. Neither the Board nor the ALJ inspected the subject property.

Record

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

1. Board Exhibits

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of Defect in Completion of Assessment Appeal Form,
Board Exhibit C:	Letter to the Board from Anant Patel,
Board Exhibit D:	Notice of Hearing,
Board Exhibit E:	Hearing Sign-In Sheet.

2. Petitioner Exhibits

Petitioner Exhibit A:	Appraisal Report of Subject Property,
Petitioner Exhibit A-1:	Sales Analysis Grid,
Petitioner Exhibit A-2:	Architect Certificate for Payment,
Petitioner Exhibit A-3:	Sales Disclosure Form,
Petitioner Exhibit A-4:	Combined Closing Statement for 247 Dixie Way, North, 118 Rhodes Street, and 116 Rhodes Street,

Petitioner Exhibit B:	Calculation of land value for subject property,
Petitioner Exhibit C:	PTABOA Hearing transcript,
Petitioner Exhibit D:	Form 131 petitions for 116 Rhodes Street, South Bend Indiana, for 2011, 2012 and 2013, and 118 Rhodes Street, South Bend, Indiana, for 2011, 2012, and 2013. ¹
Petitioner Exhibit E:	Photographs of subject property,
Petitioner Exhibit F:	Tax information for subject property,
Petitioner Exhibit G:	No Exhibit G offered,
Petitioner Exhibit H:	Letter from Norman and Anant Patel to St. Joseph County Assessor.

3. Respondent Exhibits

Respondent Exhibit 1:	Form utilized by St. Joseph County Assessor,
Respondent Exhibit 2:	Construction Permit,
Respondent Exhibit 3	Property Record Card for subject property.

Objections

14. Respondent objected to Petitioner’s appeal for 2009 on the grounds that it is not properly before the Board. There is no Form 115 in evidence for the subject property for 2009. Respondent asserted they have no record of Petitioner’s appeal for 2009. The Board’s Exhibit 1 includes a file-stamped Form 130 showing it was filed with the PTABOA on February 20, 2009. If the PTABOA fails to act on a petition for review of an assessment by the local assessing official within 180 days, the taxpayer may appeal directly to the Board. Ind. Code. § 6-1.1-15-1(k)(2). Respondent’s objection is overruled.
15. Respondent objected to Petitioner’s appeal for 2010 as being untimely. The Form 131 for 2010 was filed 59 days after the PTABOA issued its Form 115. A Form 131 petition must be filed with the Board no more that forty-five (45) days after the date of notice given to the party of the determination of the assessment of the parcel by the county board. I.C. § 6-1.1-15-3. Respondent’s objection is sustained. The Board addresses this procedural matter in greater detail below.
16. Respondent objected to Petitioner’s appeal for 2011 as being untimely. Petitioner filed his Form 131 for 2011 on April 16, 2012, and filed his Form 130 on May 21, 2012. Respondent argues that Petitioner’s act of filing his Form 131 before filing his Form 130 places the 2011 appeal with the PTABOA and not with the Board. Respondent’s objection is sustained. The Board addresses this procedural matter in greater detail below.
17. Respondent objected to Petitioner’s Exhibit A-2 on grounds of relevancy. The document contains information pertaining to three separate parcels and fails to identify the information relevant to the subject property. The Board finds that Respondent’s

¹ Petitioner also submitted a Form 115 for 2007, but did not submit a Form 131 for that year.

objection goes to the weight of the exhibit and not to its admissibility. Respondent's objection is overruled.

18. Respondent objected to Petitioner's Exhibit A-4 on grounds of relevancy. The document contains information pertaining to three separate parcels and fails to identify the information relevant to the subject property. The Board finds that Respondent's objection goes to the weight of the exhibit and not to its admissibility. Respondent's objection is overruled.
19. Respondent objected to the first page of Petitioner's Exhibit B on grounds that the document is not a record that is prepared or maintained by the county assessor. Respondent does not object to page two of the document. The Board finds that Respondent's objection goes to the weight of the exhibit and not to its admissibility. Respondent's objection is overruled.
20. Respondent objected to Petitioner's Exhibit C on the grounds that the exhibit provides only an excerpt of the full hearing transcript from the PTABOA hearing. Respondent also objected to Petitioner's Exhibit C on the grounds that the value of the property is determined by the PTABOA and is controlled by the final determination of the assessed value found on Form 115. The Board finds that Respondent's objection goes to the weight of the exhibit and not to its admissibility. The Board notes that the other hearings on the recording might contain confidential information or were inaccessible to Petitioner. Respondent's witness, the St. Joseph County Assessor, had access to the full recording of the hearing had Respondent wanted to review that information. The Board overrules Respondent's objection.
21. Respondent objected to Petitioner's Exhibit D as being untimely. Petitioner's Exhibit D reflects the taxpayer's request, made during this hearing, that the Board also consider the assessments for 116 Rhodes Street, South Bend, Indiana, and 118 Rhodes Street, South Bend, Indiana, for 2011, 2012, and 2013 at this hearing. An appeal is initiated by filing a petition for review of an assessment (Form 131) with the Board within forty-five days after the date of the notice of the final determination by the PTABOA. 52 IAC 2-4-2. Because Petitioner failed to file these petitions, the Board sustains Respondent's objection.
22. Respondent objected to Petitioner's Exhibit F as hearsay, on the grounds that it does not represent a document that is produced or maintained by the St. Joseph County assessor in her role as custodian of records relevant to assessments, although it contains information related to property tax and assessment. The Board may permit hearsay evidence to be entered into the record at its discretion provided that the hearsay does not form the sole basis of the decision. 52 IAC 2-7-3. This evidence does not form the sole basis of the decision of this matter. Respondent's objection is overruled.

23. Respondent objected to Petitioner's Exhibit H, Petitioner's letter to the Assessor, on grounds of relevancy, arguing that the amount of interest Petitioner is entitled to is purely statutory. The Board finds that Respondent's objection goes to the weight of the exhibit and not to its admissibility. The Board overrules Respondent's objection.
24. Petitioner objected to Respondent's Exhibit 1 on grounds of relevancy. The document provides information on two properties and does not specify how the information relates to the subject property. The Board finds that Petitioner's objection goes more to the weight of the exhibit than to its admissibility. The Board overrules Petitioner's objection.

Contentions

25. Summary of the Petitioner's case:
 - a) The subject property is currently over assessed in light of its unfinished state. The subject property was only 10% complete in 2009, 25% complete in 2010, and 48% complete in 2011.
 - b) The subject property should be valued at \$30,000 for the land and \$200,000 for the improvements for a total assessment of \$230,000.
26. Summary of the Respondent's case:
 - a) There is no record of Petitioner filing an appeal with the PTABOA for 2009. Petitioner's 2009 appeal should be dismissed.
 - b) Petitioner's Form 131 for 2010 was untimely as it was not filed within the forty-five (45) day deadline after issuance of the Form 115 by the PTABOA as required by I.C. § 6-1.1-15-3. Petitioner's 2010 appeal should be dismissed.
 - c) Petitioner's Form 131 for 2011 is untimely as it was filed before his Form 130, which places the appeal before the PTABOA and not with the Board. Petitioner's 2011 appeal should be dismissed.
 - d) Improvements to the property were 60% complete on the 2009 assessment date and should be assessed at \$542,300 for that year.

Burden of Proof

27. 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. Assessor*, 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). A burden-shifting statute recently amended by P.L. 97-2014 creates two exceptions to that rule.

28. First, I.C. § 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.” I.C. § 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.” I.C. § 6-1.1-15-17.2(b).
29. Second, I.C. § 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 I.C. § 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described 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.” This change is effective March 25, 2014 and has application for all appeals pending before the Board.
30. Respondent asserted at the hearing that the new construction of the improvements on the subject property creates a new property for purposes of determining the burden of proof for 2009 and 2010, which leaves the burden with the Petitioner for those years. The assessed value of the building decreased in 2011 from the value in 2010, which again places the burden with Petitioner. Also, the parties agreed at the hearing that the Petitioner has the burden for all three years.

Analysis

31. The Petitioner failed to provide sufficient evidence to support his contentions. The Board reached this conclusion for the following reasons:
32. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “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, for the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in a tax appeal must be consistent with that standard. *See also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (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. MANUAL at 2, 3; *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).

33. Regardless of the method used, a party must explain how its evidence relates to the subject property's market value in use as of 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). Otherwise the evidence lacks probative value. *Id.*
34. For assessment year 2009, Petitioner filed his Form 130 with the PTABOA on February 20, 2009. There is nothing in the record to indicate the PTABOA acted on his request for review of the 2009 assessment. If a PTABOA does not act on a petition for review of assessment by the local assessing official within 180 days, the taxpayer can file his petition directly with the Board. I.C. § 6-1.1-15-1. The Form 131 filed with the Board listed the 2009 assessment of the subject property as being under appeal. The Board finds that since the PTABOA failed to timely respond to the Form 130 filed by Petitioner on February 20, 2009, the 2009 assessment of the subject property is properly before the Board.
35. For assessment year 2010, Petitioner filed his Form 131 on April 16, 2012, 59 days after the Notification of Final Assessment Determination was issued on February 17, 2012. In order to obtain a review by the Board, a party must file their Form 131 not later than forty-five days after the date of the notice of the determination by the PTABOA. Petitioner testified that he might have been out of the country or undergoing a medical procedure at that time that might have delayed him from filing the petition earlier. Petitioner offered no documentation or specific testimony to that effect. Petitioner's appeal of the 2010 assessment is dismissed as untimely.
36. For assessment year 2011, Petitioner filed his Form 131 with the Board prior to filing his Form 130 with the PTABOA. Because he failed to file a separate petition for that tax year, Petitioner's appeal is not properly before the Board. However, as more than 180 days have passed since Petitioner filed his Form 130 for 2011, and the PTABOA has not taken action, Petitioner may file a separate petition for 2011.
37. Thus, only the 2009 assessment is before the Board. Per the Property Record Card, in 2009 the subject property was assessed at \$958,000 for the improvements and \$63,200 for the land for a total assessment of \$1,021,200. *Resp't Ex. 3.*
38. An appraisal completed in conformance with the Uniform Standards of Professional Appraisal Practice is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.* 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 N.6 (Ind. Tax Court 2005). Petitioner's appraiser offered no opinion of value and no opinion of completeness for the property in 2009. *Krause testimony.*

39. Petitioner presented an analysis of three properties offered as comparable to the subject property. *Pet'r Ex. A-1*. The grid shows the subject property is .14 acres in size and the properties listed as comparable range in size from .31 acres to 7.32 acres. Petitioner's comparison of the subject property with the comparable properties offered lacks probative value. A party offering such evidence must show that the properties are generally comparable to each other, and also must show how any relevant differences affect the relative values. *See Long, Supra 470-471* (holding that, in applying the sales-comparison approach, the taxpayers must explain how any differences between the properties affect the properties' relative market value-in-use). Petitioner failed to explain or account for any differences in the properties, and how those differences affect the respective values.
40. Petitioner also presented a document titled "Calculation of Land Value for Dixie Way North Area" that ostensibly compares the value of the subject property's land with the land values of three motels ranging in size from four to eight acres and ranging in value from \$91,800 to \$321,600. *Pet'r Ex. B*. Again, Petitioner failed to explain or account for any differences in the parcels and how those differences compare with the land of the subject property. *See Long, Supra 470-471*. Petitioner's contentions as to the value of the subject property consist largely of conclusory statements. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. V. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Petitioner has failed to present a prima facie case for reduction of the assessment.
41. Respondent conceded at the hearing that the improvements to the subject property were only 60% complete rather than 100% complete as Respondent had previously determined. Respondent also testified that, using the appropriate tax tables, the total cost of the improvements to Petitioner's property is \$903,833. Respondent calculates that 60% of \$903,833 results in an assessment of \$543,300 for the improvements for 2009. *Mandrici testimony*.

Conclusion

42. The Petitioner failed to make a prima facie case that the 2009 assessment of the subject property is incorrect.

Final Determination

- 43. Therefore, the Board finds that the assessment for the subject property for 2009 is lowered to \$605,000 as conceded by the St. Joseph County Assessor. *Mandrici testimony*. The 2010 and 2011 assessments are not properly before the Board and will remain unchanged.
- 44. This final determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

ISSUED: ___6/26/2014___

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>>.