

REPRESENTATIVE FOR PETITIONER: Sam Polen, pro se

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SAM POLEN,)	Petition Nos.: 19-002-18-1-4-00669-22
)	19-002-19-1-4-00670-22
Petitioner,)	19-002-20-1-4-00671-22
)	19-002-21-1-4-00672-22
v.)	19-002-22-1-4-00673-22
)	
DUBOIS COUNTY ASSESSOR,)	Parcel No.: 19-06-35-401-119.001-002
)	
Respondent.)	County: Dubois
)	
)	Assessment Years: 2018-2022

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

May 17th, 2024

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Sam Polen contested his 2018-2022 assessments. Because Polen failed to show that he complied with the statutory requirements for initiating appeals by timely filing Form 130 notices for the 2018-2021 assessment years, we dismiss his appeals for those years. The Assessor had the burden of proof for the 2022 assessment year. She offered an appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). Because Polen failed to successfully impeach the Assessor’s appraisal and

failed to rebut it with probative valuation evidence of his own, it is the only probative evidence of the subject property’s true tax value before us. Accordingly, we find for the Assessor and order the 2022 assessment changed to reflect the value conclusion from her appraisal.

PROCEDURAL HISTORY

2. Sam Polen contests the 2018-2022 assessments of his property located at 478 2nd Avenue in Jasper. On April 28, 2022, Polen filed his Form 130 notice initiating an appeal for the 2022 assessment year. However, it is unclear when, or even if, he initiated appeals for the 2018-2021 assessment years because he failed to attach Form 130 notices for those years to the corresponding Form 131 petitions.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	\$47,900	\$36,900	\$84,800
2019	\$47,900	\$33,100	\$81,000
2020	\$47,900	\$38,500	\$86,400
2021	\$49,300	\$38,500	\$87,800
2022	\$50,300	\$45,900	\$96,200

3. Polen timely filed Form 131 petitions for all five years with the Board. Although Polen elected our small claims procedures, we granted the Assessor’s request to remove the appeals from small claims. 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, appraiser Brian D. Shelton, MAI, and Austin Budell, an appraisal supervisor for Tyler Technologies, testified under oath.

¹ Polen did not attach a Form 130 notice to his 2018 Form 131 petition, while he erroneously attached copies of his Form 130 notice for 2022 to his 2019-2021 Form 131 petitions.

4. The Assessor submitted the following exhibits²:
- | | |
|-----------------------|--|
| Respondent Exhibit A: | The subject property's assessment history |
| Respondent Exhibit B: | 2018-2022 PTABOA findings |
| Respondent Exhibit C: | 2020-2022 Appraisal Report prepared by Brian D. Shelton, MAI |
| Respondent Exhibit D: | Property Record Card for 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 |
5. 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.

FINDINGS OF FACT

6. The subject property is located at 478 2nd Avenue in Jasper. The improvements consist of a 3,234-square-foot, non-operational self-serve car wash built in 1994, with two touchless automatic bays and four self-service bays. There are also vacuum stations, pay stations, and a vending area, but most of the associated equipment has been removed. The building is primarily constructed out of 12' concrete block walls that are core-filled with concrete for reinforcement. It has heated concrete floors, a flat roof, and each car wash bay has sloped concrete floors with drains and metal ceilings. The 0.52-acre site includes concrete drives and surface areas, and a partial concrete retaining wall. *Polen testimony; Shelton testimony; Resp't Ex. C at Executive Summary, 2, 15.*
7. The subject property was offered for sale as a non-operational car wash during 2018 for \$250,000, and it is currently offered for sale for \$259,900. *Shelton testimony; Resp't Ex. C at 2.*

² Polen did not submit any exhibits.

POLEN'S CONTENTIONS

8. Polen contends that the subject property has no value. According to Polen, the life expectancy of a car wash is only 20 years. The subject property is 31 years old, and it has never been updated. The building has been closed for 11 years, and it is "ready to be bulldozed down." *Polen testimony.*

9. Polen argues that the pictures in Shelton's appraisal report are deceiving because Shelton took the photographs while standing on a neighboring property, making it appear as though the subject property has a lot of parking when it has no parking spaces. Polen also disagrees with Shelton's estimate of the life expectancy of a car wash. *Polen argument.*

THE ASSESSOR'S CONTENTIONS

10. The Assessor assessed the subject property at \$160,400 for 2017, \$163,500 for 2018, \$132,700 for 2019, \$144,800 for 2020, \$146,200 for 2021, and \$157,200 for 2022. However, the PTABOA lowered the 2018-2022 assessments. 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 non-bay portion of the building remained priced using the automatic car wash model. *Budell testimony; Resp't Exs. A, B, D.*

11. The Assessor offered an appraisal report prepared by Brian D. Shelton, MAI. Shelton is a certified general appraiser in Indiana and Kentucky, and he has been an appraiser since 1991. He developed opinions of value for the subject property as of January 1, 2020, January 1, 2021, and January 1, 2022. Shelton relied on the cost and sales-comparison approaches, and he certified that his appraisal complies with USPAP. Shelton did not develop an income approach because the subject property's car wash was not operational and had no income. *Shelton testimony; Resp't Ex. C at 2-4, 35-39.*

12. Shelton started his cost approach by estimating the value of the subject property's land. He relied on five land sales that he felt were comparable to the subject property in terms of location and physical characteristics. Shelton made an adjustment to Comparable #1 for market conditions, which he determined by performing a trend analysis on two paired sales. He also applied an adjustment to Comparable #4 for differences in location, and he adjusted all five comparable sales for differences in net land area. After adjustment, Shelton concluded to a land value of \$2.45/SF as of January 1, 2021. He then trended that value at an annual rate of approximately 7%, resulting in land values of \$2.30/SF as of January 1, 2020 and \$2.60/SF as of January 1, 2022. That produced land value estimates for the subject property of \$52,000 as of January 1, 2020, \$55,000 as of January 1, 2021, and \$59,000 as of January 1, 2022. *Shelton testimony; Resp't Ex. C at 18-25.*

13. Shelton used Marshall Valuation Service ("MVS") to estimate the replacement cost new of the subject property's improvements. He classified the building as a Low-Cost Self-Serve Car Wash. Shelton adjusted MVS's base cost of \$76.00/SF to account for the parking areas, and he applied a multiplier to trend the base cost backward from 2022 to January 1, 2020 and January 1, 2021. MVS estimated the normal life for a car wash like the subject property to be 20-30 years, although the actual physical life of an improvement can be much longer than that. Here, Shelton applied physical incurable depreciation of 80% for 2020, 82% for 2021, and 85% for 2022. He determined a rounded replacement cost new for the improvements of \$49,000 for January 1, 2020, \$46,000 for January 1, 2021, and \$44,000 for January 1, 2022. Noting that his improvement cost estimates were lower than his estimated land values for each year, Shelton concluded to values under the cost approach of \$101,000 for 2020 and 2021, and \$103,000 for 2022. *Shelton testimony; Resp't Ex. C at 25-27.*

14. Shelton also developed a sales-comparison approach using five improved sales. He subtracted an allocated land value from the sales price of each comparable sale to compare only the improvement values. Shelton did not make any adjustments for transactional factors such as market conditions because he did not expect the contributory

value of the improvements to change since the subject property's car wash was no longer in operation. However, he did apply adjustments for differences in location, size, design, age, and features. *Shelton testimony; Resp't Ex. C at 28-34.*

15. Shelton's analysis produced an adjusted value range of \$9/SF to \$28/SF, with a median of \$16/SF and a mean of \$18/SF. Because the subject property is no longer operating as a car wash, Shelton concluded to a value lower than the median or the mean. He ultimately selected a value of \$14/SF for each year, resulting in a value for the improvements of \$45,276 for all three years. After adding in the land values he developed in the cost approach, Shelton concluded to values under the sales-comparison approach of \$97,000 for 2020, \$100,000 for 2021, and \$104,000 for 2022. *Shelton testimony; Resp't Ex. C at 34.*
16. Shelton then reconciled his two valuation approaches. He noted that the values produced by both approaches were relatively consistent, but he gave more weight to the sales-comparison approach. Shelton ultimately reconciled to final value conclusions for the subject property of \$97,000 as of January 1, 2020, \$100,000 as of January 1, 2021, and \$104,000 as of January 1, 2022. *Shelton testimony; Resp't Ex. C at 34.*
17. In response to Polen's argument that the pictures in Shelton's appraisal report depict the subject property as having a lot of parking when there are no parking spaces, Shelton explained that when he described them as parking spaces he simply meant the concrete that is outside of the building footprint. As far as Polen's disagreement regarding Shelton's estimate of the life expectancy of a car wash, Shelton reiterated that MVS estimates the normal life of a car wash to range from 20 to 30 years, and that the normal life can extend beyond that range with repairs, replacements, or other changes. *Shelton testimony.*
18. The Assessor argues that Polen provided no support for his claim that the subject property has no value and urges the Board to find that Polen failed to make a prima facie

case for any change to the subject property's 2018 or 2019 assessments. For the 2020-2022 assessment years, the Assessor asks the Board to find in her favor and increase the subject property's assessments to reflect the final value conclusions from Shelton's appraisal. *Meighen argument.*

ANALYSIS

A. Polen's appeals for the 2018-2021 assessment years are not properly before us.

19. Before reaching the merits of Polen's Form 131 petitions, we need to first address whether his appeals for the 2018-2021 assessment years are properly before us.
20. A taxpayer may appeal an error relating to the assessed value of their tangible property by filing a Form 130 Notice to Initiate an Appeal with the township assessor, or the county assessor if the township is not served by a township assessor. Ind. Code § 6-1.1-15-1.1. For assessments before January 1, 2019, a taxpayer's Form 130 notice needed to be filed with the relevant assessor not later than the earlier of (1) 45 days after a notice of assessment (Form 11) is mailed by the county, or (2) 45 days after the tax statement is mailed by the county treasurer Ind. Code § 6-1.1-15-1.1(b)(1). For assessments after December 31, 2018, a taxpayer's Form 130 notice must be filed with the relevant assessor not later than the earlier of (1) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year, or (2) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year. Ind. Code § 6-1.1-15-1.1(b)(2).
21. As discussed above, it is unclear when, or even if, Polen initiated appeals for the 2018-2021 assessment years because he failed to attach Form 130 notices for those years to the corresponding Form 131 petitions or to submit them as part of his evidentiary

presentation before us.³ Because we conclude that Polen failed to show that he complied with the statutory requirements for initiating appeals by timely filing Form 130 notices for the 2018-2021 assessment years, the Board cannot address the merits of those appeals. *See Williams Indus. v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures by which to challenge assessments, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner). Consequently, we find that Polen's Form 131 petitions for the 2018-2021 assessment years should be dismissed.

B. Because Polen's assessment increased by more than 5% between 2021 and 2022, the Assessor has the burden of proof for 2022.

22. We now turn to the 2022 assessment. Because Polen filed his Form 130 notice for the 2022 assessment year with the Assessor after March 21, 2022, we must apply Ind. Code § 6-1.1-15-20 and analyze its impact.
23. Generally, a 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." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).
24. 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 that do not apply here, 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.*

³ We note that the Form 131 Petition for Review of Assessment (State Form 42936) designated by the Indiana Board of Tax Review for filing an appeal with us specifically states that a copy of the Form 130 filed to initiate the appeal at the county level must be attached to the petition.

25. 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).
26. Polen’s assessment increased by approximately 9.5%, rising from \$87,800 in 2021 to \$96,200 in 2022. The Assessor conceded that she therefore has the burden of proof for 2022, and we agree.

C. Because the Assessor’s appraisal is the only probative evidence of the subject property’s true tax value before us, the 2022 assessment must be changed to \$104,000.

27. We are 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).
28. True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as “market value-in-use,” which it in turn defines as “[t]he 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.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
29. 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 Cty. 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 Cty. 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 DLGF’s 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.

30. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. 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 Cty. 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. Dep’t of Local Gov’t. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2022 assessments, the valuation date was January 1, 2022. I.C. § 6- 1.1-2-1.5(a).
31. As previously discussed, the Assessor accepted the burden of proof for the 2022 assessment year. She presented Shelton’s USPAP-compliant appraisal and requested we increase the 2022 assessment to reflect his concluded value. Shelton relied on the cost and sales-comparison approaches in estimating the subject property’s value to be \$104,000 as of January 1, 2022.
32. Polen raised two issues in an attempt to impeach Shelton’s appraisal. First, he argued that the subject property has no parking spaces. Second, Polen argued that Shelton’s estimate of a car wash’s life expectancy was incorrect. However, we find no merit to either criticism. Shelton credibly explained that when he described the subject property as having parking spaces he was simply referring to the concrete that is outside of the

building footprint. And Polen provided no market support for his claim that the life expectancy of a car wash is only 20 years, while Shelton reiterated that MVS (a source of market data regularly relied on by appraisers) estimates the normal life of a car wash to range from 20 to 30 years. We also credit Shelton's explanation that the normal life of a car wash can extend beyond that range. Thus, we find that Polen failed to impeach the appraisal. Because Polen did not successfully impeach Shelton's appraisal, we conclude it provides a reliable, market-based opinion of the subject property's true tax value as of January 1, 2022.

33. Turning to Polen's case, we find that he failed to present any objectively verifiable, market-based evidence showing the subject property's true tax value. As already discussed, Polen provided no market support for his 20-year estimate of a car wash's life expectancy. And while Polen claimed that his car wash had been closed for years and was ready to be demolished, he failed to provide any market-based evidence demonstrating how those issues affected the subject property's value, much less showing that they somehow rendered it worthless. Because Polen did not present any probative valuation evidence of the subject property's true tax value, we conclude he failed to rebut the Assessor's case. Consequently, the subject property's 2022 assessment must be changed to \$104,000.

FINAL DETERMINATION

34. In accordance with the above findings of fact and conclusions of law, we dismiss Polen's 2018-2021 appeals, and we order the 2022 assessment changed to \$104,000.

This 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 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>.