

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

Petitions: 19-002-18-1-4-00664-22 19-002-19-1-4-00665-22
 19-002-20-1-4-00666-22 19-002-21-1-4-00667-22
 19-002-22-1-4-00668-22

Petitioner: Sam Polen

Respondent: Dubois County Assessor

Parcel: 19-06-35-200-035.002-002

Assessment Years: 2018-2022

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

PROCEDURAL HISTORY

1. Sam Polen contested the 2018-2022 assessments of his property located at 50 Indiana Street in Jasper by filing Form 130 notices on May 29, 2022 (for 2018-2021) and April 28, 2022 (for 2022).¹ On July 8, 2022, the Dubois County Property Tax Assessment Board of Appeals (“PTABOA”) issued final determinations valuing the subject property as follows:

Year	Land	Improvements	Total
2018	\$106,700	\$52,600	\$159,300
2019	\$106,700	\$54,100	\$160,800
2020	\$106,700	\$54,100	\$160,800
2021	\$110,800	\$50,200	\$161,000
2022	\$113,000	\$54,500	\$167,500

2. Polen timely filed Form 131 petitions for all five years with the Board and elected to proceed under our small claims procedures. On August 30, 2023, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on the petitions. Neither the ALJ nor the Board inspected the property. Polen appeared pro se. Attorney Marilyn Meighen appeared as counsel for the Assessor. Polen and Austin Budell, an appraisal supervisor for Tyler Technologies, testified under oath.

¹ Although Polen mistakenly attached copies of his 2022 Form 130 notice to his 2018-2021 Form 131 petitions, he did attach his 2018-2021 Form 130 notices to his 2022 Form 131 petition.

RECORD

3. The official record for this matter includes the following:

Petitioner Exhibit 1:	Property record card (“PRC”) for G Kemp Enterprises Inc. with handwritten notes
Petitioner Exhibit 2:	Estimate for an asphalt shingle roof from Graber Post Buildings with a handwritten note
Petitioner Exhibit 3:	Estimate for a DC Rib roof from Daviess County Metal Sales, Inc. with handwritten notes
Respondent Exhibit A:	2018-2022 PRCs for subject property, neighborhood land reports, and assessment history
Respondent Exhibit B:	2018-2022 PTABOA determinations
Respondent Exhibit C:	Sale listing for the subject property
Respondent Exhibit D:	Photograph of the subject property
Respondent Exhibit E:	Real Property Assessment Guidelines, page 9 of Appendix D, pages 20 and 21 of Appendix E, pages 22 and 26 of Appendix F, pages 36 and 12 of Appendix G
Respondent Exhibit F:	Comparison between the subject and G Kemp Enterprises
Respondent Exhibit G1:	Aerial map of the subject property with handwritten traffic counts
Respondent Exhibit G2:	Aerial map of G Kemp Enterprises with handwritten traffic counts
Respondent Exhibit H:	PRC and photograph for G Kemp Enterprises

4. The record also includes: (1) all petitions and other documents filed in these appeals; (2) all notices and orders issued by the Board or the ALJ; and (3) an audio recording of the hearing.

OBJECTIONS

5. The Assessor objected to the admission of Petitioner Exhibit 3 because she did not receive a copy of the exhibit and claimed to have never seen it before. Polen responded by asserting that he mailed it to her. Our ALJ took the objection under advisement.
6. The Board’s small claims procedural rules provide that, if requested, “the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing.” 52 IAC 4-8-2(b). The rules further provide that failure to comply with that requirement “may serve as grounds to exclude evidence or testimony that has not been timely provided.” 52 IAC 4-8-2(c)(emphasis added).

7. Here, the Assessor failed to present any evidence to show that she requested copies of Polen's evidence before the hearing. For that reason, we overrule the objection and admit the exhibit.²

FINDINGS OF FACT

8. The subject property is a car wash that was built in 1996 on 0.89 acres of land located at 50 Indiana Street in Jasper. The car wash has seven bays, two of which are automatic. It is situated just off Highway 231 in an area with a traffic count of 15,295 cars per day. Indiana Street is a side street with limited visibility from Highway 231 and a traffic count of 50 cars per day. The only entrance to the subject property is off Indiana Street. *Budell testimony; Polen testimony; Resp't Exs. A, F, G1.*

A. Polen's Contentions

9. Polen contends that the subject property's 2018-2022 assessments are too high compared to the assessment of a car wash in Huntingburg owned by G Kemp Enterprises, Inc. G Kemp's car wash has an asphalt shingle roof with a 2-foot overhang, trusses, 10-inch I-beams, and brick walls. It is at least five times more efficient and five times more wash than the subject property, but the Assessor has assessed it for three or four times less than the subject property. The assessments for G Kemp's car wash increased from \$65,300 in 2016 to \$88,100 in 2022, while the subject property's assessments increased from \$288,100 to \$313,000.³ *Polen testimony; Pet'r Ex. 1.*
10. G Kemp's car wash is located three and a half miles away from the subject property on Highway 231, which has a traffic count of around 15,000 cars per day. It sits on a hill with "wonderful, perfect" visibility and it has two different entrances located on side streets. Unlike G Kemp's car wash, the subject property does not enjoy the advantages of Highway 231 because it is on a side street with poor visibility from the highway and it has a traffic count of only 50 cars per day. *Polen testimony; Pet'r Ex. 1.*
11. Polen uses 336 concrete blocks per wall to build his car washes, which at \$2 a piece comes out to \$672. G Kemp's car wash has \$2,016 worth of brick alone, while the cement for the mortar costs at least five times more and the labor costs at least four times more than if it was just built with concrete blocks. The cost to install a truss roof (like the one on G Kemp's car wash) on a building in Montgomery, Indiana was around \$71,000, whereas Polen can put on a flat metal roof with no overhang (like the subject property's) for around \$10,000. The value of G Kemp's car wash should therefore be at least three times the subject property's value, but it is just the opposite. *Polen testimony; Pet'r Exs. 1, 2, 3.*

² We also note that Polen included a copy of the exhibit as an attachment to his 2018-2021 Form 131 petitions.

³ The subject property was originally assessed for \$288,100 in 2020 and \$313,000 in 2022. *Resp't Ex. A.*

B. The Assessor's Contentions

12. The Assessor contends that the subject property's 2018-2022 assessments are correct. The subject property's land is not treated differently, and its base rate is the same as the other properties in its neighborhood. *Budell testimony; Resp't Ex. A.*
13. The Assessor originally assessed the subject property at \$283,100 for 2018, \$288,100 for 2019 and 2020, \$292,200 for 2021, and \$313,000 for 2022 before the PTABOA lowered them. The reduction was based on Budell's recommendation to change the pricing of the subject property's self-service bays to the yard structure pricing model, while the enclosed portion of the building that houses the equipment remained priced using the automatic car wash model. *Budell testimony; Resp't Exs. B, E.*
14. The Assessor did not use it to assess the subject property, but at some point Polen had listed the subject property for sale for \$399,900. The listing expressly stated that the sale would include "all car wash equipment." *Budell testimony; Resp't Ex. C.*
15. Although the subject property and G Kemp's property are both car washes, there are many differences between them:
 - They are located in different cities and taxing districts with different economic features.
 - The subject property has seven bays, two of which are automatic, while G Kemp's car wash only has six self-service bays.
 - The subject property has a traffic count of 15,295 cars per day, which is approximately 22% higher than G Kemp's traffic count of 11,844 cars per day.
 - At 0.89 acres, the subject property's lot is about 28% larger than G Kemp's 0.641-acre lot.
 - The subject property's building is 10 years newer than G Kemp's building.
 - The subject property was constructed with concrete block whereas G Kemp's car wash is brick.
 - The subject property has a flat roof while G Kemp's car wash has a hip roof.

Budell testimony; Resp't Exs. F, G1, G2, H.

BURDEN OF PROOF

16. Generally, the taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing

official or the county board,” will be presumed to equal “the property’s true tax value.” Ind. Code § 6-1.1-15-20(a) (effective March 21, 2022).⁴

17. However, the burden of proof shifts if the property’s assessment “increased more than five percent (5%) over the property’s assessment for the prior tax year.” I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment “is no longer presumed to be equal to the property’s true tax value, and the assessing official has the burden of proof.” *Id.*
18. If the burden has shifted, and “the totality of the evidence presented to the Indiana board is insufficient to determine the property’s true tax value,” then the “property’s prior year assessment is presumed to be equal to the property’s true tax value.” I.C. § 6-1.1-15-20(f).
19. Here, the 2018 assessment of \$159,300 was not an increase of more than 5% over the previous year’s assessment of \$278,100. Polen therefore has the burden of proof for 2018. The determination of who has the burden for 2019-2022 will depend on the outcome of the appeal for the previous year and will be addressed below.

ANALYSIS

20. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and our charge is to “weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence before us.” I.C. § 6-1.1-15-20(f). Our conclusion of a property’s true tax value “may be higher or lower than the assessment or the value proposed by a party or witness.” *Id.* Regardless of which party has the initial burden of proof, either party “may present evidence of the true tax value of the property, seeking to decrease or increase the assessment.” I.C. § 6-1.1-15-20(e).
21. In order to meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the property’s value. *Piotrowski v. Shelby County Ass’r*, 177 N.E.3d 127,132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *P/A Builders & Developers, LLC v. Jennings County Ass’r*, 842 N.E.2d 899,900, (Ind. Tax Ct. 2006). This is because the “formalistic application of the procedures and schedules” from the Department of Local Government Finance’s (“DLGF”) assessment guidelines lacks the market-based evidence necessary to establish a specific property’s market value-in-use. *Piotrowski*, 177 N.E.3d at 133.
22. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v.*

⁴ The Legislature repealed a prior version of the burden-shifting statute, I.C. § 6-1.1-15-17.2, on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). In the same bill, a new statute created a substitute burden-shifting statute, I.C. 6-1.1-15-20, for new appeals filed after the effective date of March 21, 2022. P.L. 174-2022 § 34 (effective on passage). Because Polen filed his Form 130 notices after March 21, 2022, I.C. 6-1.1-15-20 applies to all five years on appeal.

Garoffolo, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence.” *Marinov v. Tippecanoe County Ass’r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dept. of Local Gov’t. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For the years under appeal, the valuation date was January 1 of each respective year. Ind. Code § 6-1.1-2-1.5.

A. 2018 Assessment

23. As explained above, Polen has the burden of proof for 2018. However, he failed to present any objectively verifiable, market-based evidence showing the subject property’s true tax value. Although Polen compared the subject property to another car wash, a party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Conclusory statements that properties are “similar” or “comparable” do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.* They must similarly explain how relevant differences affect values. *Id.*
24. Here, Polen did not offer the type of analysis contemplated by *Long*. While he discussed some of the two car washes’ characteristics, most of his evidentiary presentation focused on the differences between them instead of their comparability to each other. Thus, we are not convinced that the two properties are truly comparable despite the fact that they are both car washes. To the extent they are comparable, however, the market evidence Polen submitted regarding how the differences he identified affected the properties’ values was limited to cost estimates for only one building component—the roofing system. And he failed to explain how either quote was relevant to the subject property’s value as of the January 1, 2018 valuation date.
25. Although Polen also discussed differences in the costs for concrete block walls and brick walls, he offered no market support for his testimony regarding their respective costs. Regardless, we are not convinced that his estimates fully accounted for the construction costs associated with using either material. Furthermore, while we have no doubt that higher traffic counts and better access and visibility are important to the value of both car washes, Polen did not even attempt to quantify how the differences he identified in those characteristics affected value. Nor did he address how the differences in economic attributes, the number and types of car wash bays, lot sizes, or the buildings’ ages impacted value. Finally, we note that Polen never proposed a specific valuation for the subject property.
26. Because Polen did not present any objectively verifiable, market-based evidence of the subject property’s true tax value, we conclude that he failed to make a case for reducing

the 2018 assessment. Because the Assessor did not seek to change the 2018 assessment, our inquiry ends there.

B. 2019-2022 Assessments

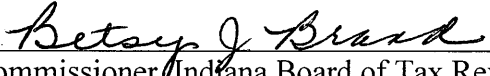
27. We now turn to the 2019-2022 assessments. Because none of the assessments increased by more than 5% year-over-year, Polen retains the burden of proof for each year.⁵ Polen relied on the same evidence and arguments he presented for the 2018 appeal, and we therefore reach the same conclusion—he failed to make a case for reducing the 2020-2022 assessments. The Assessor did not seek any changes and asked us to uphold the assessments. Thus, we conclude that the 2019-2022 assessments should remain unchanged.

FINAL DETERMINATION

28. Polen failed to prove that the subject property's 2018-2022 assessments should be reduced. We therefore find for the Assessor and order no changes.

Date: May 17th 2024


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>.

⁵ None of the assessments increased by more than 5% year-over-year as a result of the PTABOA's final determinations. And because Polen did not make a case for reducing any of the assessments he appealed, the assessments did not increase by more than 5% year-over-year as a result of our review.