

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

Petition No.: 39-007-18-1-4-01056-19
Petitioner: Mac's Convenience Stores, LLC
Respondent: Jefferson County Assessor
Parcel: 39-08-28-114-012.000-007
Assessment Year: 2018

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 2018 assessment appeal with the Jefferson County Assessor on May 16, 2019.
2. On September 24, 2019, the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) 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. On March 10, 2021, Dalene McMillen, the Board's Administrative Law Judge (ALJ) held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Certified tax representative, Milo Smith appeared for the Petitioner telephonically and was sworn. Jefferson County Assessor Karen Mannix appeared for the Respondent telephonically and was also sworn.

Facts

6. The property under appeal is a 1.68-acre commercial vacant lot located at 1927 Lanier Drive in Madison.
7. The PTABOA determined a total land assessment of \$118,400.
8. At the hearing, Mr. Smith requested a total assessment of \$47,300.

Record

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

a) A digital recording of the hearing.

b) Exhibits:¹

Petitioner Exhibit 1: 2017 subject property record card,
Petitioner Exhibit 2: 2018 subject property record card,
Petitioner Exhibit 3: Special Warranty Deed and 2019 payable 2020 tax statement for subject property dated May 8, 2019,
Petitioner Exhibit 4: Trulia information for the subject property,
Petitioner Exhibit 5: Zillow information for the subject property,
Petitioner Exhibit 6: 2006 – 2012 subject property record card,
Petitioner Exhibit 7: 2013 – 2017 subject property record card,
Petitioner Exhibit 8: Email from Milo Smith to Tony Bilz dated March 2, 2021,
Petitioner Exhibit 9: Notice of Hearing on Petition – Real Property (Form 114).

Respondent Exhibit A: 2017 subject property record card,
Respondent Exhibit B: Four photographs of the subject property,
Respondent Exhibit C: PTABOA minutes dated September 24, 2019,
Respondent Exhibit D: Aerial map of the subject property,
Respondent Exhibit E: Petitioner's evidence submitted to PTABOA – email from Pam Layton to Karen Mannix, Petitioner's written testimony, and Commercial Improved Ratio Report,
Respondent Exhibit F: 2018 subject property record card,
Respondent Exhibit G: 2018 property record cards for the following:

- 411 Green Road, Madison,
- 1831 Marion Street, Madison,
- 490 West State Street, Madison,
- 1823 Marion Street, Madison,
- 1800 Cragmont Street, Madison,
- 1806 Cragmont Street, Madison,
- 807 Lanier Drive, Madison,
- 606 Green Road, Madison,
- 600 Green Road, Madison,
- 703 Green Road, Madison,
- 531 + Green Road, Madison,
- 511 State Street, Madison,
- 516 State Street, Madison,

¹ The Board relabeled the Petitioner's exhibits.

- 1736 Cragmont Street, Madison,
- 2034 Lanier Drive, Madison,
- 2100 + Lanier Drive, Madison,
- 2118 Lanier Drive, Madison,
- 942 Lanier Drive, Madison,
- 1948 Lanier Drive, Madison,
- 1927 Lanier Drive, Madison (subject property),
- 903 Lanier Drive, Madison,
- 1826 Lanham Drive, Madison,

Respondent Exhibit H: Real Property Assessment Guidelines – Land chapter 2, page 8,

Respondent Exhibit I: Real Property Assessment Guidelines – Land chapter 2, pages 38 – 43.

- 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.

Objections

10. The Respondent objected to Petitioner’s Exhibits 3 and 8, deed and emails, on the grounds the exhibits were dated May 8, 2019, and March 3, 2021, and not relevant to a January 1, 2018, assessment appeal. Mr. Smith argued the exhibits were submitted to support the restrictions on the property, and “it started with a nominal sale price.” The ALJ took the objections under advisement. The objections go more to the weight of the exhibits rather than admissibility. Accordingly, the Board overrules the objections and the exhibits are admitted into the record.

Contentions

11. Summary of the Petitioner’s case:
- a) The subject property is over-assessed. The land assessment increased because the 60% negative influence factor was removed for the January 1, 2018, assessment date. The negative influence factor was applied to the land from 2007 through 2017. The land assessed value increased from \$47,300 in 2017 to \$118,400 in 2018.² *Smith testimony; Pet’r Exs. 1, 2, 6 & 7.*
- b) In 2015 the subject property was operating under the name Circle K and was listed for sale on June 23, 2015. The listing was removed on July 25, 2015. On August 11, 2015, the property was offered at an auction with a “nominal bid” of \$50,000 but did

² The Petitioner testified that prior to the January 1, 2018, valuation date the improvements were removed. The 2017 property record card indicates the improvements had an assessed value of \$20,800. *Smith testimony; Pet’r Ex. 1, 2.*

not garner any bids. The auction listing stated the property may be subject to deed restrictions. *Smith testimony; Pet'r Ex. 4, 5.*

- c) The property eventually sold on May 8, 2019, for \$55,000. At the time of the sale, the warranty deed included restrictions from the original owner of the property, Mac's Convenience Stores, LLC. The restrictions prevented certain types of retail stores, convenience stores, the sale of gasoline, and ancillary uses, including use as a parking lot, retention pond, or stormwater purposes.³ These restrictions made the property "a lot different" than the average parcel in the neighborhood. *Smith testimony; Pet'r Ex. 2, 3, 8.*

12. Summary of the Respondent's case:

- a) The subject property is correctly assessed. In 2018, the 60% negative influence factor was removed and in turn the assessment increased. Although the Petitioner is contesting this decision, the Respondent claims it is warranted. On March 6, 2017, during cyclical reassessment review, it was discovered that the building, paving, and underground tanks were removed from the property.⁴ Photographs were taken in 2021, and the land is still vacant. *Mannix testimony; Resp't Exs. A, B, D, F.*
- b) The Respondent testified she contacted the Indiana Department of Environmental Management (IDEM), who confirmed they have a covenant on file signed by Mac's Convenience Stores. The covenant reads that the soil disturbed due to excavation and construction activities shall be restored. It also prohibits the property from being used for residential purposes, childcare facilities, educational facilities, industrial purposes, or agricultural activities. *Mannix testimony*
- c) The Respondent followed the Real Property Assessment Guidelines in establishing the land base rate and standard lot frontage for properties in the neighborhood. She determined the standard lot depth to be 175 feet and the base rate to be \$450 per front foot. According to the Respondent, the lot is an odd shape, it has 400 feet of actual frontage, but the county is only assessing 263 feet and they applied the 175-foot depth factor of 1.00. The 263 feet of frontage was multiplied by the base rate of \$450 for a total assessed value of \$118,400. *Mannix testimony; Resp't Exs. F, H, I.*
- d) To demonstrate the commercial land base rate of \$450 per front foot is being uniformly applied in the neighborhood, the Respondent submitted property record cards for 22 commercial properties. The commercial properties included are small gas stations and small businesses that could be "used as a convenience store type scenario." The Respondent stated she did not research the comparable properties for restriction to the land. *Mannix testimony; Resp't Ex. G.*

³ According to the Respondent, the subject property is currently being used as a parking lot for campers and trucks.

⁴ The Respondent confirmed with the Madison County Fire Marshal that the underground tanks were removed.

- e) Finally, the Respondent testified that the Petitioner failed to attend the PTABOA hearing. With that being said, the Petitioner did email evidence that was reviewed by the PTABOA prior to their ruling.⁵ Ms. Mannix conceded that the Form 114 gave the Petitioner the option to not attend the PTABOA hearing. *Mannix testimony (referencing Pet'r Ex. 9); Resp't Ex. C, E.*

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 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 appeal 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).
16. Here, the Petitioner argued the assessed value of the subject property increased by more than 5% from 2017 to 2018. The Respondent did not offer any argument regarding burden of proof. The property record card indicates the total assessment increased from \$68,100 in 2017 to \$118,400 in 2018. The ALJ made the preliminary ruling the burden was on the Respondent, and the Board will adopt that ruling.⁶ Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the Respondent has the burden to prove the 2018 assessment is correct.

⁵ The September 24, 2019, PTABOA minutes do not reflect that the subject property was discussed. *Resp't Ex. C.*

⁶ Because the Respondent did not make any argument that Ind. Code § 6-1.1-15-17.2 should not apply here, the Board will not raise any issues *sua sponte*.

Analysis

17. The Respondent failed to make a prima facie case that the 2018 assessment is correct.
- 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 property 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 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
 - c) The burden was on the Respondent to prove the 2018 assessment is correct. She argued that increase in the subject property's land was a result of the negative influence factor being removed. Even if we assume the Respondent is correct that the negative influence factor should be removed, this fact alone is not enough to meet the burden of proving the assessment accurately reflects the property's market value-in-use. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 678 (Ind. Tax Ct. 2006) (explaining that strictly applying assessment regulations does not necessarily make a prima facie case and referring to the types of market-based evidence that may be used in an assessment appeal).
 - d) The Respondent testified the land base rate is the same rate applied to 22 other commercial properties in the area. While a party may offer evidence showing how comparable properties are assessed, "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *See* Ind. Code § 6-1.1-15-18(c). This requires far more information than the Respondent offered. *See Long*, 821 N.E.2d at 471 (holding that taxpayers seeking to show their property's value through sales data for other properties had to explain how the characteristics for their property compared to the other properties and how relevant differences affected value).
 - e) Here, the Respondent's burden is not merely to explain why the assessment was increased. Instead, the Respondent must offer probative evidence proving the subject property's market value-in-use. *See* Ind. Code § 6-1.1-15-17.2. The Respondent failed to offer enough probative evidence to prove the property's market value-in-use. For these reasons, the Petitioner is entitled to have its land assessment returned to the

2017 level of \$47,300.⁷ This ends the Board's inquiry because the Petitioner did not request a lower value.

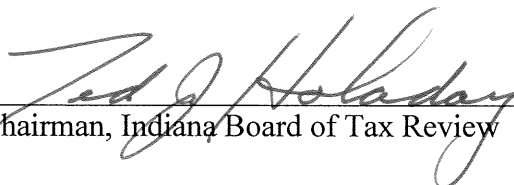
Conclusion

18. The Respondent had the burden of proving the 2018 assessment was correct. The Respondent failed to make a prima facie case. The Board orders the 2018 assessment be reduced to \$47,300.

Final Determination

In accordance with the above findings and conclusions, the 2018 assessment must be reduced to \$47,300.

ISSUED: June 17, 2021


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>

⁷ On January 1, 2017, the total assessed value was \$68,100 (land \$47,300 and improvements \$20,800). The parties agree that prior to the January 1, 2018, assessment date the improvements were removed, and the property was vacant on the valuation date in question.