

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

Petition: 14-017-13-1-4-00025
Petitioner: C.E. Taylor Oil, Inc.
Respondent: Daviess County Assessor
Parcel: 14-10-27-404-012.000-017
Assessment Year: 2013

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 its 2013 assessment appeal with the Daviess County Assessor on May 21, 2014.
2. On December 31, 2014, the Daviess County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on March 10, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on April 20, 2016. She did not inspect the property.
6. Brian Thomas appeared for the Petitioner. Attorney Brian Cusimano appeared for the Respondent. Mr. Thomas and Daviess County Assessor Dennis Eaton were sworn.

Facts

7. The property under appeal is a convenience store and gas station located at 201 North State Road 57 in Washington.
8. The PTABOA determined the 2013 total assessment is \$434,600 (land \$23,800 and improvements \$410,800).
9. The Petitioner requested a total assessment of \$364,400 (land \$23,800 and improvements \$340,600).

Record

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit A: Summary of contentions, including an assessment and price per square foot chart and “comparability charts” (MARKED CONFIDENTIAL),
- Petitioner Exhibit B: Subject property record card, photograph of the property, and general information for Washington, Indiana,
- Petitioner Exhibit C: Property analysis for 249 West Huntington in Montpelier, property record card, photograph of property, ratio study for improved commercial properties in Harrison Township/Blackford County, and general information for Montpelier, Indiana,
- Petitioner Exhibit D: Property analysis for 304 East Main Street in Knightstown, property record card, photograph of property, ratio study for improved commercial properties in Wayne County, and general information for Knightstown, Indiana,
- Petitioner Exhibit E: Property analysis for 1424 L Street in Bedford, property record card, photograph of property, and general information for Bedford, Indiana,
- Petitioner Exhibit F: 2012, 2013 and 2014 Daviess County ratio study overviews,
- Petitioner Exhibit G: Property record card and photograph for 1204 East National Highway in Washington,
- Petitioner Exhibit H: Property record card and photograph for 401 East National Highway in Washington,
- Petitioner Exhibit I: Property record card and photograph for 605 North State Road 57 in Washington.

- Respondent Exhibit A: Petitioner’s assessment and price per square foot chart from Petitioner’s Exhibit A, property record cards for 201 North State Road 57 and 401 East National Highway,
- Respondent Exhibit B: Property record card and sales disclosure for 1204 East National Highway in Washington.

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Hearing notice dated March 10, 2016,
- Board Exhibit C: Notice of Appearance for Marilyn Meighen and Heather Scheel,
- Board Exhibit D: Notice of Appearance for Brian Cusimano,

Board Exhibit E: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The subject property is assessed too high. Sales and assessments of similar properties located in rural towns indicate the subject property is over-assessed. Additionally, "as well as being the significantly highest locally assessed convenience market with gas, the subject was treated disparately in terms of the minimal decrease in the assessed value from (the) 2012 assessment year to the 2013 assessment year." *Thomas argument; Pet'r Ex. A.*
- b) Mr. Thomas examined both sales and assessments of similar properties located in Montpelier, Knightstown and Bedford. These localities are similar to Washington. The comparable properties sold between May 2012 and February 2013 and ranged in price from \$92.79 to \$130.89 per square foot. The comparable properties' assessments ranged from \$87.42 to \$122.46 per square foot. The sizes ranged from 1,528 square feet to 3,116 square feet while the subject property measures 2,911 square feet. The comparable properties "effective years of construction" ranged from 1988 to 2000 while the subject property's "effective year of construction" is 2001. All of the properties include a canopy; however, only the Knightstown property includes a car wash similar to the subject property. *Thomas argument; Pet'r Ex. A, B, C, D, E.*
- c) Mr. Thomas concluded that the Knightstown property is the most comparable to the subject property. This property sold for \$123.15 per square foot and is assessed at \$122.46 per square foot. In comparison, the subject property's 2013 assessment is \$149.30 per square foot. Mr. Thomas did concede that the subject property's 2014 assessment was ultimately lowered to \$125.18 per square foot which "falls in line with the market evidence." *Thomas argument; Pet'r Ex. D.*
- d) Mr. Thomas also examined the assessments of three "local competing properties." These properties ranged in size from 1,642 square feet to 3,080 square feet. Their "effective years of construction" ranged from 1990 to 2000. All of the properties included canopies, but none included a car wash. Accordingly, Mr. Thomas made an adjustment to account for the lack of a car wash. This adjustment equated to "adding the assessment of the subject property's car wash building to the other three properties' assessments." After the adjustment was made, the three properties' assessments ranged from \$97.62 to \$117.60 per square foot. *Thomas testimony; Pet'r Ex. A, B, G, H, I.*

12. Summary of the Respondent's case:

- a) The property is correctly assessed. This argument is supported when comparing “apples to apples” with proper adjustments. Specifically the Circle K property, located at 401 East National Highway, required an adjustment before comparing its assessment to the subject property. As Circle K leases the land, the assessment only included the building, canopy, and paving. Further, the Circle K building is 169 feet larger. The Circle K is assessed at \$70.36 per square foot. When adjusting the subject property's assessment to include the building only and adjusting for the effective age, the assessment equates to \$70.83 per square foot. *Cusimano argument; Eaton testimony; Resp't Ex. A.*
- b) The Petitioner also utilized the property located at 1204 National Highway as a comparable. This property was sold in 2015 for \$525,000; however this sale did include \$200,000 in personal property. This property was assessed at \$80.98 per square foot. But the sale price indicates a value of \$124.90 per square foot, a 54% increase from 2013 to 2015. *Eaton testimony; Resp't Ex. B.*
- c) The Petitioner also utilized the property located at 605 North State Road 57. It is an “old Marathon station” that has been vacant for several years. Consequently, obsolescence depreciation was applied to the assessment. Thus, it is not comparable to the subject property. *Eaton testimony.*
- d) The Petitioner attempted to compare the subject property to various properties located in other counties. It is “very difficult” to compare assessments from other counties. Assessing procedures vary from county to county, and different statistics are utilized in trending and ratio studies. Recently, values in Daviess County have changed slightly and some have gone down. *Eaton argument.*
- e) Finally, Mr. Thomas failed to make any adjustments in his analysis to account for differences in location, age, condition, or other characteristics of the properties. The characteristics of a property affect the value, and the Petitioner's evidence lacks any “apples to apples” comparison. *Cusimano argument citing Kooshtard Property VIII vs. Shelby Co. Ass'r, 987 N.E.2d 1178 (Ind. Tax Ct. 2013).*

Burden of Proof

13. 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.
14. 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).

15. Second, Ind. Code § 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 IC 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 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 § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the Respondent argued the burden should remain with the Petitioner because the assessment decreased from \$434,900 in 2012 to \$434,600 in 2013. The Petitioner failed to offer any argument regarding the burden. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

17. The Petitioner failed to make a prima facie case for reducing the 2013 assessment.
 - a) Real property is assessed based on its 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *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). For a 2013 assessment, the valuation date was March 1, 2013. See Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, in an attempt to prove the property is over-assessed, the Petitioner offered an analysis of three purportedly comparable sales. In doing so, it appears that Mr. Thomas was essentially relying on a sales-comparison approach to establish that the assessment should be lowered. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison

- approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also, Long*, 821 N.E.2d 466, 469.
- d) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - e) Here, the type of analysis required is lacking from the Petitioner’s analysis. The Petitioner’s evidence fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the property under appeal. Moreover, Mr. Thomas failed to identify or quantify any differences between the purportedly comparable properties and the subject property. Thus, the Petitioner’s sales-comparison analysis lacks probative weight.
 - f) The Petitioner also presented an assessment comparison including both “local competing properties” and properties located in other counties. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located *in the same taxing district or within two miles of the taxing district boundary*. Ind. Code § 6-1.1-15-18(c)(1) (emphasis added). It is clear from the evidence at least half of the properties utilized in the Petitioners “assessment comparison” fail to meet the boundary requirements set forth under Ind. Code § 6-1.1-15-18(c)(1).
 - g) The Petitioner did, however, present evidence regarding the assessments of “local competing properties.” Granted, as the Board examines the “local competing properties” there is no evidence proving these properties meet that boundary requirement set forth under Ind. Code § 6-1.1-15-18(c)(1), but even if they do, the determination of whether properties are comparable using the “assessment comparison” approach must be based on generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. Again, the Petitioner failed to provide a reliable analysis. The comparisons made by Mr. Thomas are inadequate to prove the properties are comparable. Additionally, other than accounting for the lack of a “car wash building,” Mr. Thomas failed to account for any additional differences. As such, the Petitioner’s “assessment comparison” lacks probative value.
 - h) Finally, Mr. Thomas failed to specifically explain how his various comparisons support his requested value. It seems Mr. Thomas settled on the property’s 2014 assessed value of \$364,400, and argued this value is supported by “market evidence.”

To the extent the Petitioner intends to argue the 2014 assessment is evidence of the 2013 value, the Board reminds the Petitioner that each assessment year stands alone. *See Fleet Supply Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (“[F]inally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. . . Thus, evidence as to the Main Building’s assessment in 1992 is not probative as to its assessed value three years later.”)

- i) Consequently, the Petitioner failed to make a prima facie case that the 2013 assessment was incorrect. Where the Petitioner has not supported their claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2013 assessment will not be changed.

ISSUED: July 18, 2016

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>>.