

REPRESENTATIVE FOR PETITIONER:
Richard L. Archer, Paradigm Tax Group

REPRESENTATIVE FOR RESPONDENT:
Beth H. Henkel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Layton Homes Corp.	)	Petition No.:	20-011-14-1-3-01478-16
)		
Petitioner,	)	Parcel No.	20-06-02-276-003.000-011
)		
v.	)	County:	Elkhart
)		
Elkhart County Assessor,	)	Township:	Concord
)		
Respondent.	)	Assessment Year:	2014

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

September 20, 2017

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. Layton Homes Corp. (“Petitioner”) initiated its 2014 assessment appeal on August 28, 2014. On May 23, 2016, the Elkhart County Property Tax Assessment Board of Appeals

(“PTABOA”) issued its Notification of Final Assessment Determination. Petitioner then timely filed a Form 131 petition on July 7, 2016, with the Board.

2. On June 22, 2017, the Board’s designated administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The property under appeal consists of one main manufacturing building, a pole barn, and various small utility buildings located at 401 County Road 15 in Elkhart.
4. Richard Archer of Paradigm Tax Group was sworn in for Petitioner. Elkhart County Assessor Cathy Searcy and witness Gavin Fisher were sworn in for Respondent.¹
5. Petitioner offered the following exhibits:

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|-------------------------------|---|
| Petitioner Exhibit P1 – | Aerial map for the subject property and parcel #20-06-02-276-002.000-011, |
| Petitioner Exhibit P2 – | 2014 subject property record card (“PRC”), |
| Petitioner Exhibit P3 – | PRC for Layton Homes Corp. parcel #20-06-02-276-002.000-011, |
| Petitioner Exhibit P4 – | Aerial map showing Forest River Manufacturing, |
| Petitioner Exhibit P5 – | PRC for Forest River Manufacturing, |
| Petitioner Exhibit P6 – | Sales disclosure form for subject property, parcel #20-06-02-276-002.000-011, and parcel #20-06-02-426-001.000-011, |
| Petitioner Exhibit P7 – | Sales disclosure form from Department of Local Government Finance (“DLGF”) for parcel 20-06-02-276-003.000-011, |
| Petitioner Exhibit P8 – | Combined closing statement for subject property, parcel #20-06-02-276-002.000-011 and parcel #20-06-02-426-001.000-011, |
| Petitioner Exhibit P9 – | Petitioner’s sales analysis, |
| Petitioner Exhibit P10A-10X – | Photographs of subject property, |

6. Respondent offered the following exhibits:

¹ Ms. Searcy did not testify. Tylan Miller of Equi-Val Tax Solutions was also present to observe the hearing.

- Respondent Exhibit A – Elkhart County 2013-2014 industrial real property sales,
- Respondent Exhibit B – Comparable sales analysis,
- Respondent Exhibit C – Summary of Layton Homes Corp. 2014 PRCs,
- Respondent Exhibit D – Skyline Corp. quarterly report dated February 28, 2015,
- Respondent Exhibit E – *R. Gordon Miller v. Brown County Assessor*; Petition No. 07-005-06-1-5-00001, et al. (IBTR January 18, 2013) and *Ralph L. Johnson v. Huntington Township Assessor (Huntington County)*; Petition No. 35-014-02-1-4-00084 (IBTR November 30, 2005),

7. The following additional items are included as 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 2014 is \$412,600 for the land and \$964,700 for the improvements, for a total of \$1,377,300.
9. Petitioner requested a total assessment of \$810,900.

BURDEN OF PROOF

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. 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).

12. 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).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The parties agreed that the assessment did not increase by more than 5% between 2013 and 2014 and that Petitioner has the burden of proof.

SUMMARY OF PETITIONER’S CONTENTIONS

15. Mr. Archer testified that the property under appeal was owned by Layton Homes, which is a subsidiary of Skyline Corporation (“Skyline”). Skyline sold the property and two adjacent properties to Forest River Manufacturing LLC (“Forest River”) on October 22, 2014, for \$1,500,000. Layton Homes and Forest River were both recreational vehicle manufacturers at the time, therefore, Mr. Archer contends, the sale constituted a “market value-in-use” transaction. *Archer testimony; Pet’r Ex. P1, P4 & P6-P8.*
16. In response to questioning, Mr. Archer acknowledged that the October 22, 2014, sale does not appear to have been listed with a commercial broker or to have been publicly

advertised. There also was no broker commission included in the closing statement.

Archer testimony; Pet'r Ex. P8.

17. Mr. Archer contends that as of the assessment date, the 67,374 square foot main building on the subject property was vacant and suffered from functional obsolescence. The main building was idle due in part to some long narrow rooms that impeded the flow of the work-in-process. On the other hand, the pole barn, which is referred to as the “lamination building,” and other utility buildings were operational. *Archer testimony; Pet'r Ex. P2 & P10A-X.*
18. Petitioner questioned Mr. Fisher about Respondent Exhibit B, specifically on the property located at 14489 US 20. Petitioner claims that property is very similar to the subject property in size, height, and age, but has a \$10.18 per square foot sale price, while the subject property’s sale price is much higher. Mr. Fisher contends the property at 11489 US 20 consists of a concrete block building that has changed hands frequently, often between interrelated parties, over the last 15 years. Mr. Fisher contends that the property suffers from several “condition issues” ranging from issues with the building itself to extremely poor paving. It is also located near the traffic light in Middlebury which makes it very difficult to access. Despite the similarities, Mr. Fisher contends conditions such as these are largely attributable to the difference in sales price per square foot between this property and the subject property. *Archer & Fisher testimony.*
19. Mr. Archer determined the portion of the sale price attributable to the subject property by subtracting the 2014 assessed value of the other two parcels from the overall sale price. In his calculation, he used the overall sale price of \$1,500,000, and subtracted the assessed values of parcel #20-06-02-276-002.000-011 and parcel #20-06-02-426-001.000-011, which were \$20,200 and \$668,900 respectively. Thus, he contends the value of the property under appeal should be \$810,900. *Archer testimony; Pet'r Ex. P9.*

SUMMARY OF RESPONDENT'S CONTENTIONS

20. Gavin Fisher is an Indiana licensed appraiser and certified Level III Assessor/Appraiser.² Mr. Fisher's primary focus in northern Indiana, and especially Elkhart County, has been industrial manufacturing facilities. He focuses on multiple regression analysis, statistical analysis, forecasting, and direct sales comparisons on various types of properties. He claims to study trends in industrial manufacturing, property values, and overall work and employment trends and how they affect Elkhart County. *Fisher testimony.*
21. Mr. Fisher contends that in a competitive industrial market, properties often consist of multiple buildings with varying ages and heights. Properties are considered comparable when they, among other things, range in size between 50,000 square feet and 150,000 square feet and have wall heights ranging from 12 feet to 20 feet. The subject property includes three buildings consisting of 67,374 square feet, 4,970 square feet and 20,000 square feet, for a total of 92,344 square feet. The wall heights range from 12 feet to 20 feet. *Fisher testimony; Resp't Ex. C.*
22. Mr. Fisher analyzed the sales of fourteen industrial properties ranging in size from 50,100 square feet to 128,018 square feet in Elkhart County. The properties sold between March 19, 2013, and January 16, 2015. The sale prices ranged from \$10.18 per square foot to \$23.81 per square foot, with an average of \$15.26 per square foot and median of \$15.14 per square foot. Next, he removed the properties with the two highest and three lowest prices per square foot, because it appeared that they were outliers and suffered from abnormal market conditions. Mr. Fisher concluded that the overall industrial property market in Elkhart County would include properties ranging between \$14.00 per square foot and \$17.00 per square foot. *Fisher testimony; Resp't Ex. A & B.*
23. Considering characteristics such as age, wall height, size, and location, Mr. Fisher narrowed his analysis to four purportedly comparable properties. He stated that only the comparable property located at 21680 Protecta Drive required an age adjustment due to

² Mr. Fisher did not provide an appraisal.

its newer construction. The utility offered by the remaining three comparable properties was so similar to the subject property that no adjustments were warranted. *Fisher testimony; Resp't Ex. A & B.*

24. The properties sold between May 2, 2013, and October 20, 2014. The adjusted sale prices ranged from \$14.05 per square foot to \$16.72 per square foot, with an average of \$15.14 per square foot. Fisher contends that based on this data, a reasonable price per square foot for the subject property would be between \$15.00 per square foot and \$16.00 per square foot. Because the subject property is assessed at \$14.91 per square foot, Mr. Fisher concluded that it is not overvalued. *Fisher testimony; Resp't Ex. B.*
25. Mr. Fisher argues that Petitioner's sale price is not the result of an arm's length transaction. There is no evidence of the property being listed on LoopNet or with any commercial brokers or local brokerage firms. It was not advertised in, or exposed to, the local market. He also does not believe there was ever a sign on the property showing it was for sale. *Fisher testimony.*
26. Mr. Fisher also believes that the sale of the subject property may have been made under duress. According to Mr. Fisher, Layton Homes' parent company, Skyline Corporation, exited the recreational vehicle manufacturing industry in 2014, but maintained its mobile home manufacturing operations outside of Indiana. Additionally, the main building appears to have been vacant at the time of the sale. It appears the sale was actually a strategic business decision based on lower recreational vehicle sales and a lack of profitability. *Fisher testimony; Resp't Ex. D.*
27. Mr. Fisher contends that in 2014 and 2015 the industrial manufacturing industry had returned to operating at pre-recession levels of occupancy and manufacturing space. The vacancy rate in Elkhart County was at an all-time low. According to his internal review and according to FM Stone, a commercial broker in the county, it was under 2%. He argues that this data shows that there was a shortage of industrial manufacturing facilities in the county and also shows that the subject property's sale price suffered tremendously because it was not exposed to the open market. *Fisher testimony.*

28. Mr. Fisher criticized Petitioner's calculation of the sale price attributable to the subject property. He argues the three parcels included in the sale varied in land size, building size, height, and age, so Petitioner's analysis failed to show the market value attributable to each component of every parcel. *Fisher testimony*.
29. Finally, Respondent's attorney, Ms. Henkel, argues that the Board has ruled on several occasions that a person cannot prove a property's market value-in-use by subtracting an assessed value from a sale price. *Henkel testimony; Resp't Ex. E; citing R. Gordon Miller v. Brown County Assessor; Petition No. 07-005-06-1-5-00001, et al. (IBTR January 18, 2013) and Ralph L. Johnson v. Huntington Township Assessor (Huntington County); Petition No. 35-014-02-1-4-00084 (IBTR November 30, 2005)*.

Analysis

30. 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 Township 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).
31. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the 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 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).

32. Petitioner first argues that the subject property is overvalued based on the sale price of it and two additional parcels for \$1,500,000 on October 22, 2014. The sale price of a property is often the best indication of its value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value).

33. The 2011 Real Property Assessment Manual defines market value as:

The most probable price, as of the specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and the seller acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress.

MANUAL at 5-6.

34. The sale of the three contiguous parcels took place October 22, 2014. While the Board has generally said that a sale occurring within one year of the valuation date is temporally sufficient to constitute probative evidence, there is nothing in the record to indicate whether or not the sale constituted an arm's length transaction. *See Long*, 821 N.E.2d at 471. The record also lacks evidence that the property was reasonably exposed to a competitive market.

35. Another fault with Petitioner's sale price analysis is the assumption that the subject property's market value-in-use can be accurately determined by extracting the 2014 assessed values of the other two parcels included in the sale. Strict compliance with the 2011 Real Property Assessment Guidelines does not, in and of itself, show that an assessment is a reasonable measure of the property's value. *See Westfield Golf Practice*

Center v. Washington Township Assessor, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (explaining that beginning in 2002, Indiana overhauled its property tax system, and “As a result, the new system shifts the focus from examining how the regulations were applied (i.e. mere methodology) to examining whether a property’s assessed value actually reflects the external benchmark of market value-in-use”). Subtracting the assessed values of two contiguous parcels provides no indication about what the precise market value-in-use of the subject property should be. Therefore, the overall sale price of the three properties less the assessed values of the two properties not on appeal is not probative of the subject property’s market value-in-use.

36. Petitioner contends that the building was vacant because the long and narrow rooms impeded the flow of product. But Petitioner presented no evidence to quantify how much this problem might reduce the market value-in-use of this building. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
37. Consequently, Petitioner failed to make a prima facie case that the assessment should be reduced. Where Petitioner has not supported its claim with probative evidence, 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, 1221-22 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

38. Petitioner failed to make a prima facie case for reducing the 2014 assessment and the Board finds for Respondent.

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>>.