

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Contentions and Analysis**

**Petition No.:** 19-020-18-1-4-01200-18  
**Petitioner:** Lawrence Earl Carter  
**Respondent:** Dubois County Assessor  
**Parcel No.:** 19-11-34-301-409.000-020  
**Assessment Yr.:** 2018

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now find and concludes the following.

**PROCEDURAL HISTORY**

1. Lawrence Carter challenged his 2018 assessment by filing a Form 130 petition with the Dubois County Assessor. On October 5, 2018, the Dubois County Property Tax Assessment Board of Appeals upheld the assessment and issued its determination valuing the property as follows:

<b>Land</b>	<b>Improvements</b>	<b>Total</b>
\$8,800	\$43,300	\$52,100

2. Carter then timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 24, 2019, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing on Carter’s petition. Neither he nor the Board inspected the property. Marilyn Meighen appeared as counsel for the Assessor. Carter appeared *pro se*. Carter and Jon Lawson, a project manager for Tyler Technologies, testified under oath.

**RECORD**

3. The parties offered the following exhibits:

Petitioner’s Exhibit 1:	Handwritten chart listing assessment changes for the subject parcel and 324 4 <sup>th</sup> Street
Petitioner’s Exhibit 2:	Handwritten chart listing changes in building assessments from 2017-2018 for the subject parcel and other parcels on 4 <sup>th</sup> Street
Petitioner’s Exhibit 3:	Handwritten chart listing changes in building assessments between 2015 and 2018 for the subject parcel and other parcels on 4 <sup>th</sup> Street
Petitioner’s Exhibit 4:	Copy of Respondent’s Exhibit H with handwritten notations
Petitioner’s Exhibit 5:	Form 131 petition

Petitioner’s Exhibit 6:	Form 115 determination and Form 130 petition
Respondent’s Exhibit A:	Property record card (“PRC”) for the subject parcel
Respondent’s Exhibit B:	Photograph of the subject parcel
Respondent’s Exhibit C:	Map with locations of the subject parcel and Lawson’s comparable sales 1-6
Respondent’s Exhibit D:	PRC for 324 4 <sup>th</sup> Street
Respondent’s Exhibit E:	Sales disclosure form for the subject parcel and 324 4 <sup>th</sup> Street
Respondent’s Exhibit F:	Map with locations of the subject parcel and comparable sales 1-7
Respondent’s Exhibit G-1:	Photo of comparable sale 1
Respondent’s Exhibit G-2:	Photo of comparable sale 2
Respondent’s Exhibit G-3:	Photo of comparable sale 3
Respondent’s Exhibit G-4:	Photo of comparable sale 4
Respondent’s Exhibit G-5:	Photo of comparable sale 5
Respondent’s Exhibit G-6:	Photo of comparable sale 6
Respondent’s Exhibit G-7:	Photo of comparable sale 7
Respondent’s Exhibit H:	Spreadsheets with data for comparable sales and Lawson’s narrative
Respondent’s Exhibit I-1:	PRC and disclosure form for comparable sale 1
Respondent’s Exhibit I-2:	PRC and disclosure form for comparable sale 2
Respondent’s Exhibit I-3:	PRC and disclosure form for comparable sale 3
Respondent’s Exhibit I-4:	PRC and disclosure form for comparable sale 4
Respondent’s Exhibit I-5:	PRC and disclosure form for comparable sale 5
Respondent’s Exhibit I-6:	PRC and disclosure form for comparable sale 6
Respondent’s Exhibit I-7:	PRC and disclosure form for comparable sale 7

## CONTENTIONS

### Assessor’s Contentions:

4. The subject parcel is located at 322 4<sup>th</sup> Street in Huntingburg. It is adjacent to 324 4<sup>th</sup> Street. In June 2015, Carter and his wife<sup>1</sup> bought the two parcels for \$145,000, or \$20.37/sq. ft. of building area, in a single transaction. *Resp’t Ex. E; Lawson testimony.*
  
5. The 3,410-square-foot building on the subject parcel was constructed in 1886. According to its property record card (“PRC”), a 1,320-square-foot area was used for general retail, while the rest was used for utility storage. *See Resp’t Ex. A; Lawson testimony.*

---

<sup>1</sup> The evidence concerning who bought the property is ambiguous. Although the Assessor offered the disclosure statement from the sale, she redacted the portion containing the parties’ names. Carter testified that he and his wife bought the property, while the PRC lists Carter Real Estate Holdings, LLC as the owner.

6. Jon Lawson, a project manager for the Assessor's contractor, Tyler Technologies, testified for the Assessor. He has roughly 15 years of experience in the assessment field. He compared the subject parcel to seven other properties from downtown Huntingburg that sold between November 2016 and June 2018. They represent roughly 12% of all the stores located in Huntingburg. Six of the properties were located within two blocks of the subject parcel. According to Lawson, all the properties were from the same submarket and were exposed to the same household income, traffic flow, and other location-related influences. The comparable buildings were between 1,600 and 4,174 square feet and were built between 1875 and 1960. Two of the properties (Sales 3 and 5) were mixed-use with a portion of the building used for retail and other portions used for utility storage. The rest were used solely for retail. *Resp't Exs. H, 11-17; Lawson testimony.*
7. Lawson chose price-per-square-foot of building area as his unit of comparison. He adjusted the sale prices to account for differences in market conditions between the sale dates and the January 1, 2018 valuation date at issue in this appeal. He calculated his adjustment using the median rate of appreciation derived from paired sales for several Huntingburg properties. The earliest of the paired sales was from January 2016. *Resp't Ex. H; Lawson testimony.*
8. Lawson did not make any other adjustments, even though he recognized some differences between his comparable properties and the subject parcel. Three buildings (Sales 1, 2 and 4) had been extensively renovated or remodeled. Sale 1 had a higher grade than the subject building, reflecting its superior construction quality. And Sale 7 had significantly more land and frontage. Nonetheless, Lawson believed the sales reflected the market range for retail properties in downtown Huntingburg. *Resp't Exs. H, 11-17; Lawson testimony.*
9. The two mixed-use properties sold for time-adjusted prices of \$14.16/sq. ft. and \$19.60/sq. ft., respectively. The rest sold for time-adjusted prices ranging from \$30.95/sq. ft. to \$58.79/sq. ft. The subject parcel was assessed for \$15.28/sq. ft. Thus, the Assessor believes the parcel was assessed for a little less than its market value. *Resp't Exs. H, G1-G7, 11-17; Lawson testimony; Meighen argument.*

Carter's Contentions:

10. A previous owner removed part of the wall between the buildings on the subject parcel and 324 4<sup>th</sup> Street. It is now one store with an opening in the front. *Carter testimony; Pet'r Ex. 5.*
11. Carter and his wife began renting the property in 2013. Two years later, they exercised their option to purchase it. According to Carter, they actually paid \$125,000. While the sales disclosure form shows a price of \$145,000, they were credited for two years of rent. Of the \$125,000 sale price, Carter allocated \$45,060 to the subject parcel. He based his allocation on the building having 2,090 square feet—1,320 square feet of retail and 770

square feet of utility storage.<sup>2</sup> On cross-examination, Carter acknowledged that he did not adjust the sale price to a value as of the relevant valuation date. *Carter testimony; Pet'r Exs. 4-5.*

12. Carter believes the subject parcel was unfairly assessed compared to neighboring properties, including the properties from Lawson's analysis. He was told the assessment increased because a 30% obsolescence factor was removed. But nobody gave a reason for its removal. Under those circumstances, Carter does not believe the increase was justified. In any case, the building portion of the subject parcel's assessment increased by a drastically higher percentage than did the assessments for other buildings on 4<sup>th</sup> Street. *Pet'r Exs. 1-4; Carter testimony and argument.*
13. According to Carter, Lawson miscalculated the unit value for the subject parcel's assessment. It was actually assessed for \$24.92/sq. ft., or 115.6% of its sale price of \$21.56/sq. ft.<sup>3</sup> By contrast, the assessments for Lawson's comparable properties ranged from 63.13% to 113.96% of their sale prices, with five of the seven falling below 78%. *Pet'r Ex. 4; Resp't Ex. A; Carter testimony.*
14. Because Carter believes that the increase in the subject parcel's assessment was unjustified and led to inequalities, he asks us to reduce the assessment to the previous year's level of \$38,900 (\$30,100 for improvements and \$8,800 for land). *Carter testimony and argument.*

### **BURDEN OF PROOF**

15. 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's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d). The subject parcel's assessment increased by far more than 5% between 2017 and 2018. So did the combined assessment for the subject parcel and the adjoining parcel at 324 4<sup>th</sup> Street. In any case, the Assessor acknowledged she had the burden, and we agree.

### **ANALYSIS**

16. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's "true tax value." 50 IAC 2.4-1-1(c); 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." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 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

---

<sup>2</sup> The PRC shows an additional 1,320 square feet of utility storage that Carter omitted in his calculation.

<sup>3</sup> Again, Carter's calculations omit 1,320 square feet of utility storage area.

reflected by the utility received by the owner or by a similar user, from the property.”  
MANUAL at 2.

17. Parties 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 often will be probative. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices).
18. Regardless of the valuation 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, it lacks probative value. *Id.* The valuation date for the year under appeal was January 1, 2018.
19. The Assessor relied on Lawson’s analysis of comparable sales to support the subject parcel’s assessment. The sales-comparison approach assumes that potential buyers will pay no more for a property than it would cost to buy an equally desirable substitute property in the marketplace. An appraiser identifies sales of comparable properties and adjusts the sale prices to reflect differences between the property being appraised and the comparable properties. Where possible, the appraiser then uses objectively verifiable market evidence to quantify the contributory value of those differences. *See* 2011 MANUAL at 9-10; *see also Long*, 821 N.E.2d at 471-72 (holding that taxpayers applying the sales-comparison approach needed to explain “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.”).
20. Lawson followed the basic premise of the sales-comparison approach. He identified properties that were comparable to the subject parcel in many respects. All were used at least partly for retail. The buildings were mostly similar to the subject building in terms of age and condition. And all the properties were exposed to the same location-related influences. Lawson adjusted the sale prices to account for differences in market conditions between the sale dates and the January 1, 2018 valuation date at issue. But he did not adjust for other factors that likely would affect value, such as substantial renovations to three of his comparable buildings.
21. More importantly, Lawson did not adjust the sale prices for properties with buildings that were used solely for retail purposes, even though a portion of the subject building was used for utility storage. According to his own data, that difference significantly affected value—the mixed-use properties sold for far lower prices. Without such an adjustment,

we fail to see how the five sales of retail-only buildings say much about the subject parcel's market value-in-use.

22. That left Lawson with only two sales. Assuming, without deciding, that two sales are sufficient data upon which to support a valuation conclusion in this case, Lawson's analysis suffers from an even more fundamental problem—he valued the parcel as if it were a separate property. Carter's un rebutted testimony shows that subject parcel and the adjoining parcel at 324 4<sup>th</sup> Street actually composed a single property. Although an internal wall previously divided the structures into two buildings, that barrier was effectively removed years ago. Since that time, the two parcels had been used as one store. That is how Carter and his wife bought and used the parcels, and absent evidence to the contrary, we find that is how they would be sold. The fact that a property has been divided into separate parcels with different identifying numbers for administrative purposes does not alter how the property is used. *See Cedar Lake Conf. Ass'n v. Lake Cnty. Prop. Tax Assessment Bd. of Appeals*, 887 N.E.2d 205, 209 (Ind. Tax Ct. 2008). We have repeatedly explained that where multiple tax parcels are used as a single economic unit, they should be valued as one property.
23. Lawson did not explain how valuing the two parcels as a single property would have affected his analysis, and we will not speculate on that question. We instead find that his sales-comparison analysis is not sufficiently reliable to carry probative weight.
24. Finally, while Lawson and the Assessor referred to the June 2015 sale of the subject parcel and 324 4<sup>th</sup> Street, they did not attempt to relate the sale price to the relevant January 1, 2018 valuation date. *See Nova Tube Ind. II, LLC v. Clark Cnty. Ass'r*, 101 N.E.3d 887, 895 (Ind. Tax. Ct. 2018) (rejecting a property's sale price where the assessor did not trend the sale or provide "affirmative evidence" relating it to the relevant valuation dates). Indeed, the Assessor challenged Carter's attempts to rely on the sale for precisely that reason. The sale therefore carries no probative weight.

### **FINAL DETERMINATION**

25. Because the Assessor failed to prove that the subject parcel's assessment was correct, it must be reduced to the previous year's level of \$38,900.

DATE: October 16, 2019

---

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>>.