

REPRESENTATIVE FOR THE PETITIONER:
Kevin L. Smith, President of Builders Gallery Inc.

REPRESENTATIVE FOR THE RESPONDENT:
Terri Boone, Huntington County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Builders Gallery Inc.,)	Petition No.: 35-012-20-1-4-00618-20
)	
Petitioner,)	Parcel No.: 35-09-36-400-008.900-012
)	
v.)	
)	County: Huntington
Huntington County Assessor,)	Township: Polk
)	
Respondent.)	Assessment Year: 2020

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

April 29, 2021

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:

INTRODUCTION

1. The Petitioner requested a deduction for its heritage barn. Did the Petitioner meet the requirements of Ind. Code § 6-1.1-12-26.2? The Petitioner also challenged the subject property's valuation for 2020. Did the Petitioner prove the 2020 assessment should be reduced?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2020 assessment appeal with the Huntington County Assessor on June 12, 2020. On October 9, 2020, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner a heritage barn deduction and any relief on the assessed value. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On February 2, 2021, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Kevin L. Smith, President of Builders Gallery Inc., appeared for the Petitioner via telephone. Huntington County Assessor Terri Boone and county employee Julie Newsome appeared for the Respondent via telephone. All participants were sworn.
5. The Petitioner offered the following exhibits:
 - Petitioner Exhibit A: Taxpayer's Notice to Initiate an Appeal (Form 130),
 - Petitioner Exhibit B: Page 1 Statement of Deduction of Assessed Valuation Attributed to Heritage Barn (Form 55706),
 - Petitioner Exhibit B1: Page 2 Additional information regarding heritage barn deduction,
 - Petitioner Exhibit C: Form 131,
 - Petitioner Exhibit D: Mt. Etna 1958 zone map,
 - Petitioner Exhibit D1: 1930 aerial photograph of the subject property,
 - Petitioner Exhibit D2: 2016 aerial photograph of the subject property,
 - Petitioner Exhibit D3: 2019 aerial photograph of the subject property,
 - Petitioner Exhibit D4: Photograph of the "old front" of the subject property,
 - Petitioner Exhibit D5: Photograph of the subject property "restored,"
 - Petitioner Exhibit E: Interior photograph of the subject property,
 - Petitioner Exhibit E1: Interior photograph of the subject property,
 - Petitioner Exhibit E2: Interior photograph of the subject property,
 - Petitioner Exhibit E3: Definition of the United States Department of Agriculture (USDA),
 - Petitioner Exhibit F: Beacon property information sheet for the subject property,

- Petitioner Exhibit F1: Beacon property information sheet for 6581 West 600 South in Huntington,
- Petitioner Exhibit F2: Beacon property information sheet for 5909 South 588 West in Huntington,
- Petitioner Exhibit F3: Beacon property information sheet for 5889 South 600 West in Huntington,
- Petitioner Exhibit F4: Beacon property information sheet for 5843 West 600 South in Warren,
- Petitioner Exhibit F5: Beacon property information sheet for 5908 South 594 West in Huntington,
- Petitioner Exhibit F6: Beacon property information sheet for 6026 South 600 West in Warren,
- Petitioner Exhibit F7: Beacon property information sheet for 6141 South 600 West in Warren,
- Petitioner Exhibit G: Beacon property information sheet for the subject property.

6. The Respondent offered the following exhibits:¹

- Respondent Exhibit 2: Notice of Hearing on Petition – Real Property (Form 114) and Form 115,
- Respondent Exhibit 3: Form 130,
- Respondent Exhibit 4: 2020 subject property record card,
- Respondent Exhibit 5: Three photographs of the subject property,
- Respondent Exhibit 6: “Value approach analysis,”
- Respondent Exhibit 7: Appraisal Summary of Salient Features dated March 6, 2017, and an aerial photograph of the subject property,
- Respondent Exhibit 8: Undated letter to Mr. Smith from the Huntington County Assessor,
- Respondent Exhibit 9: Letter to Mr. Smith from the Huntington County Assessor dated January 6, 2021,
- Respondent Exhibit 10: Respondent’s concluding comments.

7. 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) the digital recording of the hearing and these findings and conclusions.

8. The property under appeal is a general retail building with a mezzanine, car shed, Quonset building, and two barns located at 6062 West 600 South in Huntington.

¹ The Respondent did not submit Respondent’s Exhibit 1.

9. The PTABOA determined a total assessment of \$184,600 (land \$40,300 and improvements \$144,300).
10. The Petitioner requested a total assessment of \$71,000 (land \$11,000 and improvements \$60,000).

OBJECTIONS

11. The Petitioner objected to Respondent's Exhibit 7, the summary of salient features page from an appraisal report conducted on March 6, 2017. The Petitioner argues this information was obtained to aid in making a business decision and the Respondent is attempting to "use it towards an appraisal value." The ALJ took the objection under advisement. While this exhibit may not be exceptionally relevant, it was intended to help establish the value of the subject property. The Petitioner failed to offer any legal grounds to exclude the exhibit from the record. Accordingly, Respondent's Exhibit 7 remains part of the record.
12. The Respondent objected to the Petitioner's request for a heritage barn deduction. According to the Respondent, the Petitioner filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132) requesting an exemption on the heritage barn on October 20, 2020. On December 21, 2020, the Board issued a Final Determination denying the Form 132 because the Petitioner failed to comply with a Notice of Defect. The Petitioner also filed a Form 131 with the Board on October 20, 2020, that was also defected. However, the Petitioner cured the defect with the Form 131, and this hearing is the result of that filing. The ALJ took the objection under advisement. While there appears to be some confusion regarding the issue of the heritage barn deduction because the Petitioner raised the issue on both a Form 131 and Form 132, the Respondent did not establish any legal grounds to exclude the issue from the record. The Board has never addressed the merits of the case on whether the property qualifies for heritage barn deduction. For this reason, the objection is overruled.

PETITIONER'S CONTENTIONS

13. The Petitioner purchased the property for the purpose of revitalizing the over 100-year-old building. The building originally was the Mt. Etna sawmill. After purchasing the property, most of the building was renovated. Some new roofing was added but most of the roof was painted. A new awning was added, and the exterior has been painted. New sliding doors were installed, and an additional window was added. *Smith testimony; Pet'r Ex. D1, D2, D3, D4, D5.*
14. The interior of the building shows it is a mortise and tenon barn constructed with heavy wooden timbers joined together with wooden pegs. The Petitioner added floor joists to some areas. With that being said, the Petitioner did not change the original footprint of the building, but merely restored the old building. The building is currently being used as a retail business. A zoning map of the area shows the subject property has been zoned commercial since 1958. *Smith testimony; Pet'r Ex. D, E, E1, E2.*
15. The Petitioner filed a Statement of Deduction of Assessed Valuation Attributed to Heritage Barn (Form 55706). The County denied the heritage barn deduction because the structure is being used as a retail event center. The Petitioner argues the deduction form does not state that once the building is restored, it must be used for agricultural purposes or that it cannot be used as "retail." However, the deduction form does state, the building should retain the integrity of the design. The photographs clearly show the building is a barn and it meets the other criteria outlined on the deduction form, therefore it should qualify for the heritage barn deduction. *Smith testimony; Pet'r Ex. B, B1, D3, D5, E, E1, E2.*
16. Finally, the Petitioner offered property record card information for seven other commercial properties in Huntington County. These properties are all located within a mile of the subject property. These properties are all assessed for less than the subject property. *Smith testimony; Pet'r Ex. F, F1, F2, F3, F4, F5, F6, F7.*

RESPONDENT'S CONTENTIONS

17. The subject property's assessment is correct. The property is a 5,177 square foot one-story barn converted in 2017 to a retail event center known as Rustic River Outfitters. The property also has four outbuildings including a car shed, Quonset building, and two barns that support the operation of the event center. *Newsome testimony; Resp't Ex. 4, 5, 6.*
18. To determine the market value-in-use of the subject property, the Respondent followed the guidelines set forth by the Department of Local Government Finance (DLGF) and the Uniform Standards of Professional Appraisal Practice (USPAP). The Respondent considered all three approaches to value, the sales comparison, income, and cost approaches. Due to a lack of sales of similar properties the sales comparison approach was given no weight. Also, due to a lack of income data the income approach was not applicable. Because of "new renovation" to the property, the cost approach was the "most relevant" and given the most weight in determining the value at \$184,600. *Newsome testimony; Resp't Ex. 6, 10.*
19. The subject property was appraised on March 6, 2017, for \$235,000. While the appraisal was submitted as part of a previous appeal hearing, it demonstrates the value of the property after extensive renovations and a change in use to commercial. Thus, the appraised value supports the January 1, 2020, assessed value of \$184,600. *Newsome testimony; Resp't Ex. 7.*

BURDEN OF PROOF

20. 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. 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). The burden-shifting statute creates two exceptions to that rule.

21. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
22. 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 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).
23. Here, the parties agree the assessment did not increase by more than 5% between 2019 and 2020, in fact the property record card shows the total assessment decreased from \$250,400 in 2019 to \$184,600 in 2020. Therefore, the burden-shifting provisions do not apply, and the burden remains with the Petitioner.

ANALYSIS

24. Indiana Code § 6-1.1-12-26.2 provides a property tax deduction for heritage barns. Specifically, an eligible applicant is entitled to a deduction against the assessed value of the structure and foundation of a heritage barn beginning with assessments after 2014. The deduction is equal to 100% of the assessed value of the structure and foundation of the heritage barn. Ind. Code § 6-1.1-12-26.2(b). An eligible applicant that desires to obtain the deduction must file a certified deduction application with the auditor of the

county in which the heritage barn is located on the form prescribed by the DLGF.² Ind. Code § 6-1.1-12-26.2(c).

25. A heritage barn means a mortise and tenon barn that was constructed before 1950.³ It retains sufficient integrity of design, materials, and construction to clearly identify the building as a barn. Ind. Code § 6-1.1-12-26.2(a)(2).
26. “Barn” means a building (other than a dwelling) that was designed to be used for housing animals, storing or processing crops, storing and maintaining agricultural equipment, or serving an essential or useful purpose related to agricultural activities conducted on the adjacent land. Ind. Code § 6-1.1-12-26.2(a)(1).
27. Here, the subject property is a 100-year-old revitalized barn. The evidence shows the interior is a mortise and tenon barn constructed with heavy wooden timbers joined with wooden pegs. The Petitioner testified the property has been zoned commercial since 1958. Originally it was a sawmill and currently is a retail event center. In this case, the subject property meets the criteria of a heritage barn. As for the agricultural purposes as outlined in Ind. Code § 6-1.1-12-26.2(a)(1), timber is a crop and timber is processed on a sawmill. Moreover, the building looks like a typical barn structure that could be used to hold equipment or livestock. The statute only requires an agricultural design, not a current or continued agricultural use.
28. The Petitioner also challenged the 2020 assessed value of the subject property.
29. Real property is assessed based on its 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). 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

² Form 55706 is the DLGF prescribed form.

³ “Mortise and tenon barn” is defined as a barn that was built using heavy wooden timbers, joined together with wood-pegged mortise and tenon joinery, that form an exposed structural frame. Ind. Code § 6-1.1-12-26.2(a)(4).

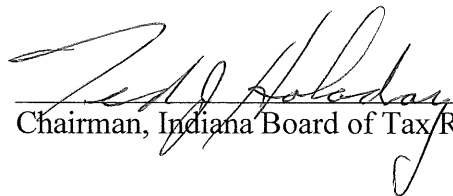
accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

30. 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 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
31. The Petitioner offered property record card information for seven other commercial properties in Huntington County. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of the property under appeal. Ind. Code § 6-1.1-15-18(c)(1). But a proponent must do more than just point to other properties. The Petitioner needed to establish the comparability of the properties being examined and explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E. 2d at 470, 471.
32. While the Petitioner did point to the fact the seven properties were all located within a mile of the subject property, he failed to offer sufficient evidence relating their specific features and amenities to the subject property. More importantly, he made no attempt to make adjustments for any relevant differences between the properties. The Petitioner's evidentiary presentation therefore falls short of providing the level of analysis contemplated by *Long*. For this reason, the Petitioner failed to make a prima facie case for reducing the assessment.
33. 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).

SUMMARY OF FINAL DETERMINATION

34. In accordance with the above findings of fact and conclusions of law, the Board finds the Petitioner failed to make a prima facie case regarding the assessed value of the subject property. However, the Petitioner met all the criteria for a heritage barn deduction. As a result, the Petitioner is entitled to receive the heritage barn deduction for the 2020 assessment year.

The 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>