

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

**Petition:** 27-008-20-1-4-00026-21  
**Petitioner:** Horizon Properties I, LLC  
**Respondent:** Grant County Assessor  
**Parcel:** 27-06-01-401-023.000-008  
**Assessment Year:** 2020

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

**Procedural History**

1. The Petitioner initiated its 2020 assessment appeal with the Grant County Assessor on June 1, 2020.
2. On November 24, 2020, the Grant County Property Tax Assessment Board of Appeals (PTABOA) issued its determination increasing the assessment.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On May 12, 2021, Administrative Law Judge (ALJ) Joseph Stanford held the Board's telephonic administrative hearing. Neither the Board nor the ALJ inspected the property.
5. Milo Smith appeared for the Petitioner via telephone and was sworn. Attorney Brian Cusimano appeared for the Respondent via telephone. Tony Garrison was sworn as a witness for the Respondent on the call.<sup>1</sup>

**Facts**

6. The property under appeal is a convenience store and gas station at 1339 West 2<sup>nd</sup> Street in Marion.
7. The PTABOA determined a 2020 assessment of \$538,000 (land \$71,600 and improvements \$466,400).
8. The Petitioner did not request a specific value, but requested this matter be remanded to the PTABOA.

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<sup>1</sup> County Assessor Rhonda Wylie was also on the call and was sworn but did not testify.

## Record

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

a) A digital recording of the hearing.

b) Exhibits:

Petitioner Exhibit 1: Email communications between Milo Smith and Rhonda Wylie,

Petitioner Exhibit 2: Indiana Code § 6-1.1-15-1.2 (2021).<sup>2</sup>

Respondent Exhibit C: Subject property record card,

Respondent Exhibit E: Data and information regarding comparable properties,

Respondent Exhibit F: Property record card for Mann Brothers Holding, LLC,

Respondent Exhibit G: Property record card for Good Oil Company, Inc.,

Respondent Exhibit H: Property record card for HSS Petroleum, Inc.,

Respondent Exhibit I: Sales disclosure form for 3801 South Western Avenue, Marion,

Respondent Exhibit J: Sales disclosure form for 318 West 3<sup>rd</sup> Street, Marion,

Respondent Exhibit K: Sales disclosure form for 2246 West 2<sup>nd</sup> Street, Marion.<sup>3</sup>

c) 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 ALJ; and (3) these findings and conclusions.

## Contentions

10. Summary of the Petitioner's case:

a) The Respondent failed to provide the taxpayer with evidence regarding the sound value computation of the subject property's assessment. *Smith argument*.

b) According to Ind. Code § 6-1.1-15-1.2(a):

[I]f the county or township official, the county auditor, or the taxpayer obtains additional information and provides the information to the other party for the first time at the hearing held by the county board, the county board, unless waived by the receiving party, shall continue the hearing until a future hearing date of the county board so that the receiving party has an opportunity to review all the information that the offering party is relying on to

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<sup>2</sup> Prior to the hearing, Mr. Smith emailed 17 exhibits to the Board, but he only offered Exhibits 1 and 2 at hearing.

<sup>3</sup> The Respondent also emailed Exhibits A, B, and D to the Board prior to the hearing but did not offer those exhibits at the hearing.

support the offering party's positions on the disputed issues concerning the assessment or deduction.

*Smith argument; Pet'r Ex. 2.*

- c) Mr. Smith requested, via email, information the Respondent relied on to raise the sound value assessment of the subject property higher than the reproduction cost shown on the property record card. He also requested that the PTABOA hearing be continued if he did not receive the information beforehand. *Smith testimony; Pet'r Ex. 1.*
- d) Mr. Smith did not receive the requested information. The PTABOA held the hearing as scheduled on November 9, 2020. The Respondent presented evidence at that hearing that Mr. Smith "didn't get" beforehand. Mr. Smith did not attend the PTABOA hearing because of the COVID-19 pandemic. *Smith testimony.*
- e) Regarding the computation of convenience store/gas station assessments, Mr. Smith argues that it is incumbent on the Respondent, when examining sales of those properties, to determine how much personal property is included in each sale. Generally, these properties have underground tanks and inside coolers, and if those items are not broken out or cannot be determined, the sale should be considered "invalid." *Smith argument.*
- f) While Mr. Smith did not argue for any specific remedy at hearing, he argued on the Form 131 that "the case be remanded to PTABOA." At the hearing, Mr. Smith argued that the Board should "review PTABOA's determination" and "take appropriate action," or Ind. Code § 6-1.1-15-1.2 is "meaningless." He admittedly did not present any valuation evidence. *Smith argument.*

11. Summary of the Respondent's case:

- a) The Board has previously found that it lacks the authority to remand to the PTABOA on its own motion. *Cusimano argument* (citing *McDonald's Real Estate Co. v. Shelby Co. Ass'r*, Ind. Bd. of Tax Rev. pet. nos. 73-002-07-1-4-10225 and -10226 (November 10, 2010)).
- b) The Petitioner also had an obligation to exchange evidence but failed to acknowledge that. In addition, Mr. Smith failed to appear for the PTABOA hearing, as was his normal practice even before the COVID-19 pandemic. Thus, he was not able to either receive evidence or request a continuance. That effectively constitutes a waiver of Ind. Code § 6-1.1-15-1.2. *Cusimano argument.*
- c) Regarding the assessment, Mr. Garrison began comparing the sale prices to the assessments of convenience stores/gas stations in Grant County in 2007. In 2012 the study was revisited because "the sales we were getting did not compare well with what our assessed values were." The assessments were then adjusted based on those

sales. The assessments are generally correct based on those studies and should have the presumption of correctness. *Cusimano argument; Garrison testimony; Resp't Ex. C, E.*

- d) In any event, the Petitioner had ample opportunity to present evidence of the property's value at both the PTABOA hearing and before the Board but failed to do so. Therefore, the assessment should not be changed. *Cusimano argument.*

### **Burden of Proof**

12. 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 creates two exceptions to that rule.
13. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
14. 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).
15. Here, the parties agree the Petitioner has the burden of proof. Indeed, the assessment increased from \$513,400 in 2019 to \$538,000 in 2020, an increase of 4.8%. Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioner.

### **Analysis**

16. The Petitioner failed to make a prima facie case for any change in the 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 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
- c) Here, the Petitioner mainly argued that the Respondent failed to provide the Petitioner with evidence as to how she computed the “sound value” assessment prior to the PTABOA hearing as required by Ind. Code § 6-1.1-15-1.2. As a result, the Petitioner stated on its Form 131 that the Board should remand this case to the PTABOA. However, Ind. Code § 6-1.1-15-1.2 does not contemplate the Board remanding a case to the PTABOA for a purported lack of adherence to that statute’s requirements. And the Petitioner failed to cite any other authority granting the Board the power to remand a case to the PTABOA.
- d) The Board is a creation of the legislature and it has only those powers conferred by statute. Therefore, the Board has limited authority to remand appeals to the PTABOA. It may do so upon specific instructions from the Indiana Tax Court. *See* Ind. Code § 6-1.1-15-8. Obviously, that situation is not present here. Accordingly, the Board lacks authority to grant the request for a remand in this case. And the Petitioner suggested no other remedy to its complaint that the Board may grant under Ind. Code § 6-1.1-15-1.2. That does not render the statute “meaningless” as Mr. Smith suggested. It simply means the Board was not granted authority to explore the statute.
- e) Even if the Board had the authority to remand this appeal, the Petitioner presented little reason to do so. The Board’s proceedings are *de novo*. The Board owes no deference to the PTABOA determination. Consequently, the purportedly insufficient sharing of evidence prior to the PTABOA hearing did not hinder a presentation of relevant evidence and argument during the Board’s hearing. *See* Ind. Code § 6-1.1-15-4. The Board’s rules provide ample opportunity for the discovery of evidence before its hearings.
- f) As stated above, the burden was on the Petitioner to prove the property’s value. But as Mr. Smith admitted, the Petitioner offered no valuation evidence. Therefore, the Petitioner failed to make a prima facie case for reducing the assessment.

- g) Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

### Conclusion

17. The Board finds for the Respondent.

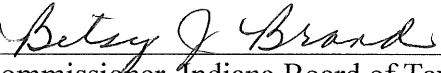
### Final Determination

In accordance with the above findings and conclusions, the 2020 assessment will not be changed.

ISSUED: August 4, 2021

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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>.