

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

Petition No.: 73-002-19-1-4-00931-19
Petitioner: Piotrowski BK #5643 LLC
Respondent: Shelby County Assessor
Parcel: 73-11-04-200-004.000-002
Assessment Year: 2019

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 its 2019 assessment appeal with the Shelby County Assessor on June 17, 2019.
2. On August 19, 2019, the Shelby County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On October 1, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ) held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Certified tax representative Milo Smith appeared for the Petitioner telephonically and was sworn. Attorney Ayn Engle appeared for the Respondent telephonically. Bradley Berkemeier was sworn as a witness for the Respondent telephonically.

Facts

6. The property under appeal is a fast-food restaurant located at 1830 East State Road 44 in Shelbyville.
7. The PTABOA determined a 2019 total assessment of \$928,800 (land \$276,000 and improvements \$652,800).

8. At the hearing, Mr. Smith requested a total assessment of \$434,200 (land \$276,000 and improvements \$158,200).

Record

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

a) A digital recording of the hearing.

b) Exhibits:¹

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| Petitioner Exhibit A: | The Appraisal of Real Estate article “Derivation of Overall Capitalization Rates,” |
| Petitioner Exhibit B: | REAL PROPERTY ASSESSMENT GUIDELINES, Appendix F, Commercial and Industrial Depreciation, |
| Petitioner Exhibit C: | The Boulder Group article “The Net Lease QSR Market Report” for 2018, |
| Petitioner Exhibit D: | The Boulder Group article “The Net Lease QSR Market Report” for 2019, |
| Petitioner Exhibit E: | Location Improvement and Building Permit Application – Shelbyville Building & Plan Commissions issued February 25, 2016, |
| Petitioner Exhibit F: | 2017 Nexus income approach analysis for the subject property, |
| Petitioner Exhibit G: | 2019 subject property record card, page one, |
| Petitioner Exhibit H: | Page 20 from the International Association of Assessing Officers (IAAO) “Standard on Mass Appraisal of Real Property.” |
| Respondent Exhibit 1: | 2019 subject property record card, |
| Respondent Exhibit 2: | 2019 Shelbyville fast food assessment analysis, |
| Respondent Exhibit 3: | 2019 property record cards for the following: <ul style="list-style-type: none">● 360 East Broadway Street, Shelbyville,● 1047 East State Road 44, Shelbyville,● 1620 East Michigan Road, Shelbyville,● 1784 North Riley Highway, Shelbyville,● 1636 East State Road 44, Shelbyville,● 1646 East State Road 44, Shelbyville,● 1107 East State Road 44, Shelbyville,● 350 East Broadway Street, Shelbyville,● 110 Lee Boulevard, Shelbyville,● 1621 East State Road 44, Shelbyville, |

¹ The Board relabeled the Petitioner’s exhibits.

- 2035 North Riley Highway, Shelbyville,
- 2501 East State Road 44, Shelbyville,
- 1830 Marketplace Boulevard, Shelbyville,
- 1830 East State Road 44, Shelbyville,
- 10 West Rampart Drive, Shelbyville,
- 1631 East State Road 44, Shelbyville,

Respondent Exhibit 4: Two aerial maps of the area,

Respondent Exhibit 5: Aerial map and Indiana Department of Transportation (INDOT) traffic count analysis of the area.

- c) 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) these findings and conclusions.

Objections

10. Ms. Engle objected to Petitioner's Exhibits A, C, D, E, F, and H, arguing the Petitioner is attempting to raise new issues that were not raised at the PTABOA hearing. She claims the Board's small claims rules preclude the Petitioner from raising new issues that were not included in the initial appeal form. While 52 IAC 4-5-4 prevents a party from amending its Form 131 without leaving the small claims docket, this does not prevent the Petitioner from presenting these exhibits. The Petitioner contested the valuation of the subject property on its Form 131, and these exhibits relate to the valuation. Accordingly, the objection is overruled, and the exhibits are admitted.
11. Ms. Engle also objected to Petitioner's Exhibit F, the 2017 income analysis, on the grounds of relevancy. Ms. Engle argued the exhibit was based on a 2017 income approach and therefore has no relevance to the assessment year under appeal. Ms. Engle's objection goes more to the weight of the exhibit rather than the admissibility. Accordingly, the Board overrules the objection, and the exhibit is admitted.

Contentions

12. Summary of the Petitioner's case:
- a) The subject property is over-assessed. The subject property, a Burger King restaurant, was originally constructed in 1987 and remodeled in 2016. Based on the remodel, the Respondent arbitrarily changed the effective age to 2016. Accordingly, the property is being taxed as if it was 3 years old, when in fact the property is 32 years old. *Smith testimony; Pet'r Ex. G.*
- b) The Guidelines explain that fast food restaurants go out of style both functionally and economically at a faster rate than they physically deteriorate. Restaurants rely heavily on location and physical appearance, so in order to be competitive the owners

must periodically renovate to cure the physical, functional, and economical depreciation. *Smith testimony; Pet'r Ex. B.*

- c) The Guidelines also state the actual age of a structure is based on the date it was constructed and the size of the structure. The 3,114 square foot subject property was constructed in 1987. In 2016 a building permit was issued indicating that 3,178 square feet of the existing building was to be renovated. The 2014 through 2019 subject property record cards show the Respondent has not increased the size of the property. Because the square footage has not been adjusted, there is no way to determine a weighted age, which is needed to change the effective age of the building. *Smith testimony; Pet'r Ex. B.*
- d) The Petitioner argues that based on the Guidelines the assessment should be calculated in the following manner. First, the age of the property has to be determined. In this case, because the property is in average condition and was originally constructed in 1987 and the assessment year under appeal is 2019, pursuant to the tables in the Guidelines, the effective age of the property equates to 32 years old. The effective age is then converted to depreciation based on the Guidelines. Here, the effective age yields 80% depreciation. This depreciation number is then applied to the reproduction cost new of \$487,256 listed on the property record card, equaling a value of \$97,451.² Next, the \$97,451 is multiplied by the 1.45 market factor to arrive at a rounded value of \$141,300. Because the Petitioner is not disputing the \$16,900 value assigned to the masonry wall or the paving, the Petitioner is requesting the improvements to be valued at \$158,200. When this value is added to the current land assessment to total 2019 assessment should be \$434,200. *Smith testimony (referencing Resp't Ex. 1); Pet'r Ex. B, G.*
- e) The Petitioner also presented an income approach analysis to support its argument the assessment is flawed. The analysis was prepared by the Nexus Group for a 2017 assessment appeal. According to the analysis, an overall capitalization rate of 6.26% was used. However, as outlined by *The Appraisal of Real Estate*, the overall capitalization rate should include the estimated tax rate. This calculation failed to include the estimated tax rate of 2.9079. Adding the 2.9079 tax rate to the 6.26% capitalization rate equals an overall capitalization rate of 9.17%. When the net operating income of \$56,208 is divided by the overall capitalization rate of 9.17% you arrive at a value of \$612,955. The income approach analysis prepared by the Nexus Group indicated a value of \$898,000. Ultimately, the totality of the evidence proves the subject property is being incorrectly assessed. *Smith testimony; Pet'r Ex. A, F.*

² The subject property record card lists the reproduction cost new as \$473,951. *Resp't Ex. 1.*

13. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The property was assessed using the cost approach by applying the cost schedules found in the Guidelines. The Respondent determined the 2019 market value-in-use of the property to be \$928,800. *Berkemeier testimony; Resp't Ex. 1, 4, 5.*
- b) If the Assessor is of the opinion that the initial application of the cost schedules yields an incorrect value, adjustments can be made to any of the following; effective age, condition rating, neighborhood factor, obsolescence, depreciation, or the market factor. Adjustments may also be made to the land rates and influence factors. *Berkemeier testimony.*
- c) Mr. Berkemeier testified that besides the cost approach, the Guidelines and statutes also allow the property to be assessed utilizing the sales comparison approach and income approach. In this case, the income approach has limited applicability because the property is owner-occupied. *Berkemeier testimony.*
- d) Accordingly, whether applying the cost approach, sales comparison approach, or income approach, the ultimate goal is to assess the property according to its market value-in-use for the particular year in question. *Engle argument; Berkemeier testimony.*
- e) If a property that was built in 1987 undergoes a total interior remodel, thus increasing its life expectancy, it is appropriate for the Assessor to adjust the effective age. Because the subject property went through a significant remodel from 2016 to 2017, effectively making the property "brand new," the Assessor updated the effective year built to 2016. *Berkemeier testimony; Resp't Ex. 1.*
- f) To prove the property is correctly assessed, Mr. Berkemeier analyzed fifteen comparable franchise type fast food restaurants. All of the properties are located in the same taxing jurisdiction and are similar in grade. The analysis lists the construction year, the year remodeled if applicable, and the effective year. These items are listed to prove the Assessor fairly and equitably changes the effective year built when a property is remodeled. The assessed values of the properties range from \$141,200 to \$1,434,600 or \$94 to \$339 per square foot. This analysis supports the current assessed value of \$928,800 or \$298 per square foot. *Berkemeier testimony; Resp't Ex. 2, 3.*
- g) Petitioner's Exhibit NICA is flawed in establishing the current assessment is incorrect. This exhibit was prepared for the Assessor for a 2017 assessment appeal before the Board. But the Petitioner withdrew the appeal prior to the hearing. Therefore, the concluded 2017 value of \$898,000 listed on the exhibit is not applicable to a 2019 appeal. *Engle argument (Referencing Pet'r Ex. F).*

- h) Finally, Ms. Engle argues the facts in the case at hand are “directly on point” with prior Tax Court decisions. In *Kooshtard VI*, the Petitioner presented the same argument concerning the Assessor changing the effective age due to modernizing and remodeling of the property. In that decision, the Tax Court recognized the Assessor may need to adjust certain factors to arrive at the market value-in-use of a property and that technical failure to comply with the Guidelines does not render the assessment invalid, so long as it is a reasonable measure of market value-in-use. *Engle argument (citing Kooshtard VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005)).

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 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 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).
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).
17. Here, the parties agree the assessment did not increase by more than 5% between 2018 and 2019, in fact the total assessment was \$928,800 for 2018 and 2019. Therefore, the burden-shifting statute does not apply, and the burden remains with the Petitioner.

Analysis

18. The Petitioner failed to make a prima facie case for reducing the assessment.
- 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 property 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 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
 - c) Here, the Petitioner argued the Assessor erred in determining the 2016 effective age of the property by not applying the Guidelines correctly. Even if the Assessor made errors, simply attacking the methodology is insufficient to rebut the presumption that the assessment is correct.³ *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property's market value-in-use. *Id*; *see also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is). Additionally, to successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id*. Here, the Petitioner failed to provide any probative market-based evidence as to the market value-in-use. The Petitioner argued the assessment should be \$434,200, but again failed to present any probative market-based evidence to support his value. Statements that are unsupported by probative evidence are conclusory and of no 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).
 - d) To the extent the Petitioner attempted to argue a “flawed” 2017 income analysis prepared for the Respondent in a prior appeal proves the 2019 assessment is incorrect,

³ The Board is doubtful that a total interior remodeling makes a 30 year old building, including its structural walls and roofing, “brand new.”

the Tax Court has explained, “each tax year - and each appeals process - stands alone.” *Fisher v. Carroll Co. Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another year. *See e.g. Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). The Petitioner had the burden to prove the 2019 assessment is incorrect, and ultimately failed to do so. For these reasons, the Petitioner failed to make a prima facie case for reducing the assessment.

- e) 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).

Conclusion

19. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2019 assessment.

ISSUED: December 30, 2020

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>>.