

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

**Petition:** 18-003-15-1-4-01512-16  
**Petitioner:** SK-PK Management, LLC  
**Respondent:** Delaware County Assessor  
**Parcel:** 18-11-04-378-023.000-003  
**Assessment Year:** 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. SK-PK Management, LLC (“Petitioner”) filed an appeal with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”), which issued notice of its determination on June 13, 2016. The Petitioner then filed a Form 131 petition with the Board, electing to have the appeal heard under the Board’s small claims procedures. The Respondent did not elect to have the appeal removed from those procedures.
2. Jennifer Bippus, the Board’s Administrative Law Judge (“ALJ”), held a hearing on December 14, 2016. Neither the ALJ nor the Board inspected the property.
3. Balwinder Singh was sworn as a witness for the Petitioner. Charles Ward and Christopher Ward were sworn as witnesses for the Respondent.

**Facts**

4. The subject property is a convenience mart/gas station located at 1631 N. Wheeling Avenue in Muncie.
5. For 2015, the PTABOA determined the land to be \$470,500 and the improvements to be \$200,100, for a total of \$670,600.

**Record**

6. The official record contains the following:

Exhibits:

Petitioner Exhibit 1:	Multiple Listing Service (“MLS”) information for the subject property
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Petitioner Exhibit 2:	Sales disclosure form for the subject property
Petitioner Exhibit 3:	Document detailing cost of remodeling
Petitioner Exhibit 4:	2011 Form 11 for parcel #18-11-04-378-023.000-003
Petitioner Exhibit 4B:	2011 Form 11 for parcel #18-11-04-378-022.000-003
Petitioner Exhibit 5:	IBTR determination for SK-PK Management, LLC for 2013
Petitioner Exhibit 5A:	IBTR determination for SK-PK Management, LLC for 2012
Petitioner Exhibit 6:	Letter of Demand
Petitioner Exhibit 7:	2014 Form 131 petition
Petitioner Exhibit 8:	2015 Form 131 petition
Respondent Exhibit 1:	Department of Local Government Finance (“DLGF”) memo regarding the burden of proof in assessment appeals
Respondent Exhibit 2:	2015 property record card (“PRC”)
Respondent Exhibit 3:	MLS information for the subject property
Respondent Exhibit 4:	909 Land Trust c/o Steve Kollar v. St. Joseph County Assessor, petitions 71-026-08-1-5-03765 & 71-026-09-1-5-01864
Respondent Exhibit 5:	Fannie Mae definition of market value
Respondent Exhibit 6:	IBTR memo on evidence in property tax appeals
Respondent Exhibit 7:	Comparable sales analysis
Respondent Exhibit 8:	PRCs for comparable properties

The record also includes: (1) a digital recording of the hearing, (2) all pleadings and documents filed in the current appeals, and (3) all orders and notices issued by the Board.

### **Objections**

7. The Petitioner objected to Respondent’s Ex. 1, a Department of Local Government Finance (“DLGF”) memo on the burden of proof, because it claimed the burden of proof should be on the Respondent. Publications of the DLGF are not subject to the normal rules of evidence, and the Board may consider them regardless of whether they have been offered or admitted. Thus, we overrule the Petitioner’s objection.
  
8. The Petitioner also objected to Respondent’s Ex. 7, the sales comparison analysis. Specifically, it objected to the reliability of the sales used. The objection goes to the weight of the evidence and not the admissibility. The evidence is relevant and we admit it over the objection.

## **Burden**

9. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value 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).
10. The assessment increased less than 5% from 2014 to 2015. However, the Petitioner argued that the increase from 2013 to 2014, a 167% increase, should be considered because it filed a petition for 2014.
11. The Petitioner's 2014 appeal was denied by the PTABOA because the Petitioner failed to appear at the hearing. It subsequently filed a Form 131 petition with the Board. We issued a Notice of Defect because the Form 131 was untimely filed. The Petitioner failed to respond to the Notice of Defect and we dismissed its appeal. The Petitioner did not request a rehearing, or appeal to the Tax Court. It now claims that it never received notice of the PTABOA hearing or its decision. The Petitioner could have raised this in response to the Notice of Defect, but did not. We cannot revisit that appeal.
12. The burden-shifting provisions only consider the assessment year directly preceding the year under appeal. Thus, the Petitioner's request that we consider the 2013 assessment when applying the burden shifting provisions is contrary to law. Because the increase between the 2014 and 2015 assessed values is less than 5%, and there was no successful appeal in the prior year, the Petitioner has the burden of proof.

## **Summary of Parties' Contentions**

13. Petitioner's case:
  - a. The Petitioner purchased the property from a bank in 2010 for \$330,000. The property had been listed for three months at \$350,000. In 2011, the Petitioner made improvements to the property totaling \$125,000. There have been no improvements to the property since that time. For this reason, the Petitioner argued an increase in value is not warranted. *Singh testimony; Pet'r Exs. 1-3.*

- b. The Petitioner also argued that because it won appeals in 2012 and 2013, the Board should rule in its favor in 2015. In addition, Singh testified that the County has not honored the prior rulings and has not refunded the taxes.<sup>1</sup> *Singh testimony.*

14. Respondent's case:

- a. Christopher Ward, the County's representative, testified that the Assessor made the corrections for 2012 and 2013 as determined by the Board. He also stated that the Assessor's office has nothing to do with the refunds or tax credits, as they are the responsibility of the Auditor's office. *Christopher Ward testimony.*
- b. Ward also pointed out that the property was vacant and bank owned when the Petitioner purchased it. He testified that a property purchased out of foreclosure may not reflect its market value-in-use because of lack of exposure on the open market or because the seller, the bank, is not typically motivated. *Christopher Ward testimony; Resp't Exs. 3 & 4.*
- c. The subject parcel has a lot size of 54,014 square feet with 340 feet of frontage on Wheeling Avenue. It is located on a corner with a four-way stop light, which is a prime location for a convenience mart. The primary building is 2,024 square feet and in good condition. *Christopher Ward testimony; Resp't Ex. 7.*
- d. The Respondent presented sales of gas stations/convenience stores in support of the assessed value:
- Comparable #1, 15150 W. Commerce Drive, sold on December 5, 2014 for \$930,000. This building and lot are slightly larger than the subject property and it also has a car wash. It has a frontage of 300 feet on a side street and is 17 miles from the subject property.
  - Comparable #2, 1401 E. 29<sup>th</sup> Street, sold on October 21, 2014 for \$1,350,000. The building and lot are larger than the subject property. It has a frontage of 265 feet on a side street and is 4.3 miles from the subject property.
  - Comparable #3, 300 E. McGalliard Road, sold on October 6, 2014 for \$1.1 million. The building is 1,760 square feet and the lot is 24,200 square feet. This property is located at a four-way stop sign, has 200 feet of frontage, and is about 1.7 miles from the subject property.

*Christopher Ward testimony; Resp't Ex. 7.*

- e. Ward computed values per square foot of \$197, \$379, and \$625. He found the average sale price per square foot was \$400 and the median price per square foot was

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<sup>1</sup> Some of Singh's testimony suggests that the county eventually paid the refund. This fact does not affect our decision.

\$379. Both of those are above the subject property's value of \$340 per square foot. He made no adjustments to the comparable properties. *Christopher Ward testimony; Resp't Ex. 7.*

#### ANALYSIS

15. The Petitioner failed to establish a prima facie case for a reduction in the assessed value. We reached this decision for the following reasons:
- a. Real property is assessed based on its "true tax value", which means "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 at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
  - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's 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 Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2015 assessment was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
  - c. As discussed above, the burden of proof rests on the Petitioner. In order to make its case, it needed to present reliable evidence for the value of the subject property as of March 1, 2015. The Petitioner presented evidence that it purchased the property in 2010 for \$330,000, then spent \$125,000 on improvements to the property in 2011. Thus, it argued that the total assessment should not exceed \$455,000. However, this evidence is not sufficiently reliable. The purchase and subsequent improvements were several years before the 2015 assessment date. Furthermore, the Petitioner made no attempt to trend or relate this evidence to March 1, 2015, as required by *Long*.
  - d. The Petitioner also claimed that because it won appeals in 2012 and 2013, it should also win for 2015. First, we note that each assessment year stands alone. *See Fleet Supply Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) ("[F]inally, the Court reminds Fleet Supply that each assessment and each tax year stands alone... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.") In addition, in 2012 and 2013

the Respondent had the burden of proof. The Petitioner won because the Respondent failed to meet the burden. In this case, the burden rests on the Petitioner.

- e. The Petitioner also made some claims relating to refunds stemming from the Board's rulings for 2012 and 2013. However, a hearing on a Form 131 for the 2015 assessment year is not the proper venue to address those claims. In addition, we note that Singh's own testimony is ambiguous as to whether the Petitioner received these refunds.

### **CONCLUSION**

- 16. The Petitioner failed to make a prima facie case for a reduction in the assessed value. Because 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). Thus, we need not examine the Respondent's additional evidence.

### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2015 assessed value should not be changed.

ISSUED: March 14, 2017

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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 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>>.