

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

Petitions: 53-011-06-1-3-00016
53-011-06-1-3-00017
53-011-06-1-3-00018
Petitioner: Cook, Inc.
Respondent: Monroe County Assessor
Parcels: 007-25210-00
007-10890-00
007-12820-00
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues its determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner, Cook, Inc., initiated assessment appeals regarding the subject properties with the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) by written document on August 10, 2007.
2. The PTABOA mailed its decisions for the 2006 assessments on October 16, 2007.
3. The Petitioner appealed all of the decisions to the Board by filing Form 131 petitions on December 3, 2007. The Petitioner elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 27, 2009.
5. Administrative Law Judge Kay Schwade held the Board’s administrative hearing on April 2, 2009. She did not inspect the property.
6. Certified Tax Representative Gregory A. Poore represented the Petitioner. Attorney Marilyn Meighen represented the Respondent.
7. The following people were sworn as witnesses at the hearing:
For Petitioner — Gregory A. Poore,
For Respondent — Ken Surface, Contractor for Monroe County,
County Assessor Judith Sharp.¹

¹ Assessor Sharp did not testify.

Facts

- 8. The subject properties are separate parcels on West McNeely Street or North Matthews Road in Ellettsville. Parcel 007-12820-00 (“Parcel 12820”) has 12.093 acres with improvements. Parcel 007-25210-00 (“Parcel 25210”) has 5 acres with improvements. Parcel 007-10890-00 (“Parcel 10890”) has 5.808 acres with improvements.
- 9. The PTABOA determined the assessed values are:

| | | |
|---------------------|--------------------------|-------------------|
| <u>Parcel 12820</u> | | |
| land \$544,200 | improvements \$2,274,400 | total \$2,818,600 |
| | | |
| <u>Parcel 25210</u> | | |
| land \$225,000 | improvements \$402,100 | total \$627,100 |
| | | |
| <u>Parcel 10890</u> | | |
| land \$261,400 | improvements \$38,900 | total \$300,300 |

- 10. The Form 131 Petitions claimed the assessed values should be:

| | | |
|---------------------|--------------------------|-------------------|
| <u>Parcel 12820</u> | | |
| land \$241,900 | improvements \$2,199,900 | total \$2,441,800 |
| | | |
| <u>Parcel 25210</u> | | |
| land \$100,000 | improvements \$346,900 | total \$446,900 |
| | | |
| <u>Parcel 10890</u> | | |
| land \$116,200 | improvements \$38,900 | total \$155,100 |

Record

- 11. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments (a separate petition for each parcel),
 - b. Notice of Hearing,
 - c. Attorney Meighen’s Appearance,
 - d. Hearing Sign-In Sheet,
 - e. Digital recording of the hearing,
 - f. Petitioner Exhibit A – Sales comparison analysis for parcel 12820,
Petitioner Exhibit B – Sales comparison analysis for parcel 25210,

Petitioner Exhibit C – Sales comparison analysis for parcel 10890,
Petitioner Exhibit D – Property assessment detail report for Parcel 007-14250-00,
Petitioner Exhibit Z – Map,
Respondent Exhibits – None,

- g. These Findings and Conclusions.

Contentions

12. Summary of the Petitioner’s case:

- a. The subject properties make up a medical equipment manufacturing facility. Parcel 12820 is the main facility where the equipment is produced. Parcel 25210 is used as a repair shop. Parcel 10890 is the “company closet” used for general storage. An analysis for each parcel shown on the first pages of Exhibits A, B, and C shows that the current assessments are incorrect. This analysis is based on comparable sales and listings from 2004 to 2007 (also included in Exhibits A, B, and C). *Poore testimony.*
- b. The current assessments value the land at \$45,000 per acre. Two sales of vacant land are comparable. The parcels are similar in size and the locations are close to the subject properties. The first land sale (“Land Comp 1”) is 8.65 acres located on McNeely Street. It sold for \$138,300 in January 2007. That price is \$15,988 per acre. The second land sale (“Land Comp 2”) is 8.3 acres that sold for \$150,000 or \$18,072 per acre in October 2000. (The sales disclosure form for the second sale shows 31.61 acres, but that is wrong—it was really only 8.3 acres.) One of the land comparables is zoned for residential use and the other is zoned for PUD use, but there probably would be little resistance to getting a zoning change to permit industrial development. *Poore testimony; Pet’r Ex. A, B, C, D.*
- c. The subject parcels would not have been classified as “industrial” if the Petitioner’s facilities were not established in their respective locations. There is little industrial property in Ellettsville: “from an industrial nature this is the only game in town.” Consequently, industrial zoning is limited. If a company wanted to build an industrial facility, land would have to be rezoned. Using a highest and best standard for the land, the land base rate for the subject properties should be \$20,000 per acre. *Poore testimony; Pet’r Ex. A, B, C.*
- d. Land value is the only dispute regarding Parcel 10890. At \$20,000 per acre, its land value should be \$116,200. With no change to the value of the improvements, the total assessment for Parcel 10890 should be \$155,100. *Poore testimony; Pet’r Ex. C.*
- e. The Petitioner presented information regarding the following nine comparables to support its claim that the improvements values on Parcel 12820 and Parcel 25210 are too high. According to the Petitioner, the comparables indicate that the building on Parcel 12820 should be valued at \$18.50 per square foot. *Pet’r Ex. A.*

And the building on Parcel 25210 should be valued at \$10.00 per square foot. *Pet'r Ex. B.* Comparable 1 (Comp 1) is located at 2100 Industrial Drive in Bloomington. Comp 1 is a 34,200 square foot building built in 1981 on 8.8 acres. Comp 1 sold for \$800,000, or \$23.39 a square foot, in November 2004. Comparable 2 (Comp 2) is located at 1180 Liberty Drive in Bloomington. Comp 2 is a 103,000 square foot building built in 1965 on 6.58 acres. Comp 2 sold for \$1,350,000, or \$13.11 a square foot, in October 2004. Comparable 3 (Comp 3) is located at 301 Grimes Lane in Bloomington. Comp 3 is a 150,000 square foot building built in 1965 on 4.68 acres. Comp 3 sold for \$1,350,000, or \$9.00 a square foot, in November 2004. Comparable 4 (Comp 4) is located at 2000 Industrial Drive in Bloomington. Comp 4 is a 156,256 square foot building built in 1987. Comp 4 sold for \$3,100,000, or \$19.84 a square foot, in March 2006. Comparable 5 (Comp 5) is located at 1823 E. Elmore Street in Crawfordsville. Comp 5 is a 95,620 square foot building built in 1987 on 4.52 acres. Comp 5 is an active sale listing with a list price of \$2,475,000, or \$25.88 a square foot. Comparable 6 (Comp 6) is located at 1200 E. 32nd Street in Anderson. Comp 6 is an 110,939 square foot building built in 1990. Comp 6 is an expired listing that was listed for sale at \$1,500,000, or \$13.52 a square foot. Comparable 7 (Comp 7) is located at 2010 John Williams Blvd. in Mitchell. Comp 7 is a 65,000 square foot building on 17.26 acres. Comp 7 has had 2 sale listings, now expired, with list prices of \$1,055,000, or \$16.32 a square foot, and \$779,000, or \$11.98 a square foot. Comparable 8 (Comp 8) is located at 5100 S. Meridian Road in Bedford. Comp 8 is a 77,500 square foot building on 7.53 acres. Comp 8 is a pending sale with a sale price of \$689,000, or \$8.89 a square foot. Comparable 9 (Comp 9) is located at 1905 Van Buren Street in Huntingburg. Comp 9 is a 65,817 square foot building built in 1985 on 5.0 acres. Comp 9 is an active listing with a list price of \$990,000, or \$15.04 a square foot. *Poore testimony; Pet'r Ex. A, B.*

- f. Parcel 12820 is the main facility where specialized medical equipment is produced. Its best comparable is Comp 4, the industrial building in Bloomington. Comp 4 sold for \$3,100,000 in 2000 and includes a 156,256 square foot building at \$19.84 per square foot. The \$19.84 should be adjusted downward to \$18.50 per square foot because Comp 4 is a superior building in a better location. Parcel 12820 should be valued at \$18.50 a square foot, or \$2,258,600. That change would make the total assessed value be \$2,500,500. *Poore testimony; Pet'r Ex. A.*
- g. Parcel 25210 is used as a repair shop. It is an oddly shaped property that is smaller than the other parcels. Comp 8, which listed for \$8.89 per square foot, is more comparable to Parcel 25210 because of size. The comparables indicate that \$10.00 per square foot would be an accurate improvement value for Parcel 25210 and the total value should be \$397,900. *Poore testimony; Ex. B.*

13. Summary of the Respondent's case:

- a. The medical products that the Petitioner manufactures require particular features necessary to maintain a level of cleanliness to meet FDA standards. The nature of the Petitioner's business means that its buildings must satisfy special requirements. Those requirements include space for research and development, laboratories, office, warehouse, special flooring, air conditioning and other features used for operation of the Cook facilities. For example, Cook purchased the old Thompson/RCA plant for \$4.6 million, but an additional investment of more than \$20 million was needed before manufacturing could begin. *Surface testimony.*
- b. The Petitioner could not function in just any building. The subject properties are special purpose buildings. *Surface testimony.*
- c. A "special purpose property" as defined in the Real Property Assessment Guidelines 2002, Version A, Book 2, Appendix F, is:

"A limited market property with unique physical design, special construction materials or a layout that restricts its utility to the use for which it was built. Typically this would include industrial properties designed for particular industry or use, steel mills or specialized types of manufacturing facilities."

Meighen argument.
- d. The Petitioner's Land Comp 1 is not relevant or comparable. The sale date for Land Comp 1 is January 4, 2007. It is not related to the required valuation date of January 1, 2005. Furthermore, Land Comp 1 was a sale for residential use, which is not comparable to the industrial and manufacturing use of the subject parcels. *Surface testimony.*
- e. The Petitioner's Land Comp 2 is not relevant or comparable. The sale date is October 25, 2000, which again is not related to the required valuation date for 2006 assessments. Additionally, the Land Comp 2 was the sale of agricultural land that was later platted into residential lots. The date and land description at the time of the sale for Land Comp 2 is not comparable to any of the three subject parcels. *Surface testimony.*
- f. The other properties that the Petitioner relies on are not comparable to the subject properties. They are various storage, office, and warehouse facilities that would not support the specialized manufacturing or research and development areas that Cook would require. Comp 4 was formerly owned by the Schulte Corporation and used to make wire shelving. That use does not compare to the ongoing operations of the subject properties. It would require substantial investments to

improve any of the purportedly comparable properties to produce the Cook's products. *Surface testimony.*

- g. Although the Petitioner offered individual calculations based on non-comparable sales, no evidence of overall value-in-use was submitted. The normal practice of preparing an assessment is to assign a land value and calculate an improvement value separately following the instructions of the assessment guidelines and the property record card. Although assessments are broken down into components on the property record card, the bottom line value is the important thing. In these cases, the Petitioner has not proved a market value-in-use that would require any assessment change. *Meighen argument.*

Analysis

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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).
15. In making a case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
16. A 2006 assessment must have a value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; IAC 21-3-3. Evidence relating to a different date must have an explanation about how it demonstrates or is relevant to the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
17. The Petitioner did not make a prima facie case for any change to the existing assessed values.
 - a. Real property is assessed on the basis of 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 a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT MANUAL at 2. The cost approach, the sales comparison approach, and the income approach are three generally accepted valuation techniques for determining that value. Assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated a series of Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may present evidence of value calculated under the sales comparison approach to rebut that presumption. *Id.* at 3, 5. “The sales comparison approach to value is based on the assumption that potential buyers will pay no more for the subject property . . . than it would cost them to purchase an equally desirable substitute [] property already existing in the market place.” *Id.* at 13. “In this approach, the

appraiser locates sales of comparable . . . properties and adjusts the selling prices to reflect the subject property's total value. The adjustments are the quantification of characteristics in [the] properties that cause prices paid to vary.”
Id. The entire underpinning of this approach is the comparability of one property with another.

Land Value

- b. The claim that the land values for the subject properties should be reduced from \$45,000 to \$20,000 per acre is based on two purportedly comparable sales. According to Mr. Poore, one of those properties sold for \$15,988 per acre and the other sold for \$18,072 per acre. Based on those two sales, he concluded that the assessed land value for all three of the Petitioner's parcels should be calculated at \$20,000 per acre. But the Petitioner failed to make a prima facie case regarding land value for two main reasons. First, the facts and analysis are not sufficient to draw any legitimate conclusion about the relative values of the properties. Second, nothing in the record establishes how the sale prices from January 1, 2007, or October 25, 2000, might relate to the required valuation date for this case, which is January 1, 2005.
- c. The record establishes the size, shape, and relative location of the subject parcels and the two land comparables. It also establishes that the use and zoning of the subject parcels differs substantially from those comparables. Although Mr. Poore provided speculative testimony that there probably would be little resistance to getting the zoning of those comparables changed to permit industrial development, his speculation is not probative evidence. The Petitioner failed to prove comparability between the subject parcels and Land Comp 1 or Land Comp 2. Therefore, the prices from the Sales Disclosure Forms and the location maps do not prove what the Petitioner's land value should be. The Petitioner did not present a prima facie case regarding land value. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002)(stating that whether or not properties are truly 'comparable' . . . depends on a number of factors including . . . size, shape, topography, accessibility, use, etc.).
- d. While noting the time difference on both Sales Disclosure Forms, the Petitioner did not establish how each of those prices might relate to the value as of January 1, 2005. The Petitioner merely invited the Board to interpolate, which is something the Board will not do. *See Meridian Towers*, 805 N.E.2d at 480 (stating that it is improper for the Board to make a case for a party). The Petitioner failed to demonstrate how or why land sales occurring in 2000 and 2007 are relevant to the value of the subject properties as of January 1, 2005. As a result, none of the evidence proves the currently assessed land value is wrong or what a more accurate land value might be. *Long*, 821 N.E.2d at 471.

Improvements

- e. Based on nine “comparables”, the Petitioner attempted to prove that its main building (Parcel 12820) should be valued at \$18.50 per square foot and that its repair shop (Parcel 25210) should be valued at \$10.00 per square foot. The attempt failed to make a prima facie case for changing the value of either building.
- f. Only four of the purported comparables were identified as actual sales.² Another one was identified as a pending sale.³ Two others were identified as active listings and two were identified as expired listings. The Petitioner did not offer any facts or argument to establish why the active or expired listings might have probative value for this case.
- g. More importantly, the Petitioner offered virtually nothing but a single small photograph, the address, the year built, and the square footage of each building to establish that those properties are comparable to the subject parcels. Conclusory statements that another property is comparable are not probative evidence. “[S]pecific reasons must be provided as to why a taxpayer believes a property is comparable.” *Long*, 821 N.E.2d at 470. The Petitioner was responsible for explaining the characteristics of its own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relative market value-in-use of the properties. *Id.* at 471. The Petitioner failed to provide any such explanation to establish comparability.
- h. But even assuming, *arguendo*, that there was some basis for comparability, the square foot values that Mr. Poore calculated simply are not credible. He did not explain how he computed the square foot values for each comparable, but it is readily apparent that for each property he simply took the total selling price (or list price) of the entire property (including land) and divided it by the square footage of the building. He failed to establish that such methodology is acceptable. Furthermore, he offered only a conclusory explanation to support his adjustments to come up with the square foot values proposed for the Petitioner’s property. When coupled with his unsubstantiated conclusions about comparability, the evidence about square foot values simply fails to support the claim that the improvements on Parcel 12820 should be assessed at \$18.50 per square foot or that the improvements on Parcel 25210 should be assessed at \$10.00 per square foot.
- i. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus.*

² The four sales were (1) 2100 Industrial Drive, Bloomington; (2) 1180 Liberty Drive, Bloomington; (3) 301 Grimes Lane, Bloomington; and (4) 2000 Industrial Drive, Bloomington.

³ The pending sale was 5100 South Meridian Road, Bedford.

v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003);
Whitley Products, 704 N.E.2d at 1119.

Conclusion

18. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessments will not be changed.

ISSUED:

Commissioner, 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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>