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

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| **Petitions:** | **71-007-12-1-4-00002** |
| | **71-007-13-1-4-00002** |
| **Petitioner:** | **Anant J. Patel** |
| **Respondent:** | **St. Joseph County** |
| **Parcel:** | **71-03-25-152-007.000-007** |
| **Assessment Years:** | **2012 and 2013** |

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

### Procedural History

1. The Petitioner initiated his 2012 and 2013 assessment appeals with the St. Joseph County Assessor on November 30, 2012, and December 3, 2013, respectively.

2. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) failed to hold a hearing within 180 days, as required by Ind. Code § 6-1.1-15-1(k).

3. The Petitioner filed Petitions for Review of Assessment (Form 131s) with the Board on April 14, 2014. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed). For both years, he elected the Board's small claims procedures.

4. The Board issued notices of hearing on September 24, 2015.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on November 24, 2015. She did not inspect the property.

6. Anant Patel appeared *pro se* and was sworn as a witness.[1] Attorney Frank Agostino appeared for the Respondent. Daniel Boecher was sworn as a witness for the Petitioner. St. Joseph County Assessor Rosemary Mandrici was sworn as a witness for the Respondent.

### Facts

7. The property under appeal is classified as a commercial parking lot located at 116 Rhodes Street in South Bend.

[1] Mr. Patel signed the Form 131s as "officer."

8. For 2012, the subject property record card indicates a total assessment of $40,000 (land $7,900 and improvements $32,100).

9. For 2013, the subject property record card indicates a total assessment of $51,000 (land $7,900 and improvements $43,100).

10. At the hearing, for both years the Petitioner requested a total assessment of $14,967 (land $7,900 and improvements $7,067).

**Record**

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

a) Petitions for Review of Assessment (Form 131s) with attachments,

b) A digital recording of the hearing,

c) Exhibits:

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| Petitioner Exhibit 1: | "116 Rhodes Valuation Info" spreadsheet, |
| Petitioner Exhibit 2: | American Institute of Architects (AIA) construction cost breakdown. |
| Respondent Exhibit A: | 2013 subject property record card, |
| Respondent Exhibit B: | 2012 subject property record card. |
| Board Exhibit A: | Form 131s with attachments, |
| Board Exhibit B: | Notices of hearing, dated September 24, 2015, |
| Board Exhibit C: | Notice of Appearance by Frank J. Agostino, |
| Board Exhibit D: | Hearing Sign-In Sheet. |

d) These Findings and Conclusions.

**Contentions**

12. Summary of the Petitioner's case:

a) The property's 2012 and 2013 assessments are too high. The property recently added additional pavement. According to construction costs, the assessments applied to the improvements are excessive. The construction cost breakdown from an "AIA document" indicate a cost of $15,000 for the "parking spaces" and "only half of it is on this the parcel." Accordingly, the cost of the new pavement for this property was $7,500. *Patel argument; Boecher testimony; Pet'r Ex. 2.*

b) Initially, the Petitioner stated he did not "have an issue with the land value." However, he proceeded to offer an assessment comparison analysis for land. The

comparable properties included in the Petitioner's analysis averaged an assessment of $88,000 per acre.[2] Applying that average to the subject property would yield a land assessment of $14,967 for each year. *Boecher argument; Pet'r Ex. 1.*

c) However, during cross-examination Mr. Boecher indicated that the Petitioner's requested land assessment of $14,967 should be "for both land and improvements." *Boecher testimony.*

13. Summary of the Respondent's case:

a) The property is assessed correctly. The assessments accurately reflect the market value-in-use of the property for each year under appeal. *Agostino argument; Mandrici argument.*

b) The Petitioner indicated that he "did not have an issue with the land value." As such, the assessment applied to the land should not be changed. Regarding the improvements, the assessments were based on cost tables issued by the Department of Local Government Finance (DLGF). The paving on the subject property measures 8,450 square feet. In 2012, the paving base rate was $6.22 per square foot. Accordingly, the total improvement value for 2012 is $32,100. For 2013, the DLGF increased the paving base rate to $8.52 per square foot. Consequently, for 2013 the improvement assessment increased to $43,100. *Mandrici testimony; Resp't Ex. A, B.*

c) The Respondent did not deviate from the cost tables in arriving at her values. Depreciation for the lot, which has an effective year of construction of 2007, was taken directly from the assessment manual. *Mandrici testimony.*

d) The Respondent requests the Board to "make an exact finding on its opinion of the cost tables presented by the DLGF, whether those fairly and accurately represent the market value-in-use for the property." *Agostino argument.*

## Burden of Proof

14. 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 amended by P.L. 97-2014 creates two exceptions to that rule.

15. 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

[2] The properties utilized in the Petitioner's analysis include a pawn shop, a doctor's office, a fast-food restaurant, a retail store, and an office building.

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).

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

17. Here, the parties agree that the 2011 total assessment was $8,000 ($7,900 for land and $100 for improvements).[3] The parties also agree the 2012 assessment increased to $40,000 ($7,900 for land and $32,100 for improvements). Thus, the 2012 assessment increased by 400% over the 2011 level.

18. However, there is no dispute that the Petitioner added additional paving between the 2011 and 2012. Normally, this would qualify as a structural improvement. In fact, for this reason, the Petitioner accepted the burden of proof. Accordingly, the ALJ made a preliminary determination that the burden of proof shall remain with the Petitioner for 2012. Indeed, the burden shifting provisions are inapplicable under Ind. Code § 6-1.1-15-17.2(c) which provides:

> (c) This section does not apply to an assessment if the assessment that is the subject of the review or appeal is based on:
> (1) *structural improvements;*
> (2) zoning; or
> (3) uses;
> that were not considered in the assessment for the prior tax year.

Ind. Code § 6-1.1-15-17.2(c) (emphasis added).

19. Consequently, the Board adopts the ALJ's ruling and the burden of proof remains with the Petitioner for 2012.

20. For 2013, the Respondent accepted the burden based on the fact the assessment increased from $40,000 in 2012 to $51,000 in 2013. Accordingly, the ALJ made a preliminary determination that the Respondent would have the burden of proof for 2013. Normally,

[3] The subject property record cards offered by the Respondent do not indicate the 2011 assessment value. *See Resp't Ex. A, B.* However, attached to the Form 131s submitted by the Petitioner, a 2011 Notification of Final Assessment Determination (Form 115) issued by the PTABOA appears to confirm the 2011 total assessment was $8,000. *See Bd. Ex. A.*

in an appeal that covers two or more years, the burden for a latter year is ultimately determined by the Board's finding in the previous year's appeal. *See* Ind. Code § 6-1.1-15-17.2(a)(3) ("In calculating the change in the assessment for purposes of this section, the assessment to be used for the prior tax year is the original assessment for that prior tax year, or, if applicable, the assessment for that prior tax year as determined by the reviewing authority"). Nevertheless, because the Respondent was represented by counsel, and the Respondent's counsel accepted the burden, the Board will accept the Respondent's concession. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2013 assessment is correct. To the extent the Petitioner seeks an assessment below the 2012 level of $40,000; he has the burden to prove that lower value.

**Analysis**

21. The Petitioner failed to make a prima facie case for reducing the 2012 assessment. The Respondent failed to make a prima facie case that the 2013 assessment was correct.

    a) 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 accurate 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.

    b) 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 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2013 assessment, the valuation date was March 1, 2013. *Id.*

    c) Here, the Petitioner offered the same evidence and argument for both 2012 and 2013. To support his argument that the assessment should be reduced, the Petitioner first offered an "AIA cost breakdown" purporting to indicate the subject property's construction cost. For several reasons, this document has little, if any, probative value. First, there is no evidence on the face of the document that it even applies to the subject property. Even if the Board were to accept that the document applies to the subject property, the Petitioner failed to provide any assurances that all required costs are included. The Petitioner simply circled a "$15,000 cost" that appears to be for "paving." There is no indication that the circled cost even includes an amount for labor. In fact, the individual costs on the copy of the document submitted to the Board are, for the most part, not even legible. Further, the Petitioner failed to

explain how he concluded that exactly 50% of the cost for concrete applies to the subject property.

d) Moreover, even if the Board were to find some probative value in the AIA cost document, the Petitioner himself did not consider it in his final value request. The Petitioner's requested assessment of $14,967 comes entirely from his assessment comparison analysis. Thus, the Board turns to the Petitioner's assessment comparison analysis.

e) Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1). However, the determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, 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*. at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

f) Here, the Petitioner failed to provide any of the required analysis. The Petitioner chose parcels of various sizes, between 0.17 acres and 1.36 acres, and failed to make any size adjustments. The purportedly comparable properties do not appear to be comparable in location, and none appear to be utilized as parking lots. Additionally, the Petitioner failed to indicate how averaging the value of other properties comports with generally accepted appraisal principles. Consequently, the Petitioner's evidence lacks probative evidence.

g) The Petitioner failed to make a prima facie case that the 2012 assessment is incorrect. Where the Petitioner has not supported their 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). Thus, for 2012, the Board finds for the Respondent and concludes the 2012 assessment shall remain at $40,000.

h) The Board now turns to the 2013 appeal. As explained above, the Respondent had the burden to prove the assessment was correct for 2013. However, the Respondent offered little in defense of the 2013 assessment. She testified that she followed the Guidelines, and did not deviate from the cost schedules in assessing the property.

i) As to request that the Board to make an "exact finding" whether the DLGF's cost tables fairly and accurately represent the property's market value-in-use, the Board

has repeatedly held that strictly applying the Guidelines does little to show a property's true tax value in an assessment appeal. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Board will not deviate from this long standing principle.

j) Because the Respondent did not offer probative evidence to support the 2013 assessment, she failed to meet her burden of proof. Consequently, the Petitioner is entitled to have his 2013 assessment reduced to the 2012 value of $40,000. The Petitioner, though, sought an even lower assessment. Thus, the Board will again turn to the Petitioner's evidence.

k) As previously stated, the Petitioner offered the exact same evidence and argument for both years. For the same reasons as set forth above, the Petitioner failed to make a prima facie case for reducing the 2013 assessment any further. Thus, the 2013 assessment shall stand at the 2012 level of $40,000.

## Conclusion

22. The Petitioner failed to make a prima facie case for reducing the 2012 assessment. Thus, the 2012 assessment shall remain at $40,000. The Respondent had the burden of proving the 2013 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2012 level, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2013 assessment be reduced to the 2012 amount of $40,000.

## Final Determination

In accordance with these findings and conclusions, the 2012 assessment will remain $40,000 and the 2013 assessment must be reduced to $40,000.

ISSUED: February 22, 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>.