

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

**Petition:** 03-005-11-1-4-00018  
**Petitioner:** Behler Holdings, Inc.<sup>1</sup>  
**Respondent:** Bartholomew County Assessor  
**Parcel:** 03-95-11-140-000.203-005  
**Assessment Year:** 2011

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes as follows:

**PROCEDURAL HISTORY**

1. Behler Holdings, Inc. (the “Petitioner”) initiated the assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (the “PTABOA”) by filing a Form 130 dated February 28, 2012.
2. The PTABOA mailed its notice of final assessment determination on Form 115 on December 28, 2012, denying the Petitioner relief.
3. The Petitioner appealed to the Board by filing a Form 131 petition for review on February 8, 2013.
4. The Petitioner elected to have the administrative hearing conducted under the Board’s small claims procedures and the Bartholomew County Assessor (the “Respondent”) did not elect to have the proceeding removed from the Board’s small claims procedures.
5. Paul Stultz, the Board’s appointed administrative law judge (the “ALJ”), held the Board’s administrative hearing on August 20, 2014. The ALJ did not inspect the subject property.
6. Tax Representative Milo Smith represented, and was sworn in as a witness for, the Petitioner. Virginia Whipple and County Assessor Lew Wilson represented, and were sworn as witnesses for, the Respondent.

**FACTS**

7. The subject property is a vacant auto dealership located at 3560 N. National Road in Columbus.

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<sup>1</sup> The Form 131 petition indicates RP Realty of Columbus LLC as the property owner. For the March 1, 2011 assessment date, Behler Holdings, Inc. was the property owner. The Form 130 and Form 115 both indicate Behler Holdings, Inc. as the property owner. The parties agreed that Behler Holding, Inc. is the correct Petitioner.

8. The PTABOA determined the 2011 assessed value for the land to be \$235,200 and the assessed value for the improvements to be \$219,400 for a total assessed value of \$454,600.
9. At the hearing, Mr. Smith requested a total assessed value of \$357,600 for the subject property.

### **RECORD**

10. The official record contains the following:
  - a. Digital recording of the hearing,
  - b. Petitioner Exhibit 1 – Subject Property Record Card (“PRC”),<sup>2</sup>  
Petitioner Exhibit 2s – PRC for 3580 N. National Road,  
Petitioner Exhibit 2sL – Form 134 for 3580 N. National Road,  
Petitioner Exhibit 3s – PRC for the Subject Property - 3560 N. National Road,  
Petitioner Exhibit 4 – GIS Map of the Subject Property,  
  
Respondent Exhibit A – Whipple and Wilson Credentials,  
Respondent Exhibit B – 2011 and 2010 Subject PRCs,  
Respondent Exhibit C – Aerial View of Subject Property,  
Respondent Exhibit D – Pictures of the Subject Property,  
Respondent Exhibit E – IncomeWorks Description,  
Respondent Exhibit F – Income Approach Workup,  
Respondent Exhibit G – Sales Approach Workup,  
Respondent Exhibit H – Subject Sales Information,  
Respondent Exhibit I – Crawfordsville Sales Information,  
Respondent Exhibit J – Evansville Sales Information,  
Respondent Exhibit K – Time Adjustment Explanation and Charts,  
Respondent Exhibit L – Reconciliation of Values,  
  
Board Exhibit A – Form 131 Petition with Attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign-in Sheet,
  - c. These Findings and Conclusions.

### **BURDEN OF PROOF**

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is incorrect and what the correct

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<sup>2</sup>This exhibit is labeled as the Subject PRC; however, it is parcel 03-95-11-140-000.200-005 located at 3580 N. National Road. The subject parcel (03-95-11-140-000.203-005) is a new parcel that was created as a result of a split from the parcel indicated in this exhibit. The 2010 assessment shown on this PRC includes the property that was split to create the subject parcel.

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 the rule.

12. First, Ind. Code § 6-1.1-15-17.2(a) “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 year.” Under Ind. Code § 6-1.1-15-17.2(b), “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 the Indiana tax court.”

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 Ind. Code 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 the assessment is correct.

13. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, and applies to all appeals pending before the Board. *See P.L. 97-2014*.
14. The parties agreed that the Respondent has the burden of proof in this case. Generally, the Board will not make further inquiries when the parties have stipulated to an issue. However, under these circumstances, the Board finds the burden-shifting statute be cannot applied.
15. For 2010, the subject property was assessed along with an adjoining property as a single parcel. For 2011, the property was divided and the subject property assigned a new parcel number. Because the subject property’s parcel did not have a prior assessment for purposes of comparison, the Board determines that the burden-shifting statute was not intended to apply under these circumstances. From a practical standpoint, were the burden-shifting statute to apply, and the Respondent failed to carry the burden, the Board would have no direction in determining the “prior year’s assessment.”
16. The Petitioner argues that the Board has previously considered parcels not on appeal in applying the burden-shifting statute and should do so in this case. But the Board has only done so when the parcels form a single economic unit, and applying the burden-shifting statute piecemeal would frustrate the clear legislative intent of the statute. The Petitioner failed to argue that the market viewed the parcels as a single unit. Moreover, the subject

property was sold separately from the adjoining property in 2012, which suggests the parcels did not likely form a single economic unit.

17. Accordingly, the Petitioner has the burden of proof in this appeal.

#### CONTENTIONS

18. Summary of the Petitioner's case:

- a. The subject parcel was separated from an adjacent parcel prior to the 2011 assessment. The 2010 assessment before the separation was \$569,520. There were no changes to the characteristics of the property aside from the separation. The Petitioner contends that the two parcels have the same footprint as the previous year and should be assessed in the same manner. *Smith testimony; Petitioner Exhibits 1, 2s, 3s.*
- b. The PRC for the adjacent parcel, 3580 N. National Road, shows two different values for the 2011 assessment: \$262,900 and \$448,300. The owner of adjacent parcel filed an appeal for 2011. As a result of the appeal, the Form 134<sup>3</sup> shows the assessment was lowered from \$448,300 to \$259,300. The Petitioner contends that the explanation on the Form 134 does not correctly describe the reduction. The Petitioner contends that reducing the building by 5% does not lower the assessed value that much and that a 50% influence factor was applied as well. *Smith testimony; Petitioner Exhibit 2sL.*
- c. The subject parcel has been vacant since 2008. The Petitioner contends that the adjacent parcel has a 50% influence factor applied for vacancy while the subject property has only a 30% influence factor applied for vacancy. *Smith testimony.*
- d. The PRC for the subject parcel shows two values for the 2011 assessment. There are no notes on the PRC to explain why the 2011 assessment increased. The Petitioner contends that the subject parcel's 2011 assessment should be \$357,600. This amount is the assessment shown in the first column on the PRC before the assessment was increased to \$454,600. *Smith testimony; Petitioner Exhibit 3s*
- e. In closing, the Petitioner contends that the assessed value increased 58% and the Respondent had the burden to prove the current assessment is correct. The Petitioner questioned the Respondent's comparables, use of IncomeWorks, and why the subject PRC shows two different assessments for 2011. The Petitioner contends he has presented a prima facie case by raising these issues. The Petitioner contends that the Respondent has not shown why the assessment should not be corrected back to \$357,600. *Smith testimony.*

19. Summary of the Respondent's case:

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<sup>3</sup> The Form 134 is a Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting.

- a. The subject parcel is situated on National Road, also known as Highway 31. The Respondent presented aerial photos of the subject parcel and the adjacent parcel. The Respondent also presented photos of the subject property taken the week of the hearing (not as of March 1, 2011). The subject building is currently occupied and the Respondent testified that the subject building has not changed from March 1, 2011 to the present. *Whipple testimony; Wilson testimony; Respondent Exhibits C, D.*
- b. For the income capitalization approach to value, the Respondent used “IncomeWorks” which is a source of locally relevant, county specific rental economics of commercial and industrial real property. The program uses local rents, expenses, vacancy rates, and capitalization rates. The user inputs data specific to the subject property and the program produces a value. In this instance, a capitalization rate of 9.75% was applied and the program valued the subject property at \$740,075. *Whipple testimony; Respondent Exhibit F.*
- c. The Respondent’s sales comparison approach used three sales, the subject parcel and two comparables. Both comparable sales were vacant dealerships similar to the subject parcel.
- The subject parcel sold for \$795,000 on August 1, 2012.<sup>4</sup> The Respondent contends that after the time adjustment, the adjusted sale price should be \$36.65 per square foot and the total value after the time adjustment should be \$777,510.
  - The second sale was a 2014 sale in Crawfordsville. This sale was adjusted for time and location. The Respondent contends that the adjusted sale price should be \$32.88 per square foot. This property was sold as a vacant dealership and was remodeled after the sale.
  - The third sale was a 2012 sale in Evansville. The Respondent contends that there should be no time adjustment for this sale and that the sale was given a location adjustment since it is in a better location. The Respondent contends that the adjusted sale price should be \$32.72 per square foot.
- The Respondent contends that the sale of the subject property is similar to the comparable sales and that the sale of the subject parcel is the best indicator of value. *Whipple testimony; Respondent Exhibits G, H, I, J, K.*
- d. The Respondent used International Association of Assessing Officials methodology to adjust the sales for time. For the subject property sale, ratios from 2011 to 2012 were used. The ratio for July 2012 is .991 and the ratio for March 2011 was .969, which is a difference of .022. All three of the sales were evaluated in the same way. *Whipple testimony; Respondent Exhibit K.*
- e. The Respondent contends that the sales comparison approach is the best indication of value and that it is supported by the sales of other vacant dealerships. The Respondent ultimately requests that the assessed value be raised to \$777,500. *Whipple testimony; Respondent Exhibit L.*

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<sup>4</sup> Respondent’s Exhibit H indicates that the conveyance date was July 31, 2012.

- f. In response to the Petitioner's questions regarding the two values shown on the PRC for 2011, the Respondent stated that the \$357,600 was "work in progress" and should have been deleted when the \$454,600 value became final. *Whipple testimony*.

#### ANALYSIS

20. 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. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm 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. *Id.* at 3.
21. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2011, the assessment and valuation dates were the same, March 1, 2011. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
22. The Petitioner contends that the subject parcel should be valued at \$357,600, which is one of the values shown on the PRC for 2011. In support of his position, the Petitioner contends that the subject property has been vacant since 2008 and that the adjacent parcel has a 50% vacancy influence factor applied while the subject parcel was given only a 30% influence factor. Finally, the Petitioner questioned some of the Respondent's evidence.
23. Simply arguing in favor of one value over another value on the PRC is not sufficient to make a prima facie case that an assessment is incorrect. Furthermore, the Petitioner failed to meet its burden by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne County Assessor*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, a taxpayer must show the assessment does not accurately reflect the market value-in-use of the property. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the proper focus is not on methodology, but rather, on what the correct value actually is). A taxpayer must do more than contest the methodology used to arrive at the assessment. A taxpayer must present evidence showing that the assessment is not the market value-in-use of the subject property and show evidence of a more accurate valuation.

24. While the Petitioner raised issues of vacancy and influence factors, and questioned the Respondent's evidence, the Petitioner failed to present any market-based evidence to support his argument. Accordingly, the Petitioner failed to establish a prima facie case that there was an error in the 2011 assessment of the subject property.
25. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
26. Finding that the Petitioner did not make a prima facie case that the assessment is incorrect does not end the Board's inquiry in this case because the Respondent requested an increase in the assessed value. The Respondent has the burden of proving the assessment should be increased. The Board, therefore, turns to the Respondent's evidence.
27. The Respondent analyzed the subject property under all three acceptable approaches to valuation (i.e. the sales comparison approach, the income capitalization approach, and the cost approach) and, after reconciliation, determined that the sales comparison approach was the best indicator of value. As a result, the Respondent requested the assessment be increased to \$777,500.
28. The sales comparison approach is a generally accepted appraisal methodology that "estimates the total value of [a given] property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 2. In order to effectively use a sales comparison analysis as evidence in a property assessment appeal, however, the proponent must show that the properties on which that analysis is based are truly comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d at 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the subject property's characteristics 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.*
29. The Respondent's sales comparison did not meet the threshold requirements for it to carry probative weight. The sales comparison consisted of the subject parcel and two other sales of vacant dealerships, one in Crawfordsville and one in Evansville. In applying the sales comparison approach, the Respondent made adjustments for time and location. A time adjustment explanation and accompanying charts were presented. The only explanation given with regard to the location adjustments was that the subject parcel location is better than the Crawfordsville sale, and the Evansville location was better than the subject parcel. A positive 5% adjustment was given to the Crawfordsville sale and a negative 5% adjustment was given to the Evansville sale. The Respondent did not explain how the amounts for the location adjustments were determined.

30. While the adjustments in the Respondent's sales comparison may not differ significantly from those made by a certified appraiser in an appraisal report, an appraiser typically certifies that its appraisal complies with Uniform Standards of Professional Appraisal Practice ("USPAP"). Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. Here, there is nothing to show whether or not the sales comparison was prepared in compliance with USPAP or generally accepted appraisal practices. Consequently, the Board therefore finds that the sales comparison insufficiently reliable to be probative of the property's market value-in-use. Therefore, the sales comparison does not support an increase in the assessment.

#### **CONCLUSION**

31. The Petitioner failed to make a prima facie case for reducing the assessment. The Respondent failed to make a prima facie case for increasing the assessment. Accordingly, the end result is that no change in the assessment should be made.

#### **FINAL DETERMINATION**

In accordance with the above findings and conclusions, the 2011 assessment will not be changed.

ISSUED: November 14, 2014

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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>>.