

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

Petition No.: 20-027-10-1-4-00093
Petitioner: Frontier Investments, LLC
Respondent: Elkhart County Assessor
Parcel No.: 02-29-456-015-027
Assessment Year: 2010

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

Procedural History

1. Frontier Investments, LLC appealed the subject property’s March 1, 2010 assessment. On March 27, 2012, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Frontier the relief it had requested.
2. Frontier then timely filed the Form 131 petition with the Board. Frontier elected to have its case heard under the Board’s small claims procedures.
3. On April 16, 2013, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn-in and testified:
 - a) Randall Aupperle¹
 - b) Cathy Searcy, Elkhart County Assessor

¹ Mr. Aupperle, who identified himself as Frontier’s accountant, appeared both as Frontier’s representative and as its sole witness. Jack B. Tuff, managing member of Frontier, was ill and therefore unable to appear at the Board’s hearing. Mr. Aupperle offered a letter from Mr. Tuff authorizing Mr. Aupperle to appear on Frontier’s behalf. A party’s authorization, while necessary, is not sufficient to allow someone to appear before the Board as the party’s representative; the representative must fall within the class of people who are authorized to practice before the Board. *See* 52 AIC 2-2-4 (identifying people authorized to practice before the Board). Neither Mr. Aupperle nor Mr. Tuff’s letter explained whether Mr. Aupperle is Frontier’s employee or merely an independent contractor. But given the tenor of Mr. Aupperle’s testimony and the fact that that nobody objected to his appearance, the Board infers that Mr. Aupperle was Frontier’s full-time, permanent employee and was therefore authorized to appear for Frontier. *See* 52 IAC 2-2-4 (1) (defining a property owner’s permanent full-time employee as an “authorized representative”).

Facts

5. The subject property is an 8.34-acre undeveloped commercial site with fencing. It is located at 2 Cassopolis Street in Elkhart.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following assessment:
Land: \$863,200 Improvements: \$3,200 Total: \$866,400
8. Frontier requested the following assessment:
Land: \$450,000 Improvements: \$3,200 Total: \$453,200

Summary of the Parties' Contentions

9. Frontier offered the following evidence and arguments:
 - a) Frontier originally bought 12-plus acres intending to sell the property as a single parcel to a big box store. Because the land was just south of the toll road on Cassopolis Street—a busy street with access to the north and the south—Frontier believed that it was desirable for retail businesses. Unfortunately, Frontier could not find a buyer for the entire 12-plus acres, so it carved out and sold three smaller parcels with frontage on Cassopolis Street. The subject property consists of the remaining 8.34 acres. *Aupperle testimony; Pet'r Ex. 7.*
 - b) The subject and surrounding properties are unattractive. The subject property's access road ends in mounds of dirt and weeds. To the property's southeast, there is a business with trucks and equipment stored outside against a fence, and there is a mobile home park just to the north. The poorly managed mobile home park has become an eyesore; it contains mostly weekly rentals and has attracted undesirable people. Items have been stolen from businesses in the area. There park is fenced, but the fence is covered with graffiti. *Aupperle testimony; Pet'r Ex. 4.*
 - c) The subject property's listing history supports a lower assessment. Frontier began listing the original 12-plus acre property at a relatively high price when Frontier thought the property was in demand. Unfortunately, Frontier was overly optimistic about the property's value. After Frontier had sold the last of the three prime parcels in 2008, the market collapsed and had yet to recover. On December 30, 2009, Frontier signed an agreement with FM Stone Commercial to list the subject property for \$1,300,000, which Mr. Aupperle described as "a pie in the sky" amount. *Aupperle testimony; Pet'r Ex. 3.* In 2011, Frontier twice reduced its asking price—first to \$995,000 in April and then to \$650,000 in November. Frontier has not signed a listing agreement for 2013, but Mr. Aupperle believed that Frontier's asking price would be reduced considerably. A few years ago, Frontier offered the subject property to a potential buyer for \$600,000, and the buyer turned Frontier down. There has been little interest in the subject property over the last few years. *Id.*

- d) The Assessor classified the subject property as primary, usable, undeveloped land. Based on that classification, the Assessor applied a base rate of \$207,000 per acre, which yielded a value of \$1,726,380. The Assessor then applied a negative 50% influence factor to reduce the assessment to \$863,190. But as presently configured, the property is nearly landlocked; it has no frontage on, nor can it even be seen from, Cassopolis Street, and its only access is a narrow road between two businesses. Any major retailer who buys the property would likely want access from Johnson Road to the east of the property and would deduct the cost of building such a road from the property's sale price. Jack Tuff, Frontier's managing member, told Mr. Aupperle that it would probably cost about \$250,000 to buy the necessary land and build such a road. *Aupperle testimony; Pet'r Exs. 5, 7.*
- e) Mr. Aupperle also pointed to two properties that he described as being comparable to the subject property. The first is located a mile north of the subject property at the corner of Cassopolis Street and County Road 6. Mr. Aupperle explained "there's some problems regarding what was the actual selling price of that parcel or something," but the sales disclosure form provided to the Assessor shows the price as \$500,000. Although the deed does not give the parcel's size, other records indicate that it was 6.93 acres, which would make the sale price equal to \$72,150 per acre. It is prime land with frontage. Thus, one would have to discount the sale price in order to compare it with the subject property. A 50% discount would yield a value of approximately \$300,000 for the subject property, while a two-thirds discount would yield a value of approximately \$200,000. *Aupperle testimony; Pet'r Ex. 2.*
- f) According to Mr. Aupperle, a former hardware store located across the street and a little south of the subject property at 1635 Cassopolis Street is a better comparison. For 2010, the land was classified as primary and the property was assessed at \$1,098,700. But it sold \$305,000, or 27% of its 2010 assessment, in late 2011 or early 2012.² Mr. Aupperle apportioned the sale price between land and improvements in amounts proportional to the property's assessment, and derived a value of \$62,000 per acre. *Aupperle testimony.* The per-acre price for the undeveloped subject property would be even lower. *Id.; Pet'r Ex.8.*

10. The Assessor offered the following evidence and arguments:

- a) The subject property's assessment aligns with the market for the March 1, 2010 assessment date. The subject property is located in assessment neighborhood #2746014, which has a base rate of \$207,000 per acre for undeveloped land. Mr. Aupperle's comparable located at 1635 Cassopolis is located in the same neighborhood, but it was classified as primary land and assessed using a base rate of \$230,000 per acre. *Searcy testimony; Resp't Ex. 1.*
- b) The Assessor performed her own sales-comparison analysis. The subject property's market area is mostly developed with little vacant land remaining. Because of the

² The property record card shows a transfer of ownership on February 23, 2012. *Pet'r Ex. 8.*

limited available sales, the Assessor found it necessary to broaden her time and distance parameters in looking for comparable sales. She ultimately chose six sales. The Assessor did not adjust those sale prices to account for market-related differences between the sale dates and the relevant March 1, 2010 valuation date because sales prices for commercial vacant land in Elkhart County were stable over the past six or seven years. Owing to her limited sales data, the Assessor performed a qualitative analysis in lieu of quantifying other adjustments to the comparable properties' sale prices. She determined that her comparable numbers 1, 2, and 4 were the most similar to the subject property and that the other three sales were supportive. The Assessor believes that her analysis supports a price of \$125,000 per acre or \$1,042,500 for the subject property. The subject property, however, was assessed for only \$866,400. *Searcy testimony; Resp't Exs. 3-5.*

- c) Comparable 1 from the Assessor's analysis involves part of the same property at Cassopolis and County Road 6 that Mr. Aupperle pointed to in his testimony. Mr. Aupperle, however, relied on a distressed sale of an eight-acre³ parcel that sold for \$500,000 one day before it was scheduled to be auctioned. By contrast, the Assessor relied on the sale of a smaller portion of that property (1.32 acres) for \$427,324 just one year later. The second sale better indicates property values in the area. *Searcy testimony; Resp't Exs. 4-5; Pet'r Ex. 2.* Mr. Aupperle's second purportedly comparable property sold on February 23, 2012, which was outside the timeframe used for determining 2010 assessments. *Searcy testimony; Pet'r Ex. 8.*
- d) According to the Assessor, the subject property's March 1, 2010 assessment was in line with the market for that date. After reviewing sales, the Assessor determined that values for 2011 and 2012 had decreased, and she adjusted the subject property's assessment accordingly. But for the March 1, 2010 assessment date, the subject assessment was reasonable. *Searcy testimony.*

11. The official record for this matter is made up of the following:

- a) The Form 131 petition with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Form 131 Petition with attachments (9 pages)

Petitioner Exhibit 2: Sales Disclosure Form for the property located at County Road 6 and Cassopolis Street (6 pages)

Petitioner Exhibit 3: FM Stone Commercial Listing Agreements and Modifications (3 pages)

³ Mr. Aupperle referred to the property as being 6.93 acres. But neither he nor the Assessor explained where they got their measurements. The Assessor did not address the issue at all, while Mr. Aupperle testified that he determined the parcel's size from unidentified records outside the sales disclosure form.

Petitioner Exhibit 4: Photographs of the subject property and area (8 photographs labeled 4-1 through 4-8)
Petitioner Exhibit 5: 2010 property record card (“PRC”) for the subject property (2 pages)
Petitioner Exhibit 6: 2012 PRC for the subject property (2 pages)
Petitioner Exhibit 7: Map of subject property
Petitioner Exhibit 8: PRC for 1635 Cassopolis Street (3 pages)

Respondent Exhibit 1: 2010 PRC for the subject property
Respondent Exhibit 2: Aerial photograph of the subject property
Respondent Exhibit 3: Sales Comparison Reconciliation (valuation)
Respondent Exhibit 4: Comparable Land Analysis (Grid)
Respondent Exhibit 5: Comparability Analysis (6 sales)

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: Notice of Appearance from Beth Henkel⁴
Board Exhibit E: Authorization for Mr. Aupperle to appear on behalf of Frontier

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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). In making its case, the taxpayer must explain how each piece of evidence relates to its 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”). If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

13. Frontier did not make a prima facie case for reducing the subject property’s land assessment. The Board reaches this conclusion for the following reasons:

⁴ Although she provided a Notice of Appearance for the Assessor, Ms. Henkel did not appear at the hearing.

- a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party’s evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice (“USPAP”) often will be probative. *See id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
- b) In any case, 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). For March 1, 2010 assessments, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f) (2010).
- c) Mr. Aupperle pointed to several factors that he claimed detracted from the subject property’s value: (1) the property is not visible from Cassopolis Street; (2) it has only a narrow service road for access; (3) it borders undesirable properties; and, (4) it has mounds of dirt and weeds that make it unattractive to buyers. While those factors likely affected the property’s market value-in-use, Frontier needed to offer probative evidence to quantify the degree to which they did so or to otherwise show the property’s value. Mr. Aupperle did point to Mr. Tuff’s estimate that it would cost \$250,000 for building an access road to Johnson Road, but he did not explain how Mr. Tuff arrived at that estimate. In any case, the Assessor already applied a 50% negative influence factor to the property, which adjusted the property’s assessment by far more than \$250,000.
- d) Mr. Aupperle also pointed to listing agreements for the subject property. Where a property has been marketed in a commercially reasonable manner without selling, the seller’s asking price may at least tend to show the ceiling on that property’s market value. The Board therefore turns to the subject property’s listing history.
- e) The subject property was listed at \$1,300,000 for the entire 2010 calendar year. While that listing might tend to show that the subject property was worth no more than \$1,300,000 as of March 1, 2010, it does nothing to rebut the subject property’s assessment of \$866,400. Although reduced its asking price, that asking price did not drop below the property’s assessment until November 2011. Other than Mr. Aupperle’s conclusory assertion that the market collapsed in 2008 and had yet to recover, Frontier did not explain how those reduced listings related to the property’s market value-in-use as of the March 1, 2010 valuation date. While the Assessor arguably lent some support to the notion that the market for commercial property remained stable for the six or seven years preceding the Board’s hearing, she also

- testified that she reduced the subject property's assessment in 2011 and 2012 to reflect market declines. On those facts, the subject property's list price in November 2011 and beyond has little or no probative weight. *See Long* 821 N.E.2d at 471 (holding that an appraisal that estimated a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- f) Mr. Aupperle's vague reference to single person or entity declining to buy the property for \$600,000 similarly lacks probative weight. He offered almost no details about the proposed sale and similarly failed to explain how it related to the subject property's market value-in-use as of the relevant valuation date.
- g) Mr. Aupperle next pointed to two other properties located on Cassopolis Street. By themselves, sale prices for other properties do not show a given property's market value-in-use. But when one analyzes those sales prices using generally accepted appraisal principles, such as the sales-comparison approach, that raw data can be transformed into a reliable value indicator. *See generally*, MANUAL at 13-14 (describing the sales-comparison approach). In order to use a sales-comparison approach as evidence in an assessment appeal, however, one must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative of the properties' comparability. *Long* 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- h) Mr. Aupperle did little to compare the other two Cassopolis Street properties to the subject property. At most, he testified that both properties had frontage on Cassopolis Street. The Assessor acknowledged at least some similarities between the subject property and a carved-out portion of one of the two properties—the property at Cassopolis and County Road 6. But she also asserted that the transaction Mr. Aupperle relied on involved an atypically motivated seller and was therefore not a good indicator of the larger property's market value-in-use. Under those circumstances, the fact that the Assessor used a carved-out portion of that larger property in her own sales-comparison analysis does little to bolster Mr. Aupperle's analysis.
- i) In any case, Mr. Aupperle did little to identify or account for any relevant differences between his purportedly comparable properties and the subject property. Thus, his analysis falls short of what the Tax Court contemplated in *Long*. Also, Mr. Aupperle's second sale (1635 Cassopolis Street) occurred on February 23, 2012—more than 23 months after the March 1, 2010 valuation date at issue in this appeal. As already explained, Mr. Aupperle did little to explain how sales or listings from 2012 related to the subject property's market value-in-use as of the relevant valuation date. For all those reasons, Frontier's purportedly comparable sales data has little or no probative value.

Conclusion

14. Frontier failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: July 12, 2013

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.