

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

**Petition:** 18-003-12-1-4-00121  
**Petitioner:** Eddie Gene McKibben  
**Respondent:** Delaware County Assessor  
**Parcel:** 18-07-31-426-005.000-003  
**Assessment Year:** 2012

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 his 2012 assessment appeal with the Delaware County Assessor on November 20, 2012.
2. On November 13, 2013, the Delaware 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 on December 13, 2013. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on May 27, 2015.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on July 7, 2015. She did not inspect the property.
6. Eddie McKibben appeared *pro se*. Deputy County Assessor Abby McDaniel and County Representative Charles W. Ward appeared for the Respondent. All of them were sworn.

**Facts**

7. The property under appeal is a 6,776 square foot commercial office building located at 3700 North Briarwood Lane in Muncie.
8. The PTABOA determined the total assessment is \$372,400 (land \$68,300 and improvements \$304,100).
9. On his Form 131, the Petitioner requested a total assessment of \$353,562 (land \$61,700 and improvements \$291,862).

## Record

10. The official record for this matter contains the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:

The Petitioner did not submit any exhibits.

Respondent Exhibit 1: Real estate listing for the subject property, dated April 29, 2015,  
Respondent Exhibit 2: Comparable sales analysis,  
Respondent Exhibit 3: Local property and lease statistics,  
Respondent Exhibit 4: Income, expense, and capitalization rate data,  
Respondent Exhibit 5: Income approach to value for the subject property,  
Respondent Exhibit 6: Subject property record card,  
Respondent Exhibit 7: Letter from Ms. McDaniel to Mr. McKibben dated May 14, 2015, listing the Respondent's exhibits and witnesses and requesting the Petitioner's exhibit and witness list.

Board Exhibit A: Form 131 with attachments,  
Board Exhibit B: Hearing notice dated May 27, 2015,  
Board Exhibit C: Representative authorization for Charles Ward,  
Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

## Contentions

11. Summary of the Petitioner's case:
- a) The subject property's assessment is too high. The property originally started as a four-unit office building. However, three units, or approximately 4,000 square feet, were customized and leased to State Farm. The units occupied by State Farm have been "empty about two years." The remaining unit is currently leased, but "the lease is about up and I am sure they are going to be gone." *McKibben argument.*
  - b) Demand for office space is currently low. In fact, no comparable sales could be found because "there is nothing like this." *McKibben argument.*
  - c) The property is currently listed for \$449,000, or \$66 per square foot. However, no purchase or lease offers have been made. The property should be valued "around \$50 to \$55 per square foot." *McKibben argument.*

12. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The 2012 assessment increased because it was a reassessment year and the cost and land tables changed. The property is currently assessed at \$54.96 per square foot. The property was listed for sale in April of 2015 for \$529,000. The property was also available for lease at \$10.50 per square foot. *Ward argument; Resp't Ex. 1, 2, 3, 4, 5, 6.*
- b) The Respondent offered evidence of three "medical office building" sales. The first property, located at 3711 North Everbrook sold for \$186,000 on June 15, 2011. The second property, located at 3701 North Briarwood sold for \$150,000 on July 20, 2012. Finally, the property at 3301 West Fox Ridge sold on June 3, 2013, for \$205,000. Granted the West Fox Ridge property's sale date is "somewhat" outside the applicable time frame for a 2012 assessment. However this property is currently listed for \$299,000. On average, these properties sold for \$70.96 per square foot. *Ward argument; Resp't Ex. 2.*
- c) The Respondent also analyzed several leases within the same office complex. The average lease term for existing leases was \$12.01 per square foot. The subject property's two leases were for \$10.79 and \$11.31 per square foot. Further, as of March 1, 2012, the property was fully occupied. State Farm did not vacate the premises until "late-2012 or 2013." *Ward argument; Resp't Ex. 3.*
- d) Finally, the Respondent presented an income approach to value that estimated the subject property's value at \$524,659.92. The 12.35% capitalization rate utilized was derived by looking at "local sales." *Ward argument; Resp't Ex. 4, 5.*

**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, except where the property was valued using the income capitalization approach in the appeal.” Under subsection (d), “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.” This change is effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the parties agreed that the 2012 assessment increased by more than 5% over the 2011 assessment. Indeed, the total assessed value increased from \$345,200 to \$372,400. The Respondent claims, however, that the assessment for 2012 was based on the income approach to value, and therefore the Petitioner has the burden. The Petitioner did not argue the Respondent’s claim. However, Ind. Code § 6-1.1-15-17.2(d) applies to situations where the previous year’s *appeal* was decided using the income capitalization approach, and does not apply where a taxpayer is claiming the burden should shift because the assessment increased by more than 5%. Here, there is no evidence that the property was the subject of an appeal in the prior year. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

### Analysis

17. The Respondent failed to make a prima facie case that the 2012 assessment is correct.
  - a) Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 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. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed 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 2012 assessment, the date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) Here, the Respondent attempted to prove that the subject property was correctly assessed by offering limited sales information for three purportedly comparable properties. In doing so, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the property. *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 tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *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) Mr. Ward offered limited details about the properties, and failed to explain or account for any differences in the properties and how those differences affected the respective values. He simply calculated an average selling price per square foot of the three purportedly comparable properties and concluded that the subject property was correctly assessed. His comparison lacked the type of analysis contemplated by *Long*. Therefore, the sales data presented lacks probative value.
- f) Mr. Ward also argued that the property was correctly assessed based upon an income-approach analysis that he performed. The “income approach-to-value is based on the assumption that potential buyers will pay no more for the subject property... than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” MANUAL at 14. The income approach, thus, focuses on the intrinsic value of the property, not upon the Petitioner’s operation of the property because property-specific rents or expenses may reflect elements other than the value of the property “such as quality of management, skill of work force, competition and the like.” *Thorntown Tel. Co., Inc. v. State Bd. of Tax Comm’rs*, 588 N.E.2d 613, 619 (Ind. Tax Ct. 1992); *see also* MANUAL at 5 (“[C]hallenges to assessments [must] be proven with aggregate data, rather than individual evidence of property wealth. ... [I]t is not permissible to use individual data without first establishing its comparability or lack thereof to the aggregate data”).
- g) It is necessary to consider income and expense data from other comparable properties in order to make an accurate, realistic projection about the income stream a property expects to produce. If the income and expense data for the subject property is not shown to be in step with what market data shows, it does not comply with generally accepted appraisal principles. By not indicating whether or not the subject property falls in line with other comparable properties, any low income or high expenses may be attributed to the Petitioner’s management of the property as opposed to the

property's market value. *See Lake County Trust Co. No. 1163 v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1253, 1257-58 (Ind. Tax Ct. 1998) (economic obsolescence was not warranted where taxpayer executed unfavorable leases resulting in a failure to realize as much net income from the subject property). The Respondent's evidence provides some information regarding income and expenses from the purportedly comparable properties, but he failed to sufficiently explain his data. Even the year the income data was taken from is unclear. Further, he failed to offer any evidence that he complied with generally accepted appraisal practices.

- h) Similarly, Mr. Ward failed to adequately support or explain his choice of a 12.35% capitalization rate. A capitalization rate "reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rate of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." *See Hometowne Assoc's, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Mr. Ward simply calculated his capitalization rate by looking at "some local sales." *Ward testimony*. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some proof of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Prod's, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Here, Mr. Ward merely provided amounts "based on market" to derive his capitalization rate without any further explanation. *Resp't Ex. 4*.
- i) Finally, Mr. Ward argued that the assessment was correct based on the fact that in April of 2015 the property was listed on the open market for \$529,000. Listings typically do little to show a property's market value-in-use. In this case, the listings occurred over three years after the March 1, 2012, valuation date, with no evidence or explanation to relate the listings back to that date. Thus, the listing fails to show the subject property's market value-in-use as of March 1, 2012. Further, it fails to show that the March 1, 2012, assessment of \$372,400 is correct. Ultimately, the Respondent failed to offer enough probative evidence to prove that the subject property's 2012 assessment is correct.
- j) Because the Respondent failed to offer enough probative evidence to show the market value-in-use, he failed to make a prima facie case that the 2012 assessment is correct. Therefore, the Petitioner is entitled to have his assessment returned to its 2011 level of \$345,200. However, Petitioner requested that the property be assessed at \$353,562. Thus, the Board will accept the Petitioner's concession and set the 2012 assessment at \$353,600 (rounded).

## Conclusion

18. The Board finds for the Petitioner.

## Final Determination

In accordance with these findings and conclusions, the 2012 assessment shall be reduced to \$353,600 (rounded).

ISSUED: October 2, 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>>.