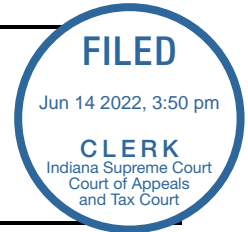


ATTORNEY FOR PETITIONER:
MELISSA G. MICHIE
TAX CONSULTANTS, INC.
Columbus, IN

ATTORNEYS FOR RESPONDENT:
MARILYN S. MEIGHEN
ATTORNEY AT LAW
Carmel, IN

BRIAN A. CUSIMANO
ATTORNEY AT LAW
Indianapolis, IN

**IN THE
INDIANA TAX COURT**



MAC'S CONVENIENCE STORES, LLC,)
)
Petitioner,)
)
v.) Case No. 21T-TA-00005
)
HENDRICKS COUNTY ASSESSOR,)
)
Respondent.)

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

**FOR PUBLICATION
June 14, 2022**

WENTWORTH, J.

Mac's Convenience Stores, LLC ("Macs") appeals the Indiana Board of Tax Review's final determination that upheld its real property assessments for the 2018 and 2019 tax years. Upon review, the Court reverses the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

In October of 2014, Macs purchased commercial property in Hendricks County, Indiana. (See, e.g., Cert. Admin. R. at 33-35.) Macs paid slightly more than \$2.7 million

for the property, which consisted of 3.2 acres of land, a 4,476 square foot convenience store with a gas station, a 1,219 square foot car wash, and a variety of personal property. (See Cert. Admin. R. at 33-35, 78-82.)

During the years at issue, the Hendricks County Assessor assigned Macs's real property an assessed value of \$1,913,400 (\$1,200,000 for land and \$713,400 for improvements). (See Cert. Admin. R. at 33-38.) Believing those values to be too high, Macs sought review first with the Hendricks County Property Tax Assessment Board of Appeals and then with the Indiana Board. (See Cert. Admin. R. at 1-18.) Macs elected to have each of its Indiana Board appeals heard under the small claims docket. (See Cert. Admin. R. at 1-2, 11-12.) See also, e.g., 52 IND. ADMIN. CODE 4-5-5 (2022).

On September 29, 2020, the Indiana Board conducted a consolidated telephonic hearing on the appeals, during which the Assessor conceded that she bore the burden of proving the 2018 assessment was correct because it had increased by about 10% since 2017. (See Cert. Admin. R. at 182-84, 186.) See also IND. CODE § 6-1.1-15-17.2(a), (b) (2020) (explaining the burden of proof at the time the Indiana Board conducted its hearing) (repealed 2022). To meet that burden, the Assessor primarily relied on two distinct types of documentary evidence: (1) a sales disclosure form and (2) an appraisal report for the property. (Cert. Admin. R. at 185-86, 199-200.) With respect to the first, the sales disclosure form, the Assessor explained that it showed Macs purchased the convenience store for \$1,982,000 and the related personal property for \$720,000 in October 2014. (See Cert. Admin. R. at 78-82, 185-87.)

The second piece of evidence, the appraisal report, was prepared by Erick Landeen, an Indiana certified general appraiser. (See Cert. Admin. R. at 95-160.)

Landeen did not appear at the Indiana Board hearing to testify, however, the appraisal report indicated that he had relied exclusively on the sales comparison approach¹ to estimate the value of Macs's property as of January 1, 2018.² (See Cert. Admin. R. at 97, 105, 182.) Specifically, Landeen used for comparison the sales of five convenience stores with gas stations in Hendricks, Johnson, and Marion counties, and after adjusting their sales prices to account for various factors, such as differences in their ages, the number of fuel pumps, and the presence of car washes, he valued Macs's real property at \$2,100,000. (See Cert. Admin. R. at 140-55.) The Assessor maintained that the evidence supported both assessments because it showed that neither assessment exceeded the property's market value in 2014 or 2018. (See Cert. Admin. R. at 194, 199-200.)

In response, Macs cautioned against placing too much weight on its property's 2014 purchase price, noting that the Hendricks County properties used as sales comparables were assessed at a fraction of their 2014 sales prices of about \$1.3 million. (See, e.g., Cert. Admin. R. at 39-46, 141-44, 194-95 (demonstrating that the two Hendricks County properties were assessed at \$603,000 and \$714,100 during the years at issue).) Macs also argued that the appraisal report should be "thrown out" because its valuation was not confined just to the real property. (See Cert. Admin. R. at 189-98.)

¹ The sales comparison approach, a generally accepted appraisal technique for valuing real property, "estimates the total value of property directly by comparing it to similar, or comparable, properties that have sold in the market." 2011 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IND. ADMIN. CODE 2-4.1-2 (2011) (amended 2020)) at 2.

² The appraisal report stated that the cost approach was "[n]ot applied due to the lack of weight applied to this approach for this property type and due to the better reliability of the sales comparison and income approaches[.]" and that the income approach was "[n]ot applied due to a lack of lease comparables and lack of operating statements (none) provided by the owner." (Cert. Admin. R. at 105.)

Macs explained that when convenience stores with gas stations are sold, the sales prices typically reflect the value of not only the realty, but also the related personal property. (See Cert. Admin. R. at 190-92.) Macs pointed to its own sales disclosure form as support, explaining that approximately 27% of the 2014 purchase price was for fuel pumps, underground storage tanks, walk-in coolers, and portable racks and shelves. (See, e.g., Cert. Admin. R. at 191, 193.) Moreover, Macs offered an email that indicated the Marion County properties used as sales comparables in the appraisal report were not eligible for use in the annual trending process³ because “information on what personal property amount was included in the sale[s]” was unavailable. (See Cert. Admin. R. at 59-60, 196.) Indeed, Macs pointed out that instead of removing the personal property costs from the sales prices of the comparable properties, all of their sales prices were increased to account for the lack of personal property (i.e., fuel pumps) in relation to Macs’s property.⁴ (See Cert. Admin. R. at 191-92, 195-96, 200.) Consequently, Macs claimed its 2018 and 2019 assessments should revert to its 2017 assessment of \$1,734,100 because the Assessor had not shown that its 2018 assessment was correct. (See, e.g., Cert. Admin. R. at 196-98, 200-01.)

On January 11, 2021, the Indiana Board issued a final determination, finding that the

³ “Trending” is the process that applies an adjustment factor to the value of real property to estimate its value on a specific date. See 50 IND. ADMIN. CODE 27-5-1 (2022). In determining the adjustment factor, assessing officials typically use sales of properties in certain neighborhoods, areas, or classes that “ideally [occurred] not more than twelve (12) months before the January 1 assessment and valuation date.” See 50 IND. ADMIN. CODE 27-5-2(a) (2022).

⁴ Macs also claimed that the appraisal report should be disregarded because it: (1) used the sales comparison approach despite the lack of relevant sales, (2) did not comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”), and (3) failed to correctly account for the Johnson County sales comparable’s three-bay car wash and oil-changing facility. (See Cert. Admin. R. at 192-93, 196-97, 200.) Moreover, Macs claimed that the Assessor erred in removing its land’s 20% negative influence factor. (See Cert. Admin. R. at 186, 200.)

Assessor met her burden of proving that Macs's 2018 assessment was correct. (See Cert. Admin. R. at 165-78.) Viewing the appraisal report and the 2014 purchase price together, the Indiana Board explained that:

- (1) with respect to the sale of convenience stores with gas stations, including the sales comparables, "it [was] likely that the real estate and personal property[, i.e., the fuel pumps, underground storage tanks, walk-in coolers, and portable racks/shelves,] transferred as a part of a single transaction with a single sale price – the same price Landeen used in his analysis[;]"
- (2) the appraisal report's imperfections did not deprive it of all probative weight because none of the evidence showed that its inclusion of personal property had "played a significant role in Landeen's value conclusion[;]" nonetheless, the imperfections "caution[ed] against raising [either] assessment to \$2.1 million as the Assessor [had] request[ed;]" and
- (3) the property's 2014 purchase price, when adjusted to exclude the cost of the personal property, supported the assessments because "Landeen concluded that the market for convenience stores appreciated by 3% per year" between the subject property's date of sale (i.e., October 2014) and the 2018 valuation date, which "more than offset" the subject property's depreciation over that same period.

(See Cert. Admin. R. at 172-76 ¶¶ 36-53.) The Indiana Board further explained that because Macs had attacked the assessment methodology without offering any market-based evidence of its own, it had failed to show that either of its assessments were incorrect. (See Cert. Admin. R. at 176-77 ¶¶ 54-59.) Accordingly, the Indiana Board concluded that Macs's 2018 and 2019 assessments should remain at \$1,913,400. (See Cert. Admin. R. at 177-78 ¶ 60.)

On February 16, 2021, Macs initiated this original tax appeal. The Court conducted an oral argument on July 15, 2021. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. Lowe's Home Ctrs., Inc. v. Monroe Cnty. Assessor, 160 N.E.3d 263, 268 (Ind. Tax Ct. 2020). Thus, to prevail in its appeal, Macs must demonstrate to the Court that the Indiana Board's final determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

LAW AND ANALYSIS

On appeal, Macs contends that the Indiana Board's final determination must be reversed because it is contrary to law and constitutes an abuse of discretion. (See, e.g., Pet'r Br. at 1; Oral Arg. Tr. at 8-9, 14.) More specifically, Macs claims that the Indiana Board erred in finding that the Assessor met her burden of proving its 2018 assessment was correct because the evidence upon which that finding is based – the appraisal report and the property's 2014 purchase price – have no probative value. (See Pet'r Br. at 7-10; Oral Arg. Tr. at 8-17.) Consequently, Macs maintains that its 2018 and 2019 assessments should revert to the 2017 assessment of \$1,734,100. (See Pet'r Br. at 12.)

The Appraisal Report

Macs asserts that the appraisal report contravenes Indiana's real property assessment guidelines because its value conclusion includes personal property, and

thus, fails to establish the value of the real property alone.⁵ (See Pet'r Br. at 7-9; Oral Arg. Tr. at 8-14.) In response, the Assessor claims that Macs's assertions rest largely on argument rather than the actual evidence. (See Resp't Br. at 9-13.) The Assessor maintains that the appraisal report "does not value anything beyond the real property" because it states that the personal property was not listed as a site improvement and that "[n]either the subject nor the [sales] comparables include[d] any non-realty components[.]" (Resp't Br. at 11 (citing Cert. Admin. R. at 113, 153), 13.) The Assessor therefore urges the Court to refrain from "reweigh[ing] the evidence as [Macs] pleads for it to do" because the appraisal report supports both assessments despite its alleged "warts and flaws[.]" (See Resp't Br. at 13; Oral Arg. Tr. at 29.)

The Legislature has adopted different methods for the assessment of distinct classes of property to achieve a just and uniform valuation of all property. See BP Prods. N. Am., Inc. v. Matonovich, 842 N.E.2d 901, 905 (Ind. Tax Ct. 2006), review denied. Specifically, the Legislature has divided tangible property into two basic classes – "personal property" and "real property" – and authorized the Department of Local Government Finance (the "DLGF") to adopt rules for the assessment of that property. See IND. CODE § 6-1.1-1-11, -15, -19 (2018); IND. CODE § 6-1.1-31-1(a)(3) (2018). To that end, the DLGF has promulgated two independent sets of regulations that prescribe how to determine the assessed value of the two different classes of property. See 50 IND.

⁵ In addition, Macs claims that the appraisal report lacks a necessary USPAP certification and is nothing more than an impermissible post hoc justification for the assessment increases. (See Pet'r Br. at 5-7; Oral Arg. Tr. at 5-6.) The Court will not address these claims because they were not raised at the Indiana Board hearing. (See, e.g., Cert. Admin. R. at 186-200.) See also Inland Steel Co. v. State Bd. of Tax Comm'rs, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (explaining that when an issue or an argument is not raised at the administrative level, it is waived and may not be considered on appeal), review denied.

ADMIN. CODE 4.2-1-1.1 to 4.2-17-3 (2022) (regarding the assessment of personal property). See also 50 IND. ADMIN. CODE 2.4-1-1 (2022); 2021 REAL PROPERTY ASSESSMENT MANUAL (“Manual”) (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2 (2021)); REAL PROPERTY ASSESSMENT GUIDELINES FOR 2021 (incorporated by reference at 50 I.A.C. 2.4-1-2) (regarding the assessment of real property). With respect to real property, Indiana’s assessment guidelines specify that the cost approach, the sales comparison approach, and the income approach may be used to determine the assessed value of real property. See Manual at 2.

Here, the appraisal report used the sales comparison approach to estimate the value of Macs’s property. Thus, to establish that the appraisal report supported her assessments, the Assessor needed to present evidence during the administrative proceedings that showed no personal property was included in the property’s valuation. The Assessor’s evidence, however, did not reveal whether the five comparable properties used in the appraisal report (convenience stores that also sold fuel) included or excluded non-realty costs in their unadjusted sales prices. (See, e.g., Cert. Admin. R. at 191-93.) Moreover, the sales disclosure forms for each of the comparable properties, unlike the sales disclosure form for Macs’s property, indicated just one sales price, and Landeen used these unadjusted sales prices as the basis for his analysis. (See Cert. Admin. R. at 48-60, 78-82, 141-50, 154.) Indeed, a notation by an assessing official on one of the sales disclosure forms states that the “[s]eller was suppose[d] to call back about personal property amount and did not return call[.]” (Cert. Admin. R. at 53.) Furthermore, another assessing official determined that the two Marion County comparable properties’ sales disclosure forms could not be used for purposes of the annual trending process because

they did not apportion the sales prices between the real and the personal property that had been sold in each transaction. (See Cert. Admin. R.at 59-60, 196.)

The record further reveals that the Assessor testified that she did not value the fuel pumps as if they were real property when she assessed convenience stores that sold fuel. (Cert. Admin. R. at 190.) Nonetheless, the appraisal report does not bear this out: it adjusted the sales prices of the comparable properties upward by about \$21,000 per fuel pump ostensibly to allow an apples-to-apples comparison with Macs's property. (See Cert. Admin. R. at 153-54.) The Assessor argued that this adjustment was not valuing the fuel pumps themselves, but instead, it valued the additional business value created by the greater number of fuel pumps on Macs's property. (See Cert. Admin. R. at 190.) Regardless of whether this fuel pump adjustment reflected the value of just the fuel pumps or represented intangible business value, it shows that non-realty costs were included in the appraisal report's value conclusion.

The Indiana Board's final determination stated that the fuel pumps, underground storage tanks, walk-in coolers, and portable racks/shelves were personal property items and that they were included in the appraisal report's valuation. (See Cert. Admin. R. at 172-74 ¶¶ 36-44.) The Indiana Board also explained that it had unanswered "concerns" about the appraisal report's valuation of the personal property and the real property. (See Cert. Admin. R. at 174-75 ¶¶ 43-46.) Nonetheless, the Assessor did not claim the Indiana Board was wrong to find that the fuel pumps, underground storage tanks, walk-in coolers, and portable racks/shelves were personal property. (See, e.g., Resp't Br. at 7-19.) Moreover, the Assessor did not present any authority, whether binding or persuasive, that would allow the Court to find that an appraisal is probative of the value of real property

even if some personal property is included in the valuation. (See, e.g., Resp't Br. at 9-13.) See also Goshen Pub. Libr. of Elkhart Cnty. v. Dep't of Local Gov't Fin., 128 N.E.3d 574, 580 (Ind. Tax Ct. 2019) (discussing the application of the de minimis doctrine), review denied. Consequently, the totality of the evidence demonstrates that the appraisal report valued more than real property contrary to Indiana's real property assessment laws. Accordingly, the Indiana Board erred in finding that the appraisal report supported the real property assessments at issue.

The 2014 Purchase Price

Macs also contends that the Indiana Board abused its discretion by finding the 2014 purchase price of its property supported the assessments because the Assessor did not properly relate it to the relevant assessment dates.⁶ (See Pet'r Br. at 9.) The Assessor, on the other hand, claims that she did properly relate the 2014 purchase price to the relevant assessment dates by applying the same 3% adjustment that was used in the appraisal report to reflect improved market conditions. (See Resp't Br. at 15-17.)

During the Indiana Board hearing, the Assessor explained that in his appraisal report, Landeen, "adjusted [the sales prices of the sales comparables] upward [by] 3% for improving market conditions." (See Cert. Admin. R. at 152, 154, 187.) The Indiana Board found that this adjustment related the 2014 purchase price to the relevant assessment dates, reasoning that any "appreciation due to improving market conditions more than offset any depreciation . . . [incurred] between the subject property's sale [and] the valuation date[s]." (See Cert. Admin. R. at 175 ¶ 49.) The record, however, contains

⁶ Macs also claims that Indiana's assessment guidelines indicate that the 2014 purchase price is not probative evidence of its property's market value-in-use, and that its assessments violated Indiana's Constitution because they were not uniform and equal. (See Pet'r Br. at 9-12.) The Court will not address these claims, however, as it has resolved this appeal on other grounds.

no evidence or analysis regarding the extent of the subject property's depreciation since its 2014 purchase. (See, e.g., Cert. Admin. R. at 95-160, 183-201.) Moreover, the Indiana Board, flirting with taking an advocacy role as it sometimes does, did little to explain how the "offset" would work, and it did not, and could not, point to any evidence or argument from either party for this concept. (See Cert. Admin. R. at 175 ¶ 49.) See also, e.g., Madison Cnty. Assessor v. Sedd Realty Co., 125 N.E.3d 676, 680-81 (Ind. Tax Ct. 2019) (holding that the Indiana Board's failure to explain its rationale for choosing a particular capitalization rate was unsupported by any evidence, and thus, was arbitrary and capricious).

The Assessor's reliance on Landeen's market conditions adjustment is further compromised because the record does not identify what data Landeen used to formulate the adjustment or why he ultimately determined that 3% would be appropriate. (See Cert. Admin. R. at 95-160, 183-201.) Because Landeen did not testify at the Indiana Board hearing, the sole support for the propriety of a 3% market conditions adjustment is the conclusory general overview of the regional and area markets contained in the appraisal report, which without more does not establish that it was warranted. (See Cert. Admin. R. at 125-38.) Thus, the Court is left to speculate about how and why Landeen determined that the 3% adjustment properly reflected the improved market conditions between 2014 and the years at issue.

Substantial evidence supports an Indiana Board finding when there is relevant evidence that a reasonable mind might accept as adequate to support a conclusion; it must be more than speculation and conjecture. See Starke Cnty. Assessor v. Porter-Starke Servs., Inc., 88 N.E.3d 814, 820 (Ind. Tax Ct. 2017); State v. Mills, 76 N.E.3d 861,

870 (Ind. Ct. App. 2017), trans. denied. Here, the Indiana Board abused its discretion by finding the 3% market conditions adjustment was sufficient to relate Macs's 2014 purchase price to the relevant assessment dates because that finding was based on speculation, not evidence. See CVS Corp. v. Searcy, 137 N.E.3d 1053, 1056-57 (Ind. Tax Ct. 2019) (explaining that an Indiana Board final determination constitutes an abuse of discretion when it is against the logic and effect of the facts and circumstances of the case). Accordingly, the Court finds that Indiana Board erred in upholding Macs's real property assessments for the 2018 and 2019 tax years.

CONCLUSION

For all of the aforementioned reasons, the Indiana Board's final determination is REVERSED. Accordingly, this matter is REMANDED to the Indiana Board with instructions that Macs's 2018 and 2019 assessments shall revert to the assessment that was in place for the 2017 tax year.