

REPRESENTATIVE FOR PETITIONERS:

Stephen Alexander, *pro se*

REPRESENTATIVE FOR RESPONDENT:

George T. Spenos, Marion County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|----------------------------|---|------------------|--------------------------|
| Stephen & Melody Alexander |) | Petition Nos.: | 49-101-12-1-4-10001 |
| |) | | |
| Petitioners, |) | Parcel No. | 49-11-11-115-043.000-101 |
| |) | | |
| v. |) | County: | Marion |
| |) | | |
| Marion County Assessor, |) | Township: | Center |
| |) | | |
| Respondent. |) | Assessment Year: | 2012 |

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

Issued: May 10, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. Stephen and Melody Alexander ("Petitioners") initiated a 2012 assessment appeal on January 28, 2013. The Marion County Property Tax Assessment Board of Appeals

(“PTABOA”) failed to hold a hearing within 180 days as required by Ind. Code § 6-1.1-15-1(k). Petitioners then filed a Form 131 petition directly with the Board on November 12, 2013.

2. Dalene McMillen, the Board’s designated administrative law judge, held a hearing on February 10, 2016. Neither she nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The subject property is a three-story office building located at 19 West Merrill Street in Indianapolis.

4. The following people were sworn and testified:¹

Stephen Alexander, Taxpayer
George Spenos, Marion County Deputy Director of Commercial/Industrial Assessments

5. Petitioners offered the following exhibits:

Petitioner Exhibit P1 – First American Title Insurance Company policy and surveyor’s map for 929 & 933 South Illinois and 932 & 915 South Meridian Street in Indianapolis,
Petitioner Exhibit P2 – Article on the City Way project of downtown Indianapolis.

6. Respondent offered the following exhibits:

Respondent Exhibit R1 – Form 130 petition,
Respondent Exhibit R2 – Form 131 petition,
Respondent Exhibit R3 – 2012 property record card (“PRC”),
Respondent Exhibit R4 – 2011 PRC,
Respondent Exhibit R5 – Assessor’s sales comparison grid,
Respondent Exhibit R6 – Aerial map for the subject parcel,
Respondent Exhibit R7 – Aerial map for the subject parcel,
Respondent Exhibit R8 – Photographs of the subject property,
Respondent Exhibit R9 – Aerial map for 845 South Meridian,

¹ Gabe Deaton and Melissa Tetrick of the Marion County Assessor’s Office were sworn but did not testify.

Respondent Exhibit R10 – Photographs for 845 South Meridian,
Respondent Exhibit R11 – Aerial map for 432 South Missouri,
Respondent Exhibit R12 – Photographs for 432 South Missouri,
Respondent Exhibit R13 – Aerial map for 25 East McCarty,
Respondent Exhibit R14 – Photographs for 25 East McCarty,
Respondent Exhibit R15 – Aerial map for 123 West McCarty,
Respondent Exhibit R16 – Photographs for 123 West McCarty,
Respondent Exhibit R17 – Aerial map for 727 Russell Avenue,
Respondent Exhibit R18 – Photographs for 727 Russell Avenue,
Respondent Exhibit R19 – Sales disclosure form for 845 South Meridian Street,
Respondent Exhibit R20 – CoStar listing for 845 South Meridian Street,
Respondent Exhibit R21 – Sales disclosure form for 436 South Missouri Street,
Respondent Exhibit R22 – CoStar listing for 432 South Missouri Street,
Respondent Exhibit R23 – Sales disclosure form for 25 East McCarty Street,
Respondent Exhibit R24 – CoStar listing for 25 East McCarty Street,
Respondent Exhibit R25 – Sales disclosure form for 123 West McCarty Street,
Respondent Exhibit R26 – CoStar listing for 123 West McCarty Street,
Respondent Exhibit R27 – Sales disclosure form for 727 Russell Avenue,
Respondent Exhibit R28 – Indiana Real Estate Data (“IRED”) sheet for 727
Russell Avenue,
Respondent Exhibit R29 – History of Property Valuation Changes,
Respondent Exhibit R30 – Aerial map showing zoning classification,
Respondent Exhibit R31 – Aerial map outlining zoning,
Respondent Exhibit R32 – Definition for Central Business District 2 (“CBD2”),
Respondent Exhibit R33 – Definition for RC Regional Center (Secondary
District),
Respondent Exhibit R34 – Definition for I-3-U Medium Industrial Urban District,
Respondent Exhibit R35 – Definition for D-3 dwelling district three regulations,
Respondent Exhibit R36 – Definition for D-8 dwelling district eight regulations,
Respondent Exhibit R37 – Definition for I-4-U Heavy Industrial Urban District,
Respondent Exhibit R38 – Definition for C-4 Community-Regional Commercial
District,
Respondent Exhibit R39 – Moody’s/RCA Commercial Property Price Indices,
Respondent Exhibit R40 – Consumer Price Index examples,
Respondent Exhibit R41 – Moody’s/RCA CPPI – Composite Indices,
Respondent Exhibit R42 – Qualifications for George T. Spenos.

7. The following additional items are part of the record:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Hearing notice,
Board Exhibit C – Hearing sign-in sheet.

8. The assessed value for 2011 is \$42,200 for the land and \$88,800 for the improvements, for a total of \$131,000.
9. The assessed value for 2012 is \$152,400 for the land and \$129,400 for the improvements, for a total of \$281,800.
10. At the hearing, Petitioners requested a total assessment of \$160,000.

OBJECTION

11. Respondent objected to Petitioners' Exhibits P1 and P2 because Petitioners failed to provide the exhibits at least five business days prior to the hearing as required by 52 IAC 2-7-1 (b)(1). Failure to comply with the requirement can be grounds to exclude evidence under 52 IAC 2-7-1 (f). Petitioners admitted they did not timely provide the exhibits. Therefore, Respondent's objection is sustained and the exhibits are excluded. The Board notes, however, that its final determination would not be any different of these exhibits were admitted.

BURDEN OF PROOF

12. 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). A 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 appeals 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,” 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.” Ind. Code § 6-1.1-15-17.2(d).
15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. The parties agreed that the assessment increased by more than 5% between 2011 and 2012 and that Respondent has the burden of proof.

SUMMARY OF RESPONDENT’S CASE

17. Respondent presented a sales comparison grid that purportedly compares five properties to the subject property. To support each purported comparable property, Respondent presented aerial maps, photographs, sales disclosure forms, and CoStar listings.² He made adjustments for time, site location, construction quality, age, condition, use, visibility, zoning, and attic space.
18. The purportedly comparable properties are as follows:

² For Comparable #5, Respondent presented an Indiana Real Estate Data sheet in place of a CoStar listing.

- a. Comparable #1 is a 3,863 square foot office building located at 845 South Meridian Street, approximately three blocks southeast of the subject. It sold on October 18, 2012, for \$350,000. After applying a negative 23% net adjustment, it has an adjusted sale price of \$269,500.
- b. Comparable #2 is an 18,000 square foot warehouse building located at 432 South Missouri Street, approximately four blocks northwest of the subject. It sold on March 26, 2010, for \$1,015,000. After applying a negative 68% net adjustment, it has an adjusted sale price of \$324,800.
- c. Comparable #3 is a 3,920 square foot small shop building located at 25 East McCarty Street, approximately four blocks southeast of the subject. It sold on April 19, 2011, for \$300,000. After applying a positive 5% net adjustment, it has an adjusted sale price of \$315,000.
- d. Comparable #4 is a 2,850 square foot warehouse building located at 125 West McCarty Street, approximately four blocks southwest of the subject. It sold on December 16, 2011, for \$180,000. After applying a positive 55% net adjustment, it has an adjusted sale price of \$279,000.
- e. Comparable #5 is a 2,686 square foot office building located at 727 Russell Avenue, approximately three blocks south of the subject. It sold on February 6, 2012, for \$280,000. After applying a negative 20% net adjustment, it has an adjusted sale price of \$280,000.

Spenos testimony; Resp't Ex. R5.

19. Respondent contends that the downtown area where the subject property is located has numerous zoning classifications. The subject property is zoned CBD-2/RC (Central Business District 2/Regional Center). The CBD2 classification allows for various mixed uses, 100% lot coverage, and unlimited height. The RC classification is designed to regulate development within the downtown area in which a diverse blend of uses exists. Respondent contends that the subject's zoning classification is superior to several other classifications in the immediate area. This superior zoning classification leads to

comparatively fewer restrictions and thus makes the subject property more desirable to prospective buyers. *Spenos testimony; Resp't Ex. R7 & R30-R38.*

20. Respondent recommends no change to the \$281,000 assessed value and contends there is no support for Petitioner's \$160,000 request. *Spenos testimony.*

SUMMARY OF PETITIONER'S CASE

21. Petitioners purchased the subject property in 1995 at a time when conditions in the area were less than favorable. According to Petitioners, the area has improved over the last 20 years, but their assessment has increased disproportionately over that time. Petitioners contend that their neighborhood association tracks tax increases in the area and some properties' taxes have increased by 2000%. More specifically, the subject property's assessed value increased by approximately 300% between 2010 and 2012. Such an increase makes operating a small business in the area difficult. *Alexander testimony.*
22. Petitioners contend one reason for the extreme increases in assessed values in the area is due to the city's tax increment finance ("TIF") commitments. Petitioners contend these TIF commitments involve developments that are funded by dramatic increases in property taxes. *Alexander testimony.*
23. Petitioners contend 609 Russell Avenue is comparable to the subject property. 609 Russell Avenue is being assessed at approximately \$9.29 per square foot for 2012 while the subject is being assessed at approximately \$60.77 per square foot. Petitioners argue this demonstrates that the assessed values are clearly dramatically different in the downtown area. *Alexander testimony; Board Ex. A.*
24. Petitioners contend that Respondent's sales comparison grid should be given no weight. According to Petitioners, the comparable properties located at 727 Russell Avenue and 845 South Meridian Street consist of newer office buildings constructed 12 years and 24 years ago respectively, while the subject property was built in 1894. The two comparable properties are also in better condition than the subject property. The subject property has

crumbling brick walls and the interior is severely deteriorated. In addition, Moody's does not appear to account for buildings that are over 100 years old and in a dilapidated condition when adjusting for the time of sale. *Alexander testimony; citing Resp't Ex. R5.*

25. Finally, Respondent's claim that the subject office is valued higher because it is zoned CBD2 is in direct conflict with his sales comparison grid, which shows that industrial-zoned properties sold for higher prices than the offices in the analysis. *Alexander testimony; citing Resp't Ex. R5.*
26. Petitioners acknowledge that their property value has increased between 2011 and 2012, but the assessment should be no more than \$160,000. *Alexander testimony.*

Analysis

27. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's 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). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005) Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id; see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
28. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).

29. Respondent had the burden of proving that the subject property's total assessment of \$281,800 was correct. He offered a sales comparison grid, aerial maps, photographs, property listings, and sales disclosure forms to support the 2012 assessment. In doing so, he essentially relied on a sales comparison approach to establish the market value-in-use. *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 adjust the selling prices to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466, 469.
30. 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.*
31. In the analysis, Respondent presented evidence of five sales located near the subject property. While he attempted to account for differences between the subject property and the five purportedly comparable properties by making various adjustments, he failed to support the percentages he used in making those adjustments which ranged from a positive 55% adjustment to a negative 68% adjustment. He also failed to explain how warehouse properties and small shop properties are comparable to office buildings. Thus, Respondent did not provide the level of comparison contemplated by *Long*.
32. Initially, Respondent's analysis does not appear to differ significantly from one made by a certified appraiser in an appraisal report. But in order to be probative of market value-

in-use, an appraisal must conform to generally accepted appraisal principles and Uniform Standards of Professional Appraisal Practice. Here, there is no indication that Respondent's sales comparison grid meets those standards and thus is not enough to prove the market value-in-use of the subject property.

33. Respondent claimed the downtown area had numerous zoning classifications and that, because the subject property is zoned CBD-2/RC, it has fewer restrictions and is thus more desirable to a prospective buyer. Other than that conclusory testimony, there is nothing in the record to show how that zoning classification affects the market value-in-use of the property or how the subject property's zoning classification makes it more valuable. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *See Whitley Products, Inc. v. State Board of Tax Comm'rs*, 704 N.E.2d at 1113, 1119 (Ind. Tax Ct. 1998).
34. Because Respondent did not offer sufficient evidence to show the market value-in-use of the subject property, he failed to make a prima facie case that the 2012 assessment was correct. Therefore, Petitioners are entitled to have their assessment returned to the 2011 level of \$131,000. But petitioners specifically testified that they believe their property's value has increased between 2011 and 2012 to a value of \$160,000. Thus, even though Petitioners presented no documentary evidence for the record to support that amount, the Board accepts Petitioners' concession.

SUMMARY OF FINAL DETERMINATION

35. Respondent had the burden of proving the 2012 assessment was correct. Respondent failed to make a prima facie case, thus the assessment would normally be reduced to the previous year's amount of \$131,000. Nevertheless, Petitioners conceded that the assessed value should be \$160,000. Therefore, the Board orders the subject property's 2012 assessed value be changed to \$160,000.

The Final Determination of the above captioned matter is issued by the Board on the date written above.

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>>.