

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

Petition: 10-005-09-1-4-10005
Petitioner: Jackson Leasing Co.
Respondent: Clark County Assessor
Parcel: 10-14-01-801-577.000-012
Assessment Year: 2009

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

Procedural History

1. The Petitioner initiated an assessment appeal by written document dated May 7, 2010.
2. The PTABOA mailed notice of its decision, Form 115, on November 24, 2010.
3. The Petitioner appealed to the Board by filing a Form 131 Petition for Review of Assessment on January 3, 2011. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on May 17, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 11, 2012. He did not inspect the property.
6. Paul Kropp, a certified tax representative, represented the Petitioner and was sworn as a witness. Attorney Marilyn Meighen represented Clark County Assessor Vicky Kent Haire. Charles Mills, Jr., a real estate appraiser and certified tax representative, was sworn as a witness for the Respondent.

Facts

7. The property is a nursing home located at 586 Eastern Boulevard, Clarksville. The facility is commonly known as Riverview Village.
8. The PTABOA determined the assessed value is \$1,365,100 for land and \$2,543,300 for improvements (total assessed value of \$3,908,400).
9. The Petitioner claimed the total assessed value should be \$2,499,300.

Record

10. The official record for this matter contains the following:
 - a. The Form 131 Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Kropp email dated July 30, 2010, Kropp email dated July 20, 2010, Kropp letter dated November 4, 2010, and IBTR Order for petition number 55-005-08-1-4-00020 dated November 12, 2010,
Petitioner Exhibit 2 – Emails between Kropp and Respondent from November 2010,
Petitioner Exhibit 3 – Property record card for the subject property printed July 15, 2010,
Petitioner Exhibit 4 – Property record card for the subject property printed November 9, 2010,
Petitioner Exhibit 5 – Undated and unsigned “Petitioner observations” (one page, apparently from Kropp & Associates),
Petitioner Exhibit 6 – Comparable sales data (although on this exhibit the Clark Rehab property is identified as the subject of the appeal, that statement is incorrect),
Petitioner Exhibit 7 – Data (assessment, number of beds, assessment per bed) about 20 American Senior Communities’ nursing homes, Chicago Title Insurance estimated buyer’s/borrower’s settlement statement, Vigo County assessment data sheet for a Terre Haute nursing home,
Petitioner Exhibit 8 – Google earth photograph of the subject area,
Respondent Exhibit A – Property record card for the subject property printed June 8, 2012,
Respondent Exhibit B – December 16, 2010, email from Kropp,
Respondent Exhibit C – Sales disclosure form for Clark Rehab,
Respondent Exhibit D – Comparable sales data (although on this exhibit the Clark Rehab property is identified as the subject of the appeal, that statement is incorrect) with supporting documents,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a. The property was originally assessed at \$2,499,300. That value was approximately \$20,000 per bed before the Petitioner's request for an informal hearing with the Respondent. The Petitioner disagreed with the allocation of value between land and improvements, but agreed with the total assessed value. The Petitioner withdrew the appeal on July 30, 2010. *Kropp testimony; Pet'r Exs. 1, 5.* Nevertheless, on November 9, 2010, the Respondent's office notified the Petitioner's representative that the withdrawal of the appeal was not accepted and the assessment had been increased to \$3,908,400. *Kropp testimony; Pet'r Ex. 2.* The assessed value should not have been increased from the original \$2,499,300 figure. *Kropp testimony; Pet'r Ex. 5.*
- b. The Rensselaer Care Center and the Mitchell Manor sales identified by the Respondent are not arm's-length transactions. Both are part of Life Care Centers and were transferred to Heart Care Center, then leased by the respective cities. *Kropp testimony; Pet'r Ex. 6; Resp't Ex. D.*
- c. The Rensselaer Care Center sale is \$10,000 per bed higher than any other sale on the list. That property was involved in a state hearing and appraised at only \$25,000 per bed in 2005. *Kropp testimony.*
- d. The New Albany facility that sold for \$13,227 per bed is a better comparable property because it is within 10 to 15 miles from the subject property. The others on the list are not even within 50 miles. *Kropp testimony; Pet'r Ex. 6.*
- e. American Senior Communities operates twenty facilities outside of Indianapolis that have an average assessment of \$17,876 per bed. A value of \$20,000 per bed would be a good price estimate for the subject property. *Kropp testimony; Pet'r Ex. 7.*

12. Summary of the Respondent's case:

- a. Although Mr. Mills is an appraiser, he explained that in this case he was only presenting data concerning sales of nursing homes that "we" have compiled. He testified that he did not do an appraisal of the subject property and he was not giving any values as to what the property might be worth. *Mills testimony.*
- b. Mr. Mills presented confirmed data about twelve sales of nursing homes throughout Indiana from July 2000 to December 2009. The data regarding those sales is summarized on the first page of Exhibit D. Supporting data sheets for each sale are located behind the sale grid. The sale price per bed for those properties ranges from \$13,227 to \$56,634 after extracting any personal property

and business value.¹ The median price per bed for these properties is \$37,710 and the mean price per bed is \$35,986. The subject property is assessed at approximately \$30,000 per bed, which is less than both the median and the mean of those other sales; however, Mr. Mills specifically declined to project a value for the subject property. *Mills testimony; Resp't Ex. D.*

- c. Potential buyers look at the income potential of a nursing home when making purchase decisions. *Mills testimony.*
- d. Clark Rehab is a nursing home located ½ to ¾ of a mile from the subject property (i.e. Riverview Village). Clark Rehab sold on December 31, 2008. The sales disclosure form states that the total sale price for the Clark Rehab property was \$3,575,000. “We typically take that as the net sale price—unless I’m told, or can verify otherwise.” But the form also states that the estimated value of personal property was \$655,000 and “Personal Property includes \$392,000.00 of goodwill.” Even if you subtract the \$655,000 from \$3,575,000 the result is almost \$30,000 per bed for Clark Rehab. *Mills testimony; Resp't Ex. C.*
- e. Mr. Mills did not inspect the Clark Rehab property or the subject property and consequently cannot make a determination about their comparability. *Mills testimony.*
- f. The elderly housing market has been stable. A trending factor from 2005 to 2009 would be very low. *Mills testimony.*
- g. The assessed value of the subject property is close to the sale price of Clark Rehab on a per bed basis. The current assessment is based primarily on the data from the Clark Rehab sale, but other nursing home sales support this assessment. *Meighen argument; Resp't Ex. C, D.*
- h. A Petitioner has no absolute right to withdraw an appeal petition. *Meighen argument, citing Joyce Sportswear Co. v. State Bd. of Tax Comm'rs, 684 N.E. 2d 1189 (Ind. Tax Ct. 1997).*

Analysis

13. Before getting to the underlying question of an accurate valuation of the subject property, we note the Petitioner’s claim that the Respondent failed to properly recognize the withdrawal of this appeal on or about July 30, 2010. The Respondent did not recognize the validity of the withdrawal during the earlier proceedings on this matter and now claims there was no absolute right to withdraw once the appeal was initiated by the

¹ Mr. Mills apparently based the statement about extracting personal property based on various data sheet entries noting “FF&E” amounts estimated by buyers. In the Clark Rehab hearing held just before this one he explained that FF&E means furniture, fixtures, and equipment. Mr. Mills also testified that in using the income approach to value a nursing home property “you would have to do a business value on this and allocate a certain amount of the business value to the real estate. And that is the way this is done.”

Petitioner. The Respondent cited *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs*, 684 N.E.2d 1189 (Ind. Tax Ct. 1997) as support for that position. But that decision may not establish the clear, absolute rule against voluntary withdrawal as suggested by the Respondent. In *Joyce Sportswear* the Tax Court considered Trial Rule 41(A) on voluntary dismissal because the statutes and rules governing administrative adjudications were silent on this point. Neither party addressed whether there have been any relevant changes in statutes or administrative rules during the intervening 15 years. Although it was determined that Joyce Sportswear had no absolute right to withdraw its petition, a substantial part of the reasoning was tied to the advanced stage of the proceedings—two evidentiary hearings had been held. The Tax Court stated, “[I]f the State Board can demonstrate either substantial expense or legal prejudice, Joyce’s petition to withdraw was properly denied. *** From a procedural standpoint, most of the work had been done on this case. To have allowed Joyce to withdraw would have meant a substantial waste of time and effort. This constitutes a substantial expense. Therefore, a voluntary withdrawal as of right was inappropriate, and the State Board was well within its power to deny it.” *Id.* at 1193-94. Neither party proved how the relevant facts actually compare to the facts in *Joyce Sportswear*. Here the Petitioner’s withdrawal was offered at an early stage of the proceedings—apparently before the Respondent even met with Mr. Kropp to discuss the matter in response to his letter of May 12, 2010. The Petitioner offered no substantial argument on the point and we will not make a case for either party. In the absence of substantial, relevant facts and argument related to withdrawal of the appeal, we make no determination on that point. Furthermore, our final determination on the valuation issue makes the withdrawal issue moot.

14. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

I.C. § 6-1.1-15-17.2.

15. In this appeal, both parties agreed that the Respondent had the burden to prove the assessment is correct.

16. The Respondent failed to present a prima facie case that the current assessment is correct.
- a. Real property is assessed based on 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Other 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. MANUAL at 5.
 - b. The Respondent's only witness, Mr. Mills, is an appraiser, but he did not appraise the subject property. He also made it clear that he was offering no opinion of value regarding the subject property. He simply offered data that had been compiled for twelve sales of other nursing homes in Indiana from July 2000 to December 2009. Although some of the evidence refers to them as "comparable" nursing home sales, a comparability conclusion is not supported by the record. No substantial evidence was presented to establish real comparability between the subject property and any of the others. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. Where there are differences, it is important to establish what they do to the relative values of the properties being examined. *Id.* at 471. The Respondent provided very little evidence and virtually no analysis of the similarities and differences between these nursing homes.²
 - c. The Respondent and Mr. Mills just attempted to compare selling price per bed.³ According to their calculations, the highest selling price shown was \$56,634 per

² The data sheets for individual properties in Exhibit D contain some of the type of information that might have been useful for a meaningful comparison of values. The Respondent, however, was required to walk the Board through such analysis and failed to do so. In making its case, a party must explain how each piece of evidence relates to the assessed value it claims to be correct. 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"). The Respondent did not do so for any of the purportedly comparable sales.

³ It appears that Mr. Mills adjusted the total selling prices of most of the other properties by subtracting for furniture, fixtures, and equipment (FF&E) in the amounts estimated by those buyers. His supporting data shows a tremendous range on the percentage of FF&E. For example, in one sale the total price was \$4,160,000 while the FF&E was \$1,074,564 and in another sale the total price was \$9,000,000 while the FF&E was \$108,435. The Respondent did not establish that Mr. Mills' methodology of computing sale price per bed conforms to generally accepted appraisal principles.

bed and the lowest was \$13,227 per bed. (Such a wide range probably indicates substantial differences among those facilities.) From those figures the median price per bed was \$37,710 and the mean was \$35,986 per bed. The subject property assessment is less than the median and the mean at approximately \$30,000 per bed. But the Respondent failed to establish how that information provides relevant, probative evidence for this case. Without meaningful comparison of the properties, it is not possible to draw a valid valuation conclusion about the value of the subject property from the other sales—and Mr. Mills pointed out that he had not done so.

- d. The Respondent claimed the assessed value is based primarily on the sale of a nearby nursing home, Clark Rehab, where the purchaser paid \$3,575,000. But that transaction involved more than just the real property. Clearly personal property was also involved in that sale. In situations where more than the value of the real property is represented in the selling price, it is necessary to determine the part of the selling price that actually is for the real property. *See Grant Co. Assessor v. Kerasotes Showplace Theatres*, 955 N.E.2d 876, 881-2 (Ind. Tax Ct. 2011)(recognizing that Indiana’s assessment system “does not ‘allow [] assessors to assess things other than real property rights for ad valorem taxation.’”) This case requires recognition and application of that same limitation. Therefore, relying on the sale price of Clark Rehab to prove an accurate assessed value is not as simple as it might first appear to be. In this case it is not clear what the total selling price for Clark Rehab actually represents. But even if the buyer paid \$3 to \$3.5 million for the Clark Rehab real property (approximately \$30,000 per bed), the Respondent still failed to prove the disputed assessment is correct.
- e. The Respondent focused entirely on the fact that both properties are nursing homes and they are in close proximity as the proof of comparability. Significantly, Mr. Mills testified that he could not characterize Clark Rehab as comparable to the property under appeal because he had not inspected either of the properties. The evidence does not establish the comparability of these two properties. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. Therefore, the Respondent’s evidence regarding the sale of Clark Rehab does not help to prove that the assessed value is correct.
- f. The Respondent did not support the assessed value of \$3,908,400 with substantial, probative evidence.
- g. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden the Board has ordered that the assessment be returned to the assessed value of the year before. In this case

doing so would reduce the assessment to \$1,911,100. But that amount is less than the Petitioner claimed. The Petitioner claimed a total assessment of \$2,499,300 with \$1,365,100 for land and \$1,134,200 for improvements would be accurate. In other cases the Board has determined that it will not reduce the assessment to less than what a petitioner requested. *See Castleman v. Steuben Co. Assessor*, Petition No. 76-006-08-1-5-00001 (IBTR decision issued Feb. 6, 2012). A similar conclusion is appropriate here.

Conclusion

17. Because the Respondent failed to prove the current assessed value is correct, the Petitioner's claim prevails.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to \$1,365,100 for land and \$1,134,200 for improvements and a total of \$2,499,300.

ISSUED: October 17, 2012

Commissioner, Indiana Board of Tax Review

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- 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>