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

Petitions:	**18-003-12-1-4-00236**
	18-003-13-1-4-00072
	18-003-14-1-4-10281-15
Petitioner:	**Key Enterprises, Inc.**
Respondent:	**Delaware County Assessor**
Parcel:	**18-11-04-379-011.000-003**
Assessment Years:	**2012, 2013, 2014**

The Indiana Board of Tax Review ("Board") issues this determination in the above matters and finds and concludes as follows:

Procedural History

1. The Petitioner appealed its 2012-2014 assessments. On October 15, 2014, the Delaware County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations for the 2012 and 2013 assessments, denying the Petitioner relief for both years. On June 3, 2015, the PTABOA issued its determination for 2014, again denying the Petitioner relief.

2. The Petitioner timely filed Form 131 petitions with the Board. It elected to proceed under our small claims rules. On December 3, 2015, our designated administrative law judge, Jennifer Bippus ("ALJ",) held a hearing on the petitions. Neither she nor the Board inspected the property.

3. The Petitioner's president, Christopher Hiatt, Tom Terry, Scott Alexander, Charles Ward, Christopher Ward, and Abby McDaniel were sworn as witnesses.[1]

[1] Mr. Hiatt represented the Petitioner. *See* 52 IAC 2-2-4 (defining a party's permanent full time employee as an authorized representative in our proceedings). Charles Ward purported to represent the Respondent. He is a certified tax representative. He may also qualify as a local government representative, although he did not file the verification required by our procedural rules. *See* 52 IAC 1-1-3.5 (identifying who may qualify as a local government representative and laying out verification requirements). Thus, if authorized by the Respondent to do so, Mr. Ward may appear in a representative capacity before us. *See* 52 IAC 1-2-1; 2-2-4. Our rules require certified tax representatives and local government representatives to file a power of attorney, in part to show they have been authorized by the parties they purport to represent. 52 IAC 2-3-2(a). Mr. Ward did not do so. Nonetheless, the ALJ allowed the hearing to continue, and we have little doubt the Respondent authorized Mr. Ward to represent him. He has done so in other appeals. Indeed, the Respondent's deputy, Abby McDaniel, appeared at the hearing and acquiesced to Mr. Ward's actions. Thus, we will treat Mr. Ward as the Respondent's representative for purposes of these appeals. We remind him to comply with our rules in the future.

Facts

4. The property is classified as an office building and is located at 1804 North Wheeling Avenue in Muncie.

5. The PTABOA determined the following values:

Year	Land	Improvements	Total
2012	$37,900	$76,100	$114,000
2013	$37,900	$75,800	$113,700
2014	$37,900	$73,000	$110,900

6. On its Form 131 petitions, the Petitioner requested a total assessment of $100,500 for each year. It requested lower values at the hearing.

Record

7. The official record for this matter is made up of the following:

   a) A digital recording of the hearing,

   b) Exhibits:

   Petitioner Exhibit 1: Profit and Loss Statement,
   Petitioner Exhibit A: Digital recordings of July 30, 2014, and April 30, 2015 PTABOA hearings,

   Respondent Exhibit 1: 2012 property record card ("PRC") for the subject property,
   Respondent Exhibit 2: 2014 PRC for the subject property,
   Respondent Exhibit 3: "2012-2014 Office Sales,"
   Respondent Exhibit 4: "2015 Office Sales,"

   Board Exhibit A: Form 131 petitions with attachments,
   Board Exhibit B: Hearing notices,
   Board Exhibit C: Hearing sign-in sheet.

   c) These Findings and Conclusions.

Objections

8. The parties made several objections, all of which the ALJ took under advisement. We address each in turn.

9. The Petitioner objected to Respondent's Exhibits 3-4 on grounds that he did not offer them at the PTABOA hearings. The Respondent argued that our hearing is a new and separate proceeding and that parties are free to offer any evidence regardless of whether they submitted it to the PTABOA.

10. We agree with the Respondent. The Petitioner confuses a limitation on raising new issues with a prohibition on offering new evidence. By accepting our small claims procedure, a party agrees that the issues contained in the appeal petition to us are "substantially the same a those presented to the PTABOA," and that "no new issues will be raised before the board." 52 IAC 3-1-2(b). The Respondent did not raise any new issues. As shown by the Form 130 petition, the issue in this case has always been whether the property is accurately assessed.

11. In contrast to the small-claims limitation on new issues, our rules do not prohibit parties from offering evidence before us that they did not offer below. To the contrary, "a party participating in the hearing may introduce evidence . . . without regard to whether that evidence has previously been introduced at a hearing before the county PTABOA." 52 IAC 2-7-1(a); *see also,* 52 IAC 3-1-1 (providing that 52 IAC 2 applies to the small claims procedures "unless inconsistent with this article."). We overrule the Petitioner's objection and admit Respondent's Exhibits 3 and 4.

12. On a related note, the Respondent objected to Petitioner's Exhibit A, a compact disc with audio recordings of the PTABOA hearings on the assessments at issue in these appeals as well as on appeals of other properties owned by the Petitioner.[2]

13. We sustain the objection. The exhibit is irrelevant. The Petitioner offered the exhibit to support its claim that the Respondent did not submit any evidence at the PTABOA hearings. As explained above, that fact has no bearing on the current proceedings.

14. Finally, the Respondent objected to Petitioner's Exhibit 1—a profit and loss statement—because the Petitioner did not offer anything to substantiate the truth or accuracy of the information contained in the statement. In response, the Petitioner claimed that its president, Mr. Hiatt offered the same information at the PTABOA hearing, where he testified to its accuracy.

15. We overrule the objection. The Respondent did not specify, nor do we readily discern, the legal grounds on which he premised his objection. We will not make the Respondent's arguments for him. To the extent he was concerned about the statement's accuracy, he was free to explore those concerns when cross-examining Mr. Hiatt. In any case, we do not rely on the statement in deciding the appeals.

[2] After she completed the hearing, the ALJ reopened the record to allow the Petitioner to offer Petitioner's Exhibit A both in these appeals and in appeals concerning a property located at 1012 North Delaware Street, which the ALJ heard earlier in the day.

Contentions

16. Summary of the Petitioner's case:

a) The assessments are too high. Although the building has six office suites, only three have been occupied in the past five years. Further, the property is landlocked and sits about 200 feet off the closest public right-of-way. The only access is across another property owned by the Petitioner. There would be little chance of selling the property without the Petitioner guaranteeing access. *Hiatt testimony; Terry testimony*.

b) Tom Terry, who is a certified tax representative, estimated the property's value for all three years. He applied a gross rent multiplier to income he took from the Petitioner's profit and loss statement for October 1, 2014, through September 30, 2015. He estimated the value at $49,000 if the building is considered to be in average condition and $56,000 if it is considered to be in good condition. On cross-examination, he acknowledged that using a gross rent multiplier is an inappropriate method for valuing office buildings. *Terry testimony; Pet'r Ex. 1.*

c) Scott Alexander is a licensed appraiser. In addressing the Respondent's purportedly comparable sales, Mr. Alexander testified that some of those properties had newer buildings and were in better locations than the subject property. The subject property does not have similar drive-by exposure. It has no road frontage and cannot be accessed without driving across another property. According to Mr. Alexander, a significant adjustment would be needed to account for those facts. *Alexander testimony.*

17. Summary of the Respondent's case:

a) The assessments are correct. The Respondent offered two separate lists with information about sales of other office properties: one with 12 sales from 2012 through 2014, and another with six sales from 2015. The Respondent used all the sales from the first list in his ratio study. *Christopher Ward testimony; Resp't Exs. 3-4.*

b) According to Christopher Ward, the properties on the lists are comparable to the subject property in location but differ in other ways, such as construction materials, age, condition, size, and number of outbuildings. The properties on the first list sold for prices ranging from $43.15/sq. ft. to $77.96/sq. ft., with median price of $58.97/sq. ft. The sales from the second list ranged from $39.83/sq. ft. to $93.10/sq. ft., with a median of $59.72/sq. ft. By contrast, the subject property was assessed for only $29.41/sq. ft. (2012), $29.33/sq. ft. (2013), and $26.03/sq. ft. (2014). *Christopher Ward testimony; Resp't Exs. 3-4.*

c) The Respondent considered the subject property's lack of road frontage in assessing the property. That is why its assessment is so much lower than the comparable properties' sale prices. *Christopher Ward testimony.*

d) Finally, the property should be valued using the income capitalization approach. Mr. Terry's method of using a gross rent multiplier to value an office property is inappropriate. And he used income from 2014. While that might be relevant to the property's 2015 value, it is not relevant to its value for the years at issue in these appeals. *Christopher Ward testimony.*

Burden of Proof

18. Generally, a taxpayer has the burden of to prove that an assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15- 17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority), or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

19. The assessment increased by 13.4% between 2011 and 2012, going from $100,500 to $114,000. In light of that increase, the Respondent conceded he had the burden of proof for 2012. Assigning the burden for 2013 and 2014 will ultimately depend on our final determinations for the immediately preceding years.

Analysis

20. The Respondent failed to make a prima facie case that the assessments are correct.

a) Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of the Department of the Local Government Finance ("DLGF"). I.C. § 6-1.1-3-16(c). The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2).

b) Evidence in an assessment should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also, Kooshtard Property VI, LLC 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, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *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).

c) In any case, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, such evidence lacks probative value. *Id*. The valuation date for each assessment at issue in these appeals was March 1 of that assessment year. *See* I.C. § 6-1.1-4-4.5(f).

d) With that guidance in mind, we turn to the evidence. We start with the 2012 appeal. To support the assessment, the Respondent offered two lists with sales information for various properties. The sales comparison approach assumes that potential buyers will pay no more for a property than it would cost to buy an equally desirable existing property. 2011 MANUAL at 9-10. For comparative sales data to be probative in an assessment appeal, the properties from which the data is taken must be demonstrably comparable to the property under appeal. Conclusory statements that properties are similar or comparable to each other do not suffice. Instead, one must identify the characteristics of the purportedly comparable properties, compare them to the property under appeal, and explain how any differences affect values. *Long,* 821 N.E.2d at 470-71.

e) Christopher Ward's analysis of sales data falls well short of what the Tax Court contemplated in *Long*. He conclusorily asserted that the properties were in similar locations as the subject property and did little else to compare characteristics beyond providing some basic information about each building's age and construction. While he acknowledged there were significant differences, he did nothing to explain how those differences affected the relative values beyond pointing out that the median sale prices were significantly higher than the subject property's assessments. Given those shortcomings, the Respondent's sales data does not make a prima facie case supporting the assessment. Therefore, the Petitioner is entitled to have the 2012 assessment reduced at least to its 2011 level of $100,500.[3]

f) To the extent the Petitioner requested any further reduction, it had the burden of proving a lower value. In that regard, the Petitioner offered Mr. Terry's valuation opinion based on a profit and loss statement and an undisclosed gross rent multiplier. His opinion was almost entirely conclusory. And he acknowledged his methodology was inappropriate. Because the Petitioner failed to offer any probative evidence to show a lower value, we determine the 2012 assessment should be $100,500.

g) Turning to the next year, the 2013 assessment is higher than the amount we have determined for 2012. Thus, the Respondent has the burden of proof for 2013 as well. *See* I.C. § 6-1.1-15-17.2(d). The parties relied on the same evidence for that year as they did for 2012, and we reach the same conclusion—the assessment must be reduced to $100,500. The same analysis and result apply for 2014.

[3] We also note Mr. Ward testified that the property should be valued under the income capitalization approach, but he did not offer a valuation based on the income approach.

Conclusion

21. The Respondent had the burden of proof for each year under appeal and failed to meet his burden, which entitled the Petitioner to have each assessment reduced to the previous year's level. The Petitioner failed to offer probative evidence to prove a lower value.

Final Determination

In accordance with these findings and conclusions, the 2012-2014 assessments must be changed to $100,500.

ISSUED: May 31, 2016

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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 of 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>.