

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

Petition: 53-009-06-1-4-00239
Petitioner: Jeffrey & Teresa Bland Trust
Respondent: Monroe County Assessor
Parcel: 015-50680-00
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated August 10, 2007.
2. The PTABOA mailed its decision on October 16, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on December 3, 2007, and elected to have this case heard according to 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 conduct an inspection of the property.
6. Certified Tax Representative Greg Poore represented the Petitioner. Attorney Marilyn Meighen represented the Respondent. Greg Poore, Monroe County Assessor Judith Sharp, and Ken Surface were sworn as witnesses at the hearing. (Assessor Sharp did not testify.)

Facts

7. This is a case about commercial property located at 1611 South College Avenue in Bloomington.
8. The PTABOA determined the assessed value is \$79,200 for land and \$20,400 for improvements (total \$99,600).
9. The Petitioner requested an assessed value of \$20,400 for land and \$20,400 for improvements (total \$40,800).

Contentions

10. Summary of the Petitioner's case:

- a. The subject property was part of a three parcel sale. All three parcels are shown on the Petitioner Exhibit B map in black—the subject parcel is the one on the left. It fronts on College Avenue, which is a dead-end street in a depressed area. The other two parcels front on South Walnut Street, a high-traffic thoroughfare that is good for retail or commercial use. An alley separates the subject property from the other two. On the map, the area to the left of the subject property is a flood zone. *Poore testimony; Pet'r Ex. A, B.*
- b. The total purchase price for all three parcels was \$310,000. The buyer, Bob Bland, said that even though a family relationship existed between the buyer and the seller (Bob Bland and Jeff Bland are cousins), the purchase was not “a deal” and he had to pay “full price.” *Poore testimony.*
- c. The combined assessed value for the three parcels is \$368,000. A comparison of the purchase price to the combined assessed value indicates over assessment. An analysis of the assessed values led to the conclusion that the subject property's land value was incorrect. *Poore testimony.*
- d. Because the subject property fronts on College Avenue, it makes sense to value the subject property using the same land rate as adjacent property. Using the same land rate as the adjacent property on College Avenue, the land value of the subject property would be \$20,400 and without changing the current improvement value its total assessed value would be \$40,800. Valuing the subject property at \$40,800 would make the combined assessed value for the three parcels be \$310,000. *Poore testimony; Pet'r Ex. A.*
- e. The property offered by the Respondent as a comparable property is not a good comparable because its use is a used car lot. The subject property had been used as a detailing garage when the three parcels were used as a car lot, but now the subject property is used as an automobile repair shop. *Poore testimony.*

11. Summary of the Respondent's case:

- a. The subject property is part of a commercial property that consists of three parcels. The Respondent Exhibit B plat map shows the subject property, parcel 015-50680-00, and the other two, parcels 14010-00 and parcel 14000-00.¹ The use of the three parcel property is a used car lot and all three parcels support that commercial operation. *Surface testimony; Resp't Ex. B.*

¹ On Resp't Ex. B, the Respondent inadvertently labeled two parcels as 14010-00, but it was agreed that the lower one of them should be labeled 14000-00.

- b. Those three parcels sold for \$310,000 on May 3, 2006. The seller was the Jeffrey W. and Teresa J. Bland Trust. The buyers were Robert J. and Heather M. Bland. There appears to be a family relationship between the parties. Consequently, the price was not considered to be a valid indication of market value. *Surface testimony; Resp't Ex. C.*
- c. The assessment date under appeal is March 1, 2006, with a valuation date of January 1, 2005. With trending, the 2006 assessment uses sales from January 1, 2004 through December 31, 2005. The date of sale does not correspond with the valuation date, and it is outside the 2004-2005 window for trending sales. The Petitioner made no effort to relate the sale to an acceptable time frame. *Surface testimony; Meighen argument.*
- d. The property record cards for the subject property and the other two parcels that sold with it show that the assessed land value was established using a land base rate of \$10 per square foot. *Surface testimony; Resp't Ex. E-1, E-2, E-3.*
- e. The property immediately south of the subject property, labeled "015-26210-00 sold property" on the plat map, is also a used car lot. It sold for \$190,000 in a sheriff's sale on November 18, 2005. Sheriff's sales are typically distressed sales, and consequently, property will sell for less than market value. The 2006 assessment for this property is \$174,500. That assessment is less than its 2005 sale price. Parcel 015-26210-00 is comparable because it has the same basic use as the subject property, it is in the same basic area as the subject property, and its assessed land value also was based on \$10 per square foot. *Surface testimony; Resp't Ex. B, D-1, D-2.*
- f. The Petitioner's calculation for the proposed value of the subject property took the sale price for the three parcels, accepted the assessed value for two of the parcels, and adjusted the land value of the subject property to get a value that equals the total sale price for all three. According to the Petitioner, "[i]f the land were consistently assessed with the other lots along the dead-end road, the land value would be \$20,400 and the total of the three parcels would be in line with the purchase price." Apparently the Petitioner refers to parcel 015-62620-00, which is immediately north of the subject parcel. The property record card and photograph of that property show it is a residential property. Residential use is completely different from the use of the subject property. The residential land value was established using a front foot rate rather than the square foot rate. It is not truly comparable to the subject property. *Surface testimony; Resp't Ex. F.*

The Hearsay Objection

12. The Respondent objected to Mr. Poore's testimony that the buyer said the subject property and the two other related parcels were purchased at full price. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the

matter asserted. It can be oral or written. The essence of the problem is that the Respondent was precluded from cross-examining the buyer about what he purportedly said. The Respondent's hearsay objection is correct. That testimony is hearsay.

13. The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3. The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it. In this particular case, the testimony that the buyer paid full price is admitted. But because the Respondent objected, it cannot serve as the sole basis for the Board's decision.

Record

14. The official record contains the following:

- a. The Petition,
- b. Digital recording of the hearing,
- c. Petitioner Exhibit A – Summary of contentions and the proposed assessment with the property assessment detail records for the subject property, parcel 015-14010-00, and parcel 015-14000-00,
Petitioner Exhibit B – Plat map and an aerial photograph for the subject property, parcel 015-14010-00 and parcel 015-14000-00,
Respondent Exhibit A – Aerial photograph,
Respondent Exhibit B – Map showing the location of the subject property, parcel 015-14010-00, parcel 015-14000-00, parcel 015-62620-00, and parcel 015-26210-00,
Respondent Exhibit C – Sales disclosure form,
Respondent Exhibit D-1 – Property record card for 1710 South Walnut Street,
Respondent Exhibit D-2 – Sales Disclosure Form for 1710 South Walnut Street,
Respondent Exhibit E-1 – Property record card for 1611 South College Avenue (the subject parcel) with a photograph,
Respondent Exhibit E-2 – Property record card for 1616 South Walnut Street (parcel 015-14010-00) with a photograph,
Respondent Exhibit E-3 – Property record card for 1618 South Walnut Street (parcel 015-14000-00),

Respondent Exhibit F – Property record card for 1607 South College Avenue with a photograph,
Board Exhibit A – Form 131 Petition for Review of Assessment with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

- d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:
 - a. 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).
 - b. In making its 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”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. The Petitioner failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
 - a. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It 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 (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. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to

offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.

- b. Clearly, sales information regarding the subject property can be an acceptable way to prove that an existing assessment is wrong and to prove what the actual market value-in-use of that property really is. The Petitioner's case focused on the bald fact that the subject parcel and two other parcels sold for \$310,000, while the assessments for those three parcels totaled \$368,000.² The Petitioner's basic premise is that this situation indicates over assessment, which should be corrected by changing the assessment of the subject parcel to a value that along with the other two parcels would total \$310,000. This premise, however, is fatally flawed.
- c. The Respondent established that the Petitioner, the Jeffrey W. and Teresa J. Bland Trust sold the three parcels to Robert J. and Heather M. Bland. After the Respondent brought up the apparent family relationship, the Petitioner admitted that Jeffrey and Robert are cousins. The Respondent correctly argued that where there is a sale from one family member to another family member, one must question whether the price is a valid indication of market value. In this case, no party to the transaction testified and there is no evidence about the terms of the sale, how the property was marketed, how long it was on the market, or other facts that might tend to show the price was, or was not, a reliable indication of market value. Mr. Poore simply attempted to support the case by testifying that Robert Bland told him he paid full price for the property. But as previously discussed, the Respondent objected to that hearsay evidence. Within the overall context of this particular case, the hearsay statement attributed to Robert Bland is not convincing evidence that \$310,000 actually was market value for all three parcels—a point that is the crux of the Petitioner's case.
- d. The Respondent also established without any dispute that the sale took place on May 3, 2006. A 2006 assessment, however, must have a value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Evidence relating to a different date must have an explanation about how it demonstrates or is relevant to the value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner failed to establish how the sale price might relate to the required valuation date, January 1, 2005. This point is another fatal flaw in the Petitioner's case.
- e. Along with the argument based on sale price, the Petitioner claimed that “[i]f the land were consistently assessed with the other lots along the dead-end road, the land value would be \$20,400.” *Pet'r Ex. A*. Such a conclusory statement is not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner did not reference any specific lot

² The Petitioner did not offer any documentation for this sale. Initially, the Petitioner did not even disclose the other party or the date of the sale.

as a comparable and failed to provide any meaningful facts or analysis for purposes of comparison. *See Long*, 821 N.E.2d at 471 (stating that proving value with comparables requires explaining the characteristics of the subject property, how those characteristics compare to those of the purported comparables, and how any differences affect the relevant market value-in-use of the properties). If the statement about other lots on the same road was intended to be a reference to the lot immediately north of the subject property, the evidence indicates the other property at 1607 South College Avenue is used for residential purposes, while the subject property is used for commercial purposes. This is a significantly different use, which the Petitioner completely ignored. If there was any way to compare the value of those properties, the Petitioner failed to establish it. The Petitioner did not support its case with any probative evidence based on the value of comparable property.

- f. When a taxpayer fails to provide probative evidence supporting its claim that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

17. The Petitioner failed to prove its case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment 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>>