

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

**Petition:** 91-021-12-1-5-00133  
**Petitioner:** David Cox  
**Respondent:** White County Assessor  
**Parcel:** 91-73-33-000-135.800-021  
**Assessment Year:** 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. The Petitioner filed a Form 130 petition with White County Property Tax Assessment Board of Appeals (“PTABOA”) contesting the subject property’s assessment. On August 20, 2013, the PTABOA issued a determination denying him relief
2. The Petitioner then timely a Form 131 petition with the Board. He elected to have this appeal heard under the Board’s small claims procedures.
3. On August 13, 2014, the Board’s designated administrative law judge, Ellen Yuhan, held a hearing on the petition. Neither she nor the Board inspected the property.
4. The Petitioner and the Respondent’s representative, Scott Potts, were sworn and testified at the hearing.

**Facts**

5. The subject property is a utility storage building located at 123 N. Railroad Street, Monticello.
6. The PTABOA determined the following assessment:  

Land: \$7,100	Improvements: \$58,200	Total: \$65,300
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7. The Petitioner requested the following values:  

Land: \$7,000	Improvements: \$28,000	Total: \$35,000
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## Record

8. The official record contains the following:
  - a. A digital recording of the hearing,
  - b. Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Hearing sign-in sheet,  
Board Exhibit D: Property record card printed August 13, 2014<sup>1</sup>
  - c. These Findings and Conclusions.

## Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479
10. Indiana Code § 6-1.1-15-17.2, also known as the burden-shifting statute, 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 for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase ...." I.C. § 6-1.1-15-17.2(d).
11. The assessment increased only 3.7% between 2011 and 2012, going from \$63,000 to \$65,300. And there is no indication that the Petitioner successfully appealed the 2011 assessment. Thus, the burden-shifting statute does not apply and the Petitioner has the burden of proof.

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<sup>1</sup> Mr. Potts referred to the property record card at the hearing and handed it to the ALJ without formally offering it as an exhibit.

## Contentions

12. Summary of the Petitioner's case:
- a. The Petitioner bought the property for \$30,000 from a lumber company when it went out of business. The building is post construction with a completely unfinished interior. It has metal that is eight inches on center instead of nine inches on center, which is obsolete. If the wind blows and tears a panel, there is no way to get metal to patch it because the standard ribs do not line up with obsolete metal. The lights are covered by 32-inch fiberglass panels instead of the standard 36 inches. The Petitioner only uses the building for personal storage. *Cox testimony.*
  - b. An adjoining property owned by Gutwein is a pole barn used for commercial storage. It is 50% finished and has gas, electric, and water. It is assessed at only \$34,200. *Cox testimony.*
  - c. A mini grocery store across the street owned by Schmeer sold for about \$40,000 or \$45,000. It is 100% finished and has electric, gas, water, and sewer. It is assessed at only \$22,900. *Cox testimony.*
  - d. The Petitioner believes that Gutwein and Schmeer<sup>2</sup> properties have lower assessments because the owners are politically connected. Those buildings are finished yet they are assessed at a fraction of the assessment for the Petitioner's property. *Cox testimony.*
13. Summary of the Respondent's case:
- a. The Gutwein building is 2,000 square feet smaller than the Petitioner's building. It also has 3,000 square feet of mezzanine. By contrast, the Petitioner's building has 6,000 square feet of mezzanine. Those differences affect the properties' assessment rates. *Potts testimony.*
  - b. The Schmeer building is steel framed. It was a grocery when it sold, and personal property may have been included in the sale. It is tiny and differs from the other two buildings. *Potts testimony.*

## Analysis

14. The Petitioner failed to make a prima facie case for reducing the assessments. The Board reaches this decision for the following reasons:

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<sup>2</sup> The Petitioner did not give the Board anything to indicate how the names for the two property owners should be spelled. "Schmeer" and "Gutwein" represent the Board's best guesses.

- a. In Indiana, real property is assessed 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 by a similar user, for the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of the Professional Appraisal Practice often will be probative. *See Id.*; *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. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b. In any case, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *See Long v. Wayne Twp. Assessor*, 821N.E.2d 466, 471 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *Id.* For 2012 assessments, the valuation date was March 1, 2012.
- c. The Petitioner testified that he bought his property for \$30,000. But he did not say when the sale occurred, much less explain how the sale price related to the property’s market value-in-use as of March 1, 2012. The sale price therefore lacks probative value.
- d. The Petitioner also attempted to compare his property to nearby properties owned by Schmeer and Gutwein, pointing to those properties’ assessments as well as to an approximate sale price for one of them. Although he compared his property to the others in terms of a few relevant characteristics, he ignored various others, such as their relative sizes. His analysis falls short of the type of comparison contemplated by generally accepted appraisal or assessment practices and therefore does not suffice to make a prima facie case that his property was over assessed. *See Long*, 821 N.E.2d at 471(finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value); *see also*, I.C. § 6-1.1-15-18(c) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable).
- e. Finally, the Petitioner referred to various problems with his building and claimed that its construction was obsolete. But he did not offer probative evidence to quantify how those problems affected the property’s market value-in-use or even to show a likely range of values for the property. *See Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 289 (Ind. Tax Ct. 2003) (explaining that

a taxpayer seeking an obsolescence adjustment must both identify factors causing an actual loss in value and quantify the obsolescence).

### **Conclusion**

15. The Petitioner failed to make a prima facie case for reducing the assessment. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value should not be changed.

ISSUED: February 9, 2015

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.