REPRESENTATIVE FOR PETITIONER:
Tom Hendrickson, Attorney

REPRESENTATIVE FOR RESPONDENT:
John Slatten, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Braco, LLC,	)	Petition Nos.: 49-930-11-1-4-00001
	)	49-930-11-1-4-00001A
Petitioner,	)	49-930-11-1-4-00001B
	)	49-930-11-1-4-00001C
	)	49-930-11-1-4-00001D
	)	
	)	Parcel Nos.: 9000230
	)	9000231
v.	)	9000232
	)	9006015
	)	9006016
	)	
	)	County: Marion
	)	
Marion County Assessor,	)	Township: Washington
	)	
Respondent.	)	Assessment Year: 2011

September 22, 2014

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

INTRODUCTION

1. The Petitioner had the burden to prove that the subject property's March 1, 2011, assessment was incorrect. Did the Petitioner prove the 2011 assessment was incorrect? Further, the Respondent argued that the 2011 assessment should in fact be higher. Did the Respondent prove the 2011 assessment should be increased?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2011 assessment appeal with the Marion County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 Petition, which referenced all of the parcels under appeal, on May 18, 2012.

3. The PTABOA failed to act on the Petitioner's Form 130. Thus, the Petitioner sought review with the Board. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor).

4. The Petitioner filed Form 131 petitions with the Board on January 15, 2013.

5. On November 1, 2013, the Petitioner filed a Tendering of Amended Appeal Petition and Amended Appeal Petition. The Board granted the Petitioner's Motion to Amend on December 3, 2013.

6. On May 7, 2014, the Board's administrative law judge, Tom Martindale (ALJ), held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.[1]

7. Additional filings are referenced below.

[1] The Petitioner submitted a Request for Hearing Officer to View Premises. This request was denied in an order dated December 6, 2013.

HEARING FACTS AND OTHER MATTERS OF RECORD

8. The following people were sworn and testified:

   For the Petitioner: Charles Brackin.

   For the Respondent: Eve Beckman.

9. The Petitioner submitted the following exhibits:[2]

Petitioner Exhibit 5:	"Exceptions from Coverage" Owners Policy from Chicago Title Insurance Company,
Petitioner Exhibit 11:	Parcel map of subject area,
Petitioner Exhibit 12:	Letter from Indiana Department of Environmental Management (IDEM) to Bradford Ullery of Quality Environmental Professionals, Inc., dated July 28, 2000.

10. The Respondent submitted the following exhibits:

Respondent Exhibit R-1:	Summary spreadsheet of the subject parcels,
Respondent Exhibit R-2:	2011 Property Record Card for Parcel 9000230,
Respondent Exhibit R-3:	Aerial photographs of subject property,
Respondent Exhibit R-4:	Sales comparison analysis prepared by Eve Beckman,
Respondent Exhibit R-5:	Form 131, Form 130, and Request to Combine.

11. The Board recognizes the following additional items as part of the record:

Board Exhibit A:	Form 131 petitions with attachments,
Board Exhibit B:	Hearing notices, dated January 28, 2014,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Petitioner's Post-Hearing Brief,
Board Exhibit E:	Respondent's Post-Hearing Brief,
Board Exhibit F:	Petitioner's Reply-Brief,
Board Exhibit G:	Respondent's Reply-Brief.

12. The subject property is a commercial building located at 4838 and 4850 West Washington Street in Indianapolis.[3]

13. The subject parcels had the following combined 2011 assessment:

    Land: $127,000 Improvements: $72,000 Total: $199,000

[2] The Petitioner's representative only entered three exhibits and numbered the exhibits himself.
[3] Some evidence indicates the address of the subject property is 4830 West Washington Street. The parties stipulated that the proper address of the subject property is 4838 and 4850 West Washington Street.

14. The Petitioner requested a total assessment of $75,000.

OBJECTIONS

15. The Respondent objected to Petitioner Exhibit 12 on the grounds that it was hearsay. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it. Noting the Respondent's objection, the Board admits Petitioner Exhibit 12, but does not base its determination solely on this evidence.

16. The Petitioner objected to Respondent Exhibit R-3 on the grounds that it contained errors and was "not a very good exhibit." The Board finds that the Respondent sufficiently explained the purported errors in the exhibit. The Petitioner's objection goes to the weight of the evidence rather than its admissibility. Therefore, Respondent Exhibit R-3 is admitted.

17. The Petitioner objected to Respondent's Exhibit R-5 on the grounds that to admit it into evidence would be to "pre-judge" the issue of whether to accept Petitioner's Second Amended Petition. Respondent's Exhibit R-5 consists solely of documents that the Petitioner submitted to the Board or to the County. The Board does not accept that the Petitioner's own filings prejudice it. Respondent Exhibit R-5 is admitted.

MOTION TO DISMISS

18. The Respondent argued that the Petitioner's appeal for parcels 9000231, 9000232 9006015, and 9006016 should be dismissed for failing to file separate Form 130s or Form 131s for those parcels. The Petitioner filed a Form 130 and Form 131 that listed Parcel 9000230 "merged with" 9000231, 9000232, 9006015, and 9006016. The Petitioner also filed a combination request at the same time. The county did not combine the parcels until the 2013 tax year.

19. The statutory requirements for filing an initial review of assessment are found in Ind. Code § 6-1.1-15-1(f). This statute does not require the filing of a Form 130, but instead merely requires the name, address, and telephone number of the taxpayer, as well as the parcel number of the property that is being appealed. The Petitioner's Form 130 that listed all five parcels satisfied these requirements.

20. The requirements for initiating an appeal with the Board are more stringent. The Board's procedural rules require an actual Form 131, as well as a separate Form 131 for each parcel. At the time of the initial filing, the Board deemed the separate Form 131s to have been constructively filed. The Board issued separate Notices of Hearing for each parcel. This matter included significant pre-hearing litigation, including two motions to amend the petition and a case management conference. At no time prior to the hearing did the Respondent make this objection. The Respondent had ample notice of what parcels were under appeal, and should have objected prior to the day of hearing. The appeal will proceed on the merits.

PETITIONER'S SECOND MOTION TO AMEND

21. The Petitioner filed a Tendering of Second Amended Appeal Petition and Second Amended Appeal Petition on March 31, 2014. This petition raised new allegations that

the property was a registered Brownfield and that the 2003 purchase price should be considered probative evidence of value.

22. The Petitioner filed an Exception Taken by Petitioner to the Board Declining to Accept Second Amended Appeal Petition. This filing states that a Board staff member informed the Petitioner's counsel that the Board would not rule on the Second Amended Petition until the hearing. The Exception alleges this was an abuse of discretion by the Board.

23. At the May 7, 2014, hearing, the ALJ took arguments on why the Board should accept the second amended Petition. The Petitioner's counsel argued that he only recently discovered the significance of the Brownfield classification. The Respondent's counsel argued that this was an attempt to get additional evidence in after a prior hearing was continued.

24. According to the Board's procedural rules, it is within the Board's discretion whether to allow a second amendment to a petition. Furthermore, a Petitioner must show good cause for the Board to allow an amendment over 30 days after an initial filing. The Petitioner did not show good cause. Neither the Indiana Code nor the Board's procedural rules require a party to identify every argument or piece of evidence in an initial Petition. Therefore, the Board does not accept the Second Amended Petition because it lacked good cause. This does not exclude the evidence the Petitioner presented that was referenced in the Second Amended Petition.

25. After the hearing, the Petitioner filed a Motion to Amend, If Necessary, to Conform to Evidence of Brownfield Under Trial Rule 15(B). Allowing amendments under Trial Rule 15(b) is again, at the discretion of the Board. Moreover, the Trial Rules do not strictly apply to the Board. The Board's own procedural rules on amendments take precedence. The Motion to Amend is denied for the same reasons stated above.

JUDICIAL NOTICE REQUEST

26. The Petitioner requested the Board accept judicial notice that the subject property was a registered Brownfield with the Indiana Department of Environmental Management (IDEM). The ALJ took the request under advisement. The Petitioner objected that the ALJ declined to immediately accept judicial notice. The Respondent argued that the Board should not accept judicial notice, as they had not had time to adequately prepare for that evidence.

27. Judicial notice is a matter of discretion. As stated in 52 IAC 2-7-4 the Board may take notice of any fact that could be judicially noticed by a court. It is unclear whether under these circumstances a court would take judicial notice of this fact. Further the Petitioner's representative provided no cogent argument as to why the Board should take judicial notice. Thus, the Board declines to take judicial notice of this fact. However, even were the Board to decide to take notice, the evidence would still not be probative because the Petitioner failed to relate a Brownfield classification to a quantified reduction in value.

JURISDICTIONAL FRAMEWORK

28. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

29. The subject property's assessment is too high. The most probative evidence of value is the purchase price of the property. The Petitioner purchased the subject property in 2003 for $95,000.[4] *Hendrickson argument; Brackin testimony.*

30. The price paid reflected a number of deficiencies in the property. First, the property does not have heating or air conditioning. There is an encroachment issue with a neighboring property that has remained unresolved after significant litigation and costs. Moreover, the property is a registered Brownfield as evidenced by the denial of a request for a "comfort letter," as well as the listing on the IDEM website. The Board should accept this fact by judicial notice. *Hendrickson argument; Brackin testimony; Pet'r Ex. 12.*

31. A Brownfield designation significantly reduces the value of a property. Accordingly, a 2006 Board decision approved a PTABOA's application of a negative 75% influence factor to land. However, that particular decision did not go far enough, because a Brownfield also lowers the value of improvements. *Hendrickson argument; Pet'r Brief (citing IBTR decision Darlage v. Mlynarik, July 27, 2006).*

32. The market has not significantly changed since 2003. According to the Petitioner's Brief,

> The DLGF (Indiana Department of local Government Finance) kept track of and published the median COD (coefficiency of dispersion,) the ratio of sales to assessments, for Wayne Township, Indianapolis, "Improved Commercial," the subject property's category, for 2007 (.99), 2008 (.982), 2009 (.972), and 2011 (.981). As reported on the subject property's assessment record card for 2011 (R-2, p.2) even trending for assumed inflation since 2002 was only 117, or 17%.

These numbers indicate that "the more than 100% discrepancy between 2003 $92,000 sale and the 2011 $199,000 assessment spotlighted an outlier from normal valuation." *Hendrickson argument; Pet'r Brief; Resp't Ex. R-2.*

[4] Mr. Brackin testified that he purchased the property for $95,000. According to the Petitioner's post-hearing briefs, however, the purchase price was $92,000.

33. The Respondent's evidence was not probative. Ms. Beckman did not state if the purported comparable properties were Brownfield properties, if they had encroachment issues, or if they lacked heating and air conditioning. Finally, Ms. Beckman failed to inspect the subject property. *Hendrickson argument; Resp't Ex. R-4.*

RESPONDENT'S CONTENTIONS

34. The subject property is currently under assessed. As far as the evidence presented by the Petitioner, Mr. Hendrickson argues the subject property is a Brownfield. However, the Petitioner failed to provide any explanation of the supposed contamination. Further, the Petitioner did not provide any estimation of costs to remediate the contamination. Finally, and perhaps most importantly, the Petitioner did not quantify the impact of the purported Brownfield classification on the market value-in-use of the subject property. *Slatten argument.*

35. Next, the encroachment issue argued by Mr. Hendrickson is not significant as it only involves 3 feet of a 13,000 square foot building. It is also likely the Petitioner could remedy the encroachment through the doctrines of title by acquiescence and adverse possession. In any case, the Petitioner failed to quantify the purported encroachment's effect, if any, on the value of the property. *Slatten argument; Beckman testimony.*

36. Several sales of comparable properties near the subject property indicate that the 2011 assessment should in fact be higher. A property at 4426 West Washington Street sold in April of 2010 for $17.50 per square foot. A property at 5324-5330 West Washington Street sold in August of 2011 for $24.24 per square foot. A property located at 5227 West Washington Street sold in November of 2008 for $65.23 per square foot. A property at 5324-5330 West Washington Street sold in April of 2007 for just under $75 per square foot. *Slatten argument; Beckman testimony; Resp't Ex. R-4.*

37. The most comparable sale was located at 5324-5330 West Washington Street, which sold for $24.24 per square foot. It demonstrates that the subject property was under assessed by at least $9 per square foot. The subject property should be assessed at $24.24 per square foot. Therefore, the Board should raise the 2011 assessment of the subject property to $319,200. *Slatten argument; Beckman testimony; Resp't Ex. R-4.*

BURDEN OF PROOF

38. 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.

39. 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).

40. 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 the 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). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

41. Here, the Petitioner did not argue that the burden should shift to the Respondent. Moreover, the record does not indicate the 2011 assessment increased by more than 5% over the 2010 assessed value. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

ANALYSIS

42. 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. To show 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 (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r,* 836 N.E.2d 501, 506 n.6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

43. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long,* 821 N.E.2d at 471.

44. Here, the Petitioner had the burden of proof. The Petitioner relied primarily on the 2003 sale of the subject property for $95,000. While a sale of the subject property can be

probative, all evidence must be related to the relevant valuation date. *See Long* 821 N.E.2d at 471. A sale eight years removed from the March 1, 2011, valuation date requires proof and explanation to turn it into probative evidence.

45. The Petitioner relied on conclusory statements that the market had not changed significantly since 2003. The Petitioner cited figures from sales ratio studies from 2007, 2008, 2009, and 2011. The Petitioner also cited the trending factor listed on the 2011 property record card for one parcel. This presentation does not satisfy the requirements of *Long.* Here, the Petitioner needed to provide the Board with evidence of market effects for every year in between the sale date and the valuation date. Conclusory statements that the market had not changed are not sufficient. Without this analysis, the 2003 sale is not probative.

46. The Petitioner also argued that the subject property was a designated Brownfield, and for that reason, its 2011 assessment should be reduced. As the Respondent correctly pointed out, even if the Board accepts the Petitioner's evidence that the property is a designated Brownfield, that fact alone is insufficient to prove value. The Petitioner did not attempt to explain the details of the contamination. The Petitioner also needed to relate the evidence to market value-in-use as required by *O'Donnell* and *Long.* Either a quantification of the contamination's effect on the property's market value-in-use, or evidence of the cost of cleanup might have been probative. The Petitioner provided neither and ultimately failed to offer any probative evidence on how this fact affects the market value-in-use of the subject property.

47. The Petitioner did cite a prior Board decision in which a PTABOA had applied a negative 75% influence to a Brownfield property. *See Pet'r Brief at 4.* The Petitioner's representative failed to point out, however, that the Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs,* 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001); *see also Phelps Dodge v. State Bd. of Tax*

Comm'rs, 705 N.E.2d 1099 (Ind. Tax Ct. 1999). Furthermore, even if a 75% influence factor was proper in a previous appeal that does not make it appropriate for every case.

48. Because the Petitioner did not offer probative evidence of the property's market value-in-use, it failed to meet the burden of proving the assessment was incorrect.

49. Where a 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. LTD v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003). This conclusion does not end the analysis because the Respondent requested an increase. The Respondent has the burden of proving that claim.

50. In an effort to justify an increase in the 2011 assessment, the Respondent presented several sales. Ms. Beckman relied primarily on the sale of the property located at 5324 - 5330 West Washington Street. Ms. Beckman testified that it was the most comparable property and she accounted for any differences between it and the subject property.

51. Ms. Beckman's analysis of comparability was limited to a conclusory statement claiming that the purportedly comparable property was similar to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long,* 821 N.E.2d at 471. Rather, 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.* Similarly, the proponent must explain how any differences affect the relative market value-in-use. In order to effectively utilize the sales comparison approach one must provide the Board with more than simple conclusory statements. The Respondent's case lacked the type of analysis contemplated by *Long*. Further, Ms. Beckman failed to make adjustments to account for differences between the properties. Therefore, the Respondent has not presented a prima facie case for any increase in assessment.

SUMMARY OF FINAL DETERMINATION

52. The Petitioner had the burden of proof in this appeal, but failed to make a prima facie case supporting a change in assessment. The Respondent requested an increase in assessment, but failed to establish a prima facie case to support an increase. Therefore, the assessment will remain unchanged.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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>.