

REPRESENTATIVE 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.: 18-003-12-1-4-00096
)	18-003-12-1-4-00096A
Petitioner,)	
)	Parcel Nos.: 18-11-04-378-23.000-003
)	18-11-04-378-22.000-003
v.)	
)	County: Delaware
)	
Delaware County Assessor,)	Township: Center
)	
Respondent.)	Assessment Year: 2012

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

April 13, 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 be reduced?

PROCEDURAL HISTORY

2. On September 27, 2013, the Petitioner appealed the assessments for parcels 18-11-04-378-22.000-003 (“Parcel 22”) and 18-11-04-378-23.000-003 (“Parcel 23”). The Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) failed to hold a hearing. Thus, on June 13, 2014, the Petitioner filed Form 131 petitions for both parcels directly with the Board. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed).
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, the Petitioner’s manager, and Christopher J. Ward, the Respondent’s representative,¹ were sworn as witnesses.
5. The Petitioner offered the following exhibits:
 - Petitioner Exhibit 1: Multiple Listing Service (“MLS”) listing for subject property,
 - Petitioner Exhibit 2: Sales disclosure form for subject property, dated July 23, 2010,
 - Petitioner Exhibit 3: Building Application and Permit Summary Report for subject property, dated December 8, 2010,
 - Petitioner Exhibit 4: 2013 subject property record cards.
6. The Respondent offered the following exhibits:
 - Respondent Exhibit 1: 2010 subject property record cards,
 - Respondent Exhibit 1A: 2011 subject property record cards,
 - Respondent Exhibit 1B: 2012 subject property record cards,
 - Respondent Exhibit 1C: 2013 subject property record cards,

¹ Mr. 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 2: Sales disclosure form for subject property, dated February 17, 2010,
- Respondent Exhibit 3: Sales disclosure form for subject property, dated July 23, 2010,
- Respondent Exhibit 4: Photograph of “speed limit” sign,
- Respondent Exhibit 5: Traffic count map,
- Respondent Exhibit 6: JSO Valuation Group, Ltd., *Convenience Stores and Gas Stations: Roads to Valuation, Part One*,
- Respondent Exhibit 7: Sales-comparison analysis,
- Respondent Exhibit 7A: Property record card for 2535 South Hoyt Avenue,
- Respondent Exhibit 7B: Property record card for 715 West University Avenue,
- Respondent Exhibit 7C: Property record card for 1800 West Jackson Street,
- Respondent Exhibit 7D: Property record card for 2905 West Bethel Avenue,
- Respondent Exhibit 7E: Property record card for 2001 West McGalliard Road,
- Respondent Exhibit 7F: Property record card for 7910 North State Road 3,
- Respondent Exhibit 7G: Property record card for 1634 North Wheeling Avenue,
- Respondent Exhibit 7H: Four photographs and two aerial view photographs of subject parcels,
- Respondent Exhibit 8: Map showing locations of properties used in sales-comparison analysis,
- Respondent Exhibit 10: Building Application and Permit Summary Report for subject parcels, dated December 8, 2010,
- Respondent Exhibit 10A: Building Application and Permit Summary Report for subject parcels, dated April 14, 2011,
- Respondent Exhibit 11: MLS listing for subject parcels,
- Respondent Exhibit 12: *Horizon Properties, LLC v. Grant County Ass’r*, pet. nos. 27-015-06-1-4-00600, etc. (IBTR, June 17, 2015),
- Respondent Exhibit 16: 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 petition,
- 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 property was assessed as follows:

Parcel	Land	Improvements	Total
Parcel 23	\$470,500	\$194,700	\$665,200
Parcel 22	\$41,800	\$43,400	\$85,200
Total			\$750,400

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

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

OBJECTION

11. The Respondent objected to all of the Petitioner's exhibits on grounds that the Petitioner failed to identify and exchange them prior to the hearing. The Petitioner responded that it was offering the same exhibits it offered at the PTABOA hearing. The Respondent did not say otherwise.³ 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 a PTABOA hearing. 52 IAC 2-7-1(d).

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

³ As explained above, the PTABOA did not hold a hearing on the Petitioner's 2012 appeals. But the Petitioner also appealed the property's 2013 assessment (we address those assessment appeals in separate findings and conclusions, *see SK-PK Management, LLC v. Delaware County Ass'r*, IBTR pet. nos. 18-003-1-4-00011 and -00012). The parties may have been thinking about the PTABOA hearing on the 2013 appeals.

13. We overrule the Respondent's objection. There is no dispute that the Petitioner previously submitted the exhibits to the Respondent, so he can hardly claim surprise or prejudice. Indeed, the Respondent himself offered all but one of the documents (an MLS listing sheet for the subject property) as exhibits in his own case-in-chief.

PETITIONER'S CONTENTIONS

14. The assessment is too high. On March 23, 2010, the property was listed for sale with an asking price of \$350,000. Nearly three months later, on July 23, 2010, the Petitioner bought the property for \$330,000. It was an arm's length transaction. On December 8, 2010, the Petitioner filed a building permit for a \$125,000 "commercial remodel." Thus, the property should be assessed for \$455,000—the sum of the sale price and remodeling costs. *Singh argument and testimony; Pet'r Exs. 1-3.*
15. Contrary to testimony from the Respondent's witness, Mr. Ward, the property was a convenience store and gas station before the Petitioner bought it, although the business had closed for some reason. The Petitioner "freshened up" the property and installed new pumps. It already had a canopy, although the Petitioner had it resurfaced as part of the renovation. *Singh testimony.*
16. The property's assessment changed drastically between 2011 and 2012. Parcel 23's assessment jumped from \$281,300 to \$665,200. Parcel 22's assessment went from \$65,200 to \$85,200, even though the land value decreased and the Petitioner did not renovate that parcel. The market did not increase at anything approaching those rates. *Singh argument and testimony; Pet'r Ex. 4.*
17. Although Mr. Ward prepared a sales-comparison analysis, the properties he used were dissimilar to the subject property. They were not from the subject property's neighborhood. Some were located downtown or close to the university where many students shop. One property had an asking price of \$1,000,000. *Singh testimony and argument.*

RESPONDENT'S CONTENTIONS

18. The subject 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. It had been a “Mr. SuperRent” with an old canopy and no gas tanks. Mutual Bank bought it for \$326,459 at a sheriff’s sale in March 2010. It had been listed for sale from July 7, 2008, to February 12, 2010. The listing price at the end of that period was \$399,000, but it could have started out higher. The sales disclosure form for the transaction has the box checked for “compulsory transactions as a result of foreclosure or express threat of foreclosure, divorce, court order, judgment, condemnation, or probate.” *Ward testimony and argument; Resp’t Exs. 2, 11.*
19. The Petitioner bought the property from Mutual Bank in July 2010. While there are no conditions marked on the sales disclosure form, the Respondent contends that a sale from a bank is considered a distressed sale. *Ward testimony and argument; Resp’t Ex. 3.*
20. When the Petitioner bought the property, it was classified as utility storage for assessment purposes. The Respondent did not initially change the classification. In December 2010 and March 2011, however, the Petitioner applied for building permits to remodel or renovate the property. The first permit described the project as a “Commercial Remodel” and listed the cost as \$125,000. The second referenced the canopy but did not provide a cost. Parcel 23 was extensively remodeled and put to use as a gas station and convenience store. Thus, in 2012, the Respondent reclassified the primary building and added the detached canopy. The base rate he used to assess the land also increased, and because the property was now occupied, he removed the 20% negative influence factor that had previously been applied to Parcel 23. *Ward testimony. Resp’t Exs. 1-1C, 10-10A.*
21. To support the assessment, Mr. Ward offered an analysis of sales (and one listing) for seven comparable properties located within 1.014 to 6.6 miles of the subject property.

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”).

22. 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 the following factors in valuing gas stations and convenience stores: 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. The subject property is located on strong collector streets at a four way traffic light with full ingress and egress. The collector streets, Wheeling and Centennial, have between 11,000 and 17,000 vehicles per day, and the posted speed limit is 30 miles-per-hour. According to Mr. Ward, the convenience-store parcel (Parcel 23) alone has 340 feet of frontage and 74,000 square feet.⁴ *Ward testimony; Resp’t Exs. 1-1C, 4-7, 7H.*
23. The following is a summary of Mr. Ward’s ratings for each property:
- 2536 South Hoyt Avenue. It sold for \$725,000 or \$453.69/sq. ft. of building area on August 31, 2011. Mr. Ward rated its location, condition, and lot as similar to the subject property, and its building size, lot size, traffic count, canopy size, and age as inferior. He rated its frontage as superior.
 - 715 West University. It sold for \$699,000 or \$328.32/sq. ft. on September 14, 2011. Mr. Ward rated its building size, age, condition, and lot as similar to the subject property, and its lot size, frontage, location, traffic count, and canopy size as inferior.
 - 1800 West Jackson. It sold for \$550,000 or \$291/sq. ft. on December 9, 2010. Mr. Ward rated all its characteristics except for its condition as inferior to the subject property.

⁴ The property record cards for the two parcels list 26,136 and 27,878 square feet, respectively or a total of 54,014 square feet. *Resp’t Ex. 1.*

- 2905 West Bethel. It sold for \$1,000,000 or \$297.62/sq. ft. on December 30, 2010. Mr. Ward rated its building size, canopy size, and age as superior to the subject property, and its frontage, location, traffic count, condition, and lot as similar. He rated its lot size as inferior.
- 2001 McGalliard. It sold for \$700,000 or \$307.29/sq. ft. on August 31, 2011. Mr. Ward rated its building size and traffic count as superior to the subject property and its frontage, location, age, condition, and lot as similar. He rated its lot size and canopy size as inferior.
- 7910 North State Road 3. It sold for \$1,200,000 or \$614.75/sq. ft. on August 31, 2011. Mr. Ward rated the building size, lot size, age, and condition as similar to the subject property and the frontage, location, traffic count, canopy size, and lot as inferior.
- 1634 North Wheeling. It was listed at \$1,000,000 or \$471.90/sq. ft. on September 13, 2006. Mr. Ward rated its lot size, canopy size, and condition as inferior to the subject property and its frontage, location, traffic count, and lot as similar. He rated its building size and age as superior. It is located within 40 feet of the subject property.

Mr. Ward included the presence or absence of additional buildings (the subject property has them, while the comparables do not) on his comparison grid, but he did not assign a comparative rating for that characteristic. *Ward testimony; Resp't Exs. 7-7H, 8.*

24. Mr. Ward is not an appraiser, and he had to find a way of comparing the properties “in our own way.” He 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 five he believed were most similar to the subject property, which he determined by counting the number of similar ratings. Those averages were \$460.84/sq. ft. and \$403.98/sq. ft., respectively. By contrast, Parcel 23 was assessed for only \$328.66/sq. ft. *Ward argument and testimony; Resp't Ex. 7.*
25. Finally, the MLS listing sheet from 2010 shows that the property had 3,488 square feet of retail space, 2,867 square feet of warehouse, and 730 square feet of office space. Mr.

Ward was “quite a bit under that” in his sales-comparison analysis. Thus, he asked for the assessment to be increased, although he did not say by how much. *Ward argument and testimony; See Pet’r Ex. 1.*

BURDEN OF PROOF

26. 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 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).*
27. The parties agreed that the assessment increased by more than 5% between 2011 and 2012. The Petitioner contended that the Respondent had the burden of proof, and Mr. Ward replied that he had “no problem with that.” Thus, the ALJ preliminarily determined that the Respondent had the burden of proof.
28. In defending the assessment, the Respondent pointed to a change in the property’s use sometime after late 2010. The Petitioner, however, disputed that fact, claiming the property had previously been used as a gas station and convenience store. The parties also agreed that the property was remodeled, although neither said much about the specifics of the project. We need not decide whether there was a sufficient change in use

or sufficient structural improvements between 2011 and 2012 to avoid operation of the burden-shifting statute. Those were Respondent's arguments to make. Rather than make them, he accepted the burden of proof. We therefore uphold the ALJ's preliminary determination and find that the Respondent has the burden of proof.

ANALYSIS

29. 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, sale 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).
30. Regardless of the method used, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. Otherwise, the evidence lacks probative value. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the valuation date was March 1, 2012. *See* I.C. § 6-1.1-4-4.5(f).
31. 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.

32. 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 both the appraisal article he relied on and the Petitioner’s witness identified as significant. Nonetheless, he showed that the properties were generally comparable.
33. 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.
34. We understand that qualitative analysis may be permissible, or even advisable, where the available data is insufficient to support quantitative adjustments. But Mr. Ward simply 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 four sales (and one listing) 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.

35. In addition, Mr. Ward ignored a significant point of comparison—time related market conditions. Two of his sales were from more than 14 months before the valuation date, and his listing was from 2006. Because he did not explain how those sale (and listing) prices related to the valuation date, they lack probative weight. *Long*, 466 N.E.2d at 471.
36. Thus, while at least some of Mr. Ward’s sales data was relevant, we cannot say that it shows a specific value, or even a likely range of values, for the subject property.
37. The Respondent offered little evidence beyond Mr. Ward’s sales-comparison analysis. Although Mr. Ward discussed the subject property’s sales and listing history from 2008-2010, he did so largely to argue that the sales were distressed and that the property has since been remodeled and converted to a different use. In any case, the sales occurred well before the March 1, 2012 valuation date, and nobody explained how they related to that date. As for Mr. Ward’s claim that the Respondent had underestimated the building’s size, that fact, by itself, does nothing to show the property’s overall true tax value.
38. For those reasons, the Respondent failed to make a prima facie case supporting the 2012 assessment. Ordinarily, that would require lowering the assessment to its 2011 level of \$346,500. *See* I.C. § 6-1.1-15-17.2(a) and (b). The Petitioner, however, requested a total assessment of \$455,100 in its Form 131 petitions. We will not order the assessment to be reduced below the amount the Petitioner requested.

SUMMARY OF FINAL DETERMINATION

39. The Respondent failed to make a prima facie case proving that the combined assessment was correct. Consequently, we order the parcels’ combined assessment reduced to \$455,100—the amount the Petitioner requested.

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>>.