

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

Petition Nos.: 45-006-19-1-4-00354-23
45-006-20-1-4-00355-23
45-006-21-1-4-00356-23
Petitioner: Three Brothers' Investments LLC
Respondent: Lake County Assessor
Parcel: 45-07-34-126-001.000-006
Assessment Years: 2019, 2020 & 2021

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 appealed the 2019, 2020, and 2021 assessments of its property located at 1631-49 West 45th Avenue in Griffith.
2. On March 24, 2023, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") sustained the following assessments:

2019: Land: \$331,800	Improvements: \$77,300	Total: \$409,100
2020: Land: \$331,800	Improvements: \$69,400	Total: \$401,200
2021: Land: \$331,800	Improvements: \$69,400	Total: \$401,200

3. The Petitioner timely filed appeals with the Board, electing to proceed under the small claims procedures.
4. On December 19, 2023, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Todd Barron, tax representative for Barron Corporate Tax Solutions, Ltd appeared for the Petitioner. Ayn Engle appeared as the Respondent's attorney. Barron, Michael Clifford, MAI, and John Yanek, project coordinator for Nexus LTD, all testified under oath.

Record

6. The parties submitted the following exhibits:

- Petitioner Exhibit 1: Petitioner’s summary of evidence, 2021 subject property record card, aerial map, three photographs of the subject property, three photographs and 2020 and 2022 property record cards for 1625-29 West 45th Avenue,
- Petitioner Exhibit 2: Real estate consulting letter prepared by Stout, Risius, Ross, LLC (“Stout”),¹
- Respondent Exhibit R-1: 2019, 2020 and 2021 subject property record cards,
- Respondent Exhibit R-2: 2019, 2020 and 2021 property record cards for 1707-27 West 45th Avenue,
- Respondent Exhibit R-3: Three GIS aerial maps,
- Respondent Exhibit R-4: Four Google maps of the subject property and adjacent Family Express,
- Respondent Exhibit R-9: Carwash count sheet,
- Respondent Exhibit R-10: 2011 and 2012 sales disclosure forms for 1707 West 45th Avenue in Griffith,
- Respondent Exhibit R-11: Indiana Code § 6-1.1-15-18 and House Enrolled Act No. 1260,²

- a) 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) a digital recording of the hearing.

Findings of Fact

7. The subject property is a one-story, 968 sq. ft. single bay drive-through carwash built in 1998 with paving and retaining walls on 35,000 sq. ft. of land in Griffith. *Barron testimony; Pet’r Ex. 3.*
8. The subject property is contiguous with another parcel containing a convenience store/gas station. The two parcels share parking spaces, exterior building colors and curbing. In addition, the only access to the subject property is through the other parcel. The two parcels were sold together in 2006, 2011, and finally in 2012 to the Petitioner. *Yanek testimony; Resp’t Exs. R-1 to R-4 & R-10.*
9. There is another car wash located adjacent to the subject property. It has 3,500 sq. ft of gross building area on 43,560 sq. ft. of land. This property was assessed at \$220,800 for 2019 and 2020, and \$220,700 for 2021. *Clifford testimony; Yanek testimony; Pet’r Ex. 1-2.*

¹ Petitioner Exhibit 3 was not submitted into the record.

² Respondent Exhibits R-5, R-6, R-7, R-8, and R-12 were not submitted into the record.

10. The Petitioner hired Michael Clifford, MAI to determine “the comparability of [the] two adjacent car wash buildings, excluding all personal property and business value.” He did not perform an appraisal. Instead, using “aspects of the sales-comparison approach,” he made adjustments to the adjacent car wash property to bring it in line with the subject. After determining adjustments for building size, quality of construction, and land-to-building ratio, he concluded that the adjacent car wash property would need a total positive adjustment of 16.5% to account for differences between it and the subject. *Clifford testimony; Pet’r Ex. 2.*

Contentions

11. Summary of the Petitioner’s case:
- a) The Petitioner argued that the subject property was over-assessed. In support of this, it pointed to Indiana Code § 6-1.1-15-18, a statute that previously allowed a taxpayer to introduce evidence of comparable assessments in property tax appeals.³ To derive a value for the subject property, Barron began with the assessments of the adjacent car wash. He then applied the 16.5% adjustment factor developed by Clifford to those assessments. This resulted in rounded values of \$257,300 for 2019 and 2020, and \$257,200 for 2021. The Petitioner requested the subject property’s assessment be changed to those values. *Clifford testimony; Barron testimony; Pet’r Exs. 1 & 2.*
12. Summary of the Respondent’s case:
- a) John Yanek, project coordinator for Nexus Ltd., testified that that Clifford’s analysis was flawed because it only used one comparable property. In addition, he noted that the analysis failed to address the fact that the subject property had an adjoining convenience store/gas station. Finally, he took issue with Clifford’s building size adjustment. *Yanek testimony; Pet’r Ex. 2.*

Analysis

13. The Petitioner failed to make a prima facie case for reducing the assessment.
- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 and 2021 REAL PROPERTY ASSESSMENT MANUAL at 3.⁴ The petitioner has the burden of proving the assessment is incorrect and what the correct assessment

³ As the Assessor points out, I.C. § 6-1.1-15-18 was repealed by Public Law 174-2022 on March 21, 2022.

⁴ For the Petitioner’s 2019 and 2020 appeal, the 2011 Real Property Assessment Manual applied. The Department of Local Government Finance adopted a new assessment manual and guidelines for 2021 assessments forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

should be. *Piotrowski v. Shelby County Assessor*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).⁵

- b) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 and 2021 REAL PROPERTY ASSESSMENT MANUAL at 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.
- c) 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 these appeals, the valuation dates were January 1 of the respective assessment years. Ind. Code § 6-1.1-2-1.5.
- d) In order to meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the value of the property. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (*citing Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulation.” *P/A Builders & Developers, LLC v. Jennings Cty. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the “formalistic application of the Guidelines’ procedures and schedules” lacks the market-based evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.2d at 133.
- e) Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Ass'r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019).
- f) The Petitioner presented evidence in the form of one comparable assessment. A party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 470-71 (Ind. Tax

⁵ IC § 6-1.1-15-17.2 (repealed March 21, 2022) created an exception to the general rule that the party challenging an assessment has the burden of proof. This burden-shifted in cases where an assessment increased by more than 5% or there was a successful appeal in the prior year and there was any increase in the assessment. Here, the 2019 assessment of \$409,100 was identical to the 2018 assessment. The assessment then dropped in 2020 to \$401,200. It kept the same value for 2021. Thus, the burden-shifting statute is not triggered, and the burden remains with the Petitioner.

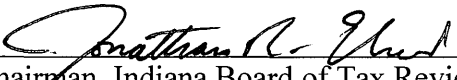
Ct. 2005). Conclusory statements that properties are “similar” or “comparable” do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. They must similarly explain how relevant differences affect values. *Id.* Opinions that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- g) We are unpersuaded by the Petitioner’s evidence. First, it based its analysis on a single comparable assessment. This alone seriously detracts from the reliability of the conclusions. In addition, we agree with the Assessor that the subject property is used as part of a single economic unit with the neighboring convenience store/gas station. Although the Petitioner posits that it could be sold separately, that is not the case here. Rather, it was used in conjunction with the neighboring parcel during the years at issue. Under these circumstances, we do not find a comparable that lacks a similar convenience store/gas station to be a reliable indicator of value for the subject property.
- h) Finally, we note that the Petitioner may have been challenging the uniformity and equality of the assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana Constitution. As the Tax Court has explained, “when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the preparation of assessment ratio studies, which compare assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Ass’r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). While the Petitioner analyzed the assessment data of one purportedly comparable property, it did not compare that data with any objectively verifiable data from the market such as sale prices. Nor did it show that a single property is a statistically reliable sample. For these reasons, the Petitioner has failed to show it is entitled to any relief on these grounds.
- i) Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

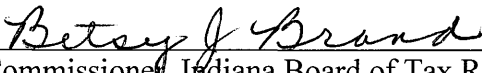
Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2019, 2020 and 2021 assessments.

ISSUED: MARCH 15, 2024



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>>.