

REPRESENTATIVE FOR PETITIONER: Todd Barron, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Bartholome Enterprises, LLC,	)	Petitions:	48-039-18-1-4-00659-19
	)		48-039-19-1-4-00283-21
Petitioners,	)		48-039-20-1-4-00350-21
)		
v.	)	Parcel:	48-14-03-300-008.000-039
)		
Madison County Assessor,	)	County:	Madison
)		
Respondent.	)	Assessment Year:	2018, 2019, 2020

October 12, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

INTRODUCTION

1. Bartholome sought a reduction in its assessments for a small office building located in Anderson. In support of this, it offered a consulting report prepared by its tax representative. It claimed this evidence showed that the current assessments were above the market value-in-use of the subject property and that they lacked uniformity and equality with other assessments of nearby properties. Because Bartholome failed to show that its evidence complied with generally accepted appraisal principles or the applicable law, the Board finds for the Assessor and orders no change to the assessments.

PROCEDURAL HISTORY

2. Bartholome Enterprises, LLC appealed its 2018, 2019, and 2020 assessments for a property located at 2709 Enterprise Drive in Anderson, Indiana. The Madison County Property Tax Assessment Board of Appeals (“PTABOA”) upheld the following assessments:

	Land	Improvements	Total
2018	\$48,400	\$673,500	\$721,900
2019	\$48,400	\$672,800	\$721,200
2020	\$48,400	\$673,000	\$721,400

3. The Board administrative law judge, Jennifer Thuma (“ALJ”), held a telephonic hearing on June 11, 2021. Neither she nor the Board inspected the subject property.
4. Bartholome’s tax representative, Todd Barron, and Michelle Davis, Nexus Group Tax Director were sworn and testified.

RECORD

5. The parties submitted the following exhibits:

Petitioner’s Exhibit 1:	Summary of Valuation Evidence
Petitioner’s Exhibit 2:	Subject & Comparison Property Photos
Petitioner’s Exhibit 3:	Property Information—600 Corporation Drive
Petitioner’s Exhibit 4:	Rebuttal Evidence with four attachments including property record cards, sales information, and an income approach forecast
Respondent’s Exhibit A:	Public Data for Subject Property
Respondent’s Exhibit B:	Sales Comparison Approach
Respondent’s Exhibit C:	Sale 1 Information
Respondent’s Exhibit D:	Sale 2 Information
Respondent’s Exhibit E:	Sale 3 Information
Respondent’s Exhibit F:	Sale 4 information
Respondent’s Exhibit G:	7311 Quality Circle Information
Respondent’s Exhibit H:	Income Approach ¹

6. 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 the ALJ; and (3) a digital recording of the hearing.

¹ The Assessor listed an Exhibit I on his exhibit list but did not offer it.

OBJECTIONS

7. The Assessor objected to Attachments 2 and 4 of Petitioner's Ex. 4, sales information and an income approach forecast, on the grounds that they lacked foundation, were not relevant, and were not rebuttal evidence. The exhibits are related to the valuation of the subject property and thus relevant to these appeals. We also find that Bartholome laid sufficient foundation as to their authenticity and that the Assessor's foundation objection goes more to the weight of the evidence than its admissibility. Finally, we note that although the evidence would have been better offered in Bartholome's case-in-chief, it was in some respects responsive to the Assessor's case. In addition, the Assessor had sufficient opportunity to respond to it. Thus, we do not find its exclusion merited.

BURDEN OF PROOF

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code § 6-1.1-15-17.2 (b) and (d).
9. For 2018, the parties agreed that Bartholome had the burden of proof because the assessment decreased from the prior year's assessment. We agree and find the burden rests with Bartholome.

FINDINGS OF FACT

A. Subject Property

10. The property consists of an approximately 9,400 sq. ft brick office building located on .967 acres of land. Constructed in 1999, it is accessible just off the Interstate 69 exit in Anderson's Enterprise Office Park. The park's campus includes at least a dozen other office buildings of approximately the same age. *Barron testimony; Davis testimony; Pet'r. Ex. 1; Resp't. Ex. A*

B. Bartholome's Evidence

11. Bartholome presented a “consulting report” prepared by its tax representative, Todd Barron. This included an evaluation of the current assessment along with comparable sales and assessment analyses.² For the current assessment, Barron noted that despite no significant changes to the subject property, the Assessor changed the effective age to 2005 in 2018. He found this understated the subject property’s depreciation. *Barron testimony; Pet’r Ex. 1.*
12. For his sales analysis, Barron presented seven purportedly comparable properties that sold for between \$14.21/sq. ft. and \$58.14/sq. ft. between August 2014 and April 2019. He did not make adjustments to the comparables. Based on the average and median sale prices, he concluded the subject should be assessed at no more than \$50.00/sq. ft. or \$470,000 rounded. *Barron testimony; Pet’r Ex. 1-3.*
13. Finally, he performed a uniformity analysis where he looked at the assessments of other properties in the same neighborhood. He found that after eliminating the highest and lowest assessments the average assessment was between \$38.23/sq. ft. and \$40.90/sq. ft. depending on the year at issue. He also found that the median assessments ranged from \$31.30/sq. ft. to \$34.56/sq. ft. depending on the year at issue. Based on this, he concluded that the subject property should not be assessed for more than \$50.00/sq. ft. or \$470,000 rounded. *Barron testimony; Pet’r. Exs. 1-4.*

C. Assessor's Evidence

14. The Assessor presented a sales analysis prepared by Michelle Davis, a certified level 3 assessor/appraiser. Ms. Davis presented four properties that sold between November 2015 and June 2017 for \$45.95/sq. ft. to \$109/sq. ft. She adjusted the sales for size, wall height, land to building ratio, age, and location. After adjustment, the sale prices ranged from \$57.00/sq. ft. to \$122.36/sq. ft. Ms. Davis also presented an income analysis in which she developed a “rough estimate” of value using sales of leased properties. After deducting actual vacancy and expenses she concluded to a value of \$78/sq. ft.

² Bartholome also submitted an “income approach forecast” as a rebuttal exhibit. Because it offered very little explanation of how the forecast was developed, we give it no weight and do not recount it here.

ANALYSIS

15. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in turn defines as "[t]he 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." MANUAL at 2.
16. In an assessment appeal, a market-value-in-use appraisal compliant with the Uniform Standards of Professional Appraisal Practice is often the best evidence of a property's true tax value. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer any other evidence that is relevant to a property's true tax value, such as actual construction costs, sales information for the property under appeal, and sales or assessment information for comparable properties. MANUAL at 3; see also *Eckerling*, 841 N.E. at 674; I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals).
17. Regardless of the method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation dates for these appeals are January 1, 2018, 2019 and 2020. Ind. Code § 6-1.1-2-1.5(a). In addition, to effectively use any kind of comparison approach to value a property, one must establish that the properties are truly comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470. A petitioner is "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Id.* at 471.

18. As discussed above, Bartholome had the burden of proof in this case. To meet this burden, Bartholome relied on the value analyses prepared by its tax representative, Todd Barron. He began by criticizing the current assessment, focusing on the Assessor's choice to change the effective age of the subject property, thus decreasing the depreciation. But simply attacking the Assessor's methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling* 841 N.E.2d at 678. To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property's market value-in-use. *Id.*; see also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is). To do so, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
19. Barron did develop some market-based evidence, including a sales-comparison approach. But he did little to show that it was a reliable indicator of value. To effectively use a sales-comparison approach, a party needs to establish that the properties were comparable by adjusting any differences between them and the subject and relating those to the applicable year under appeal as required by *Long*. While Mr. Barron provided some cursory explanation of the differences and similarities of the different properties, he did not make adjustments for important differences such as size, condition, age, or location. Nor did he show that he had sufficient market-based evidence to support any such adjustments. For that reason, we find Barron's sales-comparison analysis unreliable.³
20. Finally, Bartholome argued that the subject property's assessment was not uniform and equal compared to other assessments. 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. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007)

³ As discussed above, we also find Barron's income forecast unreliable because he failed to explain how he developed it.

(emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *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. *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)). Bartholome's evidence failed to meet this standard for several reasons. First, while Barron did point to some other assessments that differed from the subject property, he did not show that he relied on professionally accepted standards in preparing his analysis. Second, he did not provide any objectively verifiable market data showing values for the other properties. And lastly, he failed to show that the comparison assessments he presented constituted a statistically reliable sample. For these reasons, we find Bartholome has failed to make a case for a lack of uniformity or equality in its assessments.

21. Because Bartholome did not support its claims with probative evidence, the Assessor's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Industries. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, we need not examine the Assessor's evidence.

CONCLUSION

22. Bartholome did not meet its burden of proof to show the subject property's current assessments were incorrect. Nor did it prove there was a lack of uniformity or equality in the assessments. Thus, the Board finds for the Assessor and orders no change to the assessments for any of the three years under appeal.

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>>.