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

Petition: **57-004-16-1-3-02238-16**
Petitioner: **Garrett LLC**
Respondent: **Noble County Assessor**
Parcel: **57-09-04-400-482.000-004**
Assessment Year: **2016**

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

Procedural History

1. The Petitioner initiated a 2016 assessment appeal with the Noble County Assessor on July 11, 2016.

2. On November 23, 2016, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment but not to the level requested by the Petitioner.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.

4. The Board issued a notice of hearing on June 29, 2017.

5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on August 3, 2017. He did not inspect the property.

6. Attorney Michael M. Yoder appeared for the Petitioner. Deputy Assessor Deidra D. Schlotterback appeared for the Respondent and was sworn as a witness. Michael E. Heitz, "principal" for Garrett LLC; Mark Anderson, senior project manager for IWM Consulting Group; and Dean Rummel, real estate agent, were all sworn as witnesses for the Petitioner.[1] Gavin M. Fisher, consultant, was sworn as a witness for the Respondent.[2]

[1] Cory Heitz, of Garrett LLC, was present at the hearing but was not sworn and did not testify.
[2] At the hearing, Mr. Fisher participated as if he was the Respondent's representative. While the Petitioner did not object, Mr. Fisher should have submitted written verification that he is a "professional appraiser" approved by the Department of Local Government Finance (DLGF) as required by 52 IAC 1-1-3.5. Additionally, Mr. Fisher should have presented a signed power of attorney as required by 52 IAC 2-3-2. Because he did not, and the Respondent was properly represented by Ms. Schlotterback pursuant to 52 IAC 2-2-4, the Board will view Mr. Fisher's role as that of a witness.

Facts

7. The subject property is located at 200 West Ohio Street in Kendallville.

8. The PTABOA determined a total assessment of $105,400 (land $95,400 and improvements $10,000).

9. The Petitioner requested a total assessment of $68,900 (land $68,900 and improvements $0).

Record

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

    a) Form 131 with attachments,

    b) A digital recording of the hearing,

    c) Exhibits:

Petitioner Exhibit 1:	Affidavit of Mayor Suzanne Handshoe dated July 21, 2017,
Petitioner Exhibit 2:	2015 Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) and subject property record card,
Petitioner Exhibit 3:	Special Warranty Deed dated June 27, 2014,
Petitioner Exhibit 4:	Settlement Statement dated June 30, 2014,
Petitioner Exhibit 5:	Quit Claim Deed dated June 3, 2015,
Petitioner Exhibit 6:	Aerial photograph of 19.31 acres owned by Petitioner as of January 2015,
Petitioner Exhibit 7:	Aerial photograph of 14.56 acres owned by Petitioner as of January 2016,
Petitioner Exhibit 8:	Property record card and tax information for a property located on East Lisbon Road,
Petitioner Exhibit 9:	Tax Deed for the East Lisbon Road property dated September 14, 2015,
Petitioner Exhibit 10:	Aerial photograph of 205 West Wayne Street,
Petitioner Exhibit 11:	Tax information for 205 West Wayne Street,
Petitioner Exhibit 12:	"Summary" prepared by Mr. Yoder.
Respondent Exhibit 1:	2015 subject property record card,
Respondent Exhibit 1A:	2016 subject property record card,
Respondent Exhibit 2:	Aerial photograph of subject property,
Respondent Exhibits 2A-E:	Aerial photographs of subject property,
Respondent Exhibit 3:	"On site" photograph of subject property,
Respondent Exhibits 3A-E:	"On site" photographs of subject property.

Board Exhibit A:	Form 131 with attachments and Mr. Yoder's Notice of Appearance,
Board Exhibit B:	Notice of hearing dated June 29, 2017,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Petitioner's Motion to Quash Subpoena,
Board Exhibit E:	Order Granting Petitioner's Motion to Quash Subpoena.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

a) The property's assessment is too high. The Petitioner is in the business of purchasing contaminated properties and cleaning them up. The Petitioner purchased the subject property for $1 from Dalton Corporation in June 2014 via a Commissioner's Deed after the property failed to sell at a tax sale. The Principal of Garrett LLC, Mr. Heitz, testified that he learned about the property through a meeting with the mayor. At that time, the property was vacant, and it was an "eyesore." But the Petitioner argues the 2014 purchase was an arm's-length transaction because the property was advertised as a tax sale in the newspaper. *Yoder argument; M. Heitz testimony; Pet'r Ex. 3.*

b) After purchasing the property, the Petitioner hired a contractor to perform Phase-II examination for environmental contaminants. The Petitioner also hired IWM Consulting Group to "do evaluation and protection" as the Petitioner demolished the improvements on the property. *M. Heitz testimony.*

c) According to Mr. Anderson, senior project manager for IWM, the property suffers from the existence of chlorine and solvents in the soil and ground water. The property is also hindered by metal contamination. Additionally, there is between two and fifteen feet of "foundry sand" covering the entire property, with the majority located on the parking lot. Before anything could be built on the property, it would be imperative "to put two feet of clay surface and a foot of top soil over the sand." *Anderson testimony.*

d) Currently, the property is in a "voluntary remediation program." The Petitioner is voluntarily cleaning the property "to standard." Once "the standard" is achieved, the Petitioner will receive a Covenant Not to Sue from the State of Indiana for the specified chemicals that were once on the property. *Anderson testimony.*

e) Prior to January 1, 2016, the Petitioner transferred several acres from the original purchase. Specifically, the Petitioner transferred 4.75 acres to Garrett Well LLC in May 2015. The Petitioner also "sold a portion" that "fronts Drake Road" to East Noble School Corporation. As of the relevant January 1, 2016, assessment date, no buildings existed on the subject property. *M. Heitz testimony; Pet'r Ex. 5, 6, 7.*

f) According to the Petitioner, the property has "zero value." The property is unusable, and no one would consider buying it without obtaining a "comfort letter" from the State of Indiana regarding the environmental concerns. However, the Petitioner is willing to accept a total land assessment of $68,900, the land assessment the Petitioner and Respondent agreed to for the 2015 assessment year. *Rummel testimony (referencing Resp't Ex. 1A); Yoder argument.*

12. Summary of the Respondent's case:

a) The property is correctly assessed. While the Petitioner has shown that the property suffers from some contamination, the Petitioner failed to offer any evidence correlating that to a diminution of value. *Fisher argument.*

b) The 2014 purchase of the property was not an arm's-length transaction because there was no reasonable exposure to the market. Further, the acquisition price of $1 could not have been true market value if the Petitioner was able to in turn "sell a portion" of that acquisition for a profit. *Fisher argument.*

c) Finally, the Petitioner's purportedly comparable properties, set forth in an exhibit but not testified to, do not meet the "reasonable criteria" for determining market value. The Petitioner did not provide any evidence that the properties had reasonable exposure to the market leading up to the sale or transfer. Additionally, there were "extenuating circumstances" surrounding the sales, and the properties sold via Commissioner's Deeds. *Fisher argument (referencing Pet'r Ex. 12).*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 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). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

14. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

15. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased

above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, there is no dispute the subject property changed between March 1, 2015, and January 1, 2016. Specifically, prior to January 1, 2016, the Petitioner transferred various acres to two different entities. Additionally, the Petitioner demolished the improvements on the property prior to the January 1, 2016, assessment date. Even if the Board were to view this as the *same property*, the total assessment decreased from $200,000 in 2015 to $105,400 in 2016. As such, the burden-shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

Analysis

17. The Petitioner failed to offer probative evidence of the property's value, but made a prima facie case the total assessment should be reduced.

    a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

    b) Regardless of the method used, a party must explain how the evidence relates to 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. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.

    c) Here, the Petitioner argued the subject property has "zero value" but would accept a total land assessment of $68,900, the property's 2015 land assessment. In support of this argument, the Petitioner offered essentially three arguments. First, the property is contaminated with hazardous chemicals. Second, the June 2014 purchase of the property for $1, along with the sales of purportedly comparable properties, is probative evidence of the value as of January 1, 2016. And lastly, the parties' 2015 stipulation is probative of the property's value as of January 1, 2016.

    d) First, there is no dispute that the property is contaminated with hazardous chemicals. Certainly, the existence of contamination could greatly lower a property's value and make it more difficult to sell. Still, it is incumbent on the Petitioner to offer

probative evidence as to what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs,* 704 N.E.2d at 1119 (Ind. Tax Ct. 1998).

e) To that end, the Petitioner offered evidence regarding the 2014 purchase of the property. Because the purchase date is nearly 18 months removed from the relevant valuation date of January 1, 2016, and the Petitioner failed to relate the purchase price to the valuation date in question, it lacks probative value.

f) Further, it does not appear this sale meets the conditions of a market value sale. As explained in the Manual, market value is:

> [T]he most probable price, as of a specified date, in cash, or terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell *after reasonable exposure in a competitive market under all conditions requisite to a fair sale*, with the buyer and seller each acting prudently, knowledgably, and for self-interest, and assuming *neither is under undue duress.*

MANUAL at 5-6 (emphasis added).

g) Here, the evidence indicates that two key indicia of a market value sale may have been missing. First, the Petitioner failed to establish the property was exposed to the market for a reasonable time. While the Petitioner argued the tax sale for the property would have been advertised "in the newspaper," there is no evidence indicating when or for how long it was listed, or how many people were exposed to it. It is worth noting, Mr. Heitz testified that he learned about the property though "a meeting with the mayor" and not a sale listing. Second, according to testimony and evidence, it appears likely that the previous owner of the property, Dalton Corporation, may have been under undue duress. Because the property was "vacant" and up for tax sale, the Board can only assume that Dalton Corporation abandoned it.

h) With that being said, it is not impossible for this type of transaction to qualify as a reliable indicator of market value-in-use. But, where the preponderance of the evidence indicates that the sale is not reliable, the burden falls back on the Petitioner to provide some evidence the sale is reliable. The Petitioner failed to do so. Thus, given the circumstances, the weight of the evidence tends to indicate the Petitioner's purchase price is not, by itself, indicative of market value-in-use. For these reasons, the purchase price lacks probative value.

i) While the Petitioner did not discuss them, a list of purportedly comparable properties was introduced as evidence. The Board infers that the Petitioner intended to use the sales-comparison approach to prove the property's value. *See* MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466, 469.

j) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long,* 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioner's evidence lacks any of this analysis, and therefore lacks any probative value.

k) Finally, the Petitioner pointed to the parties' 2015 stipulation that the land be assessed at $68,900. However, a stipulation agreement is a compromise between a taxpayer and an assessing official. Therefore, a stipulated value does not constitute evidence of the correct valuation of a property.

l) Even if a stipulation could have some probative value in an assessment appeal, here the property changed significantly between the 2015 and 2016 assessment dates. Several acres were transferred, improvements were demolished, and the Petitioner began the process of cleaning up the property. Finally, it is a well-settled concept in Indiana that each assessment year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm'rs,* 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs,* 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("[F]inally, the court reminds Fleet Supply that each assessment and each tax year stands alone. … Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.")

m) Thus, for these reasons, the Petitioner's evidence is not probative of the property's value as of January 1, 2016. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

n) However, the Petitioner did make a case for a change in the assessment. Specifically, Mr. Heitz testified no buildings remain on the property and "everything was taken down" prior to January 1, 2016.

o) Mr. Heitz's testimony regarding the lack of buildings is undisputed. Further, in examining both parties' aerial photographs, the Board finds it inconclusive as to whether any buildings existed on the subject property as of January 1, 2016. Thus, Mr. Heitz's undisputed testimony carries the day.

p) As such, the Board orders the utility shed and pole barn, both present on the 2016 assessment, be removed. *See Resp't Ex. 1A.* [The true tax value attributable to these

two items must be calculated and removed from the 2016 assessment by the Respondent.[3]]

Conclusion

18. The Board generally finds for the Respondent. However, the assessment must be reduced to reflect the removal of the utility shed and the pole barn.

Final Determination

In accordance with these findings and conclusions, the 2016 assessment must be reduced.

ISSUED: November 1 , 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.

[3] The "improvements section" of the 2016 property record card also includes assessments for paving. The Board can only assume this is for the "parking lot" Mr. Anderson referred to. Thus, the assessments attributed to the paving should not be disturbed.