REPRESENTATIVE FOR PETITIONER: Douglas C. Holland, Attorney-at-Law

REPRESENTATIVE FOR RESPONDENT: Robert Ewbank, Attorney-at-Law

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BEFORE THE
INDIANA BOARD OF TAX REVIEW

Maurice & Teresa Kuebel,	)	Petition No.: 15-016-06-1-4-00115
	)	15-016-06-1-4-00116
Petitioners,	)	
	)	Parcel: 15-07-02-304-001.001-016
	)	15-07-02-304-010.000-016
v.	)	
	)	Dearborn County
Dearborn County Assessor,	)	Lawrenceburg Township
	)	2006 Assessment
Respondent.	)	

Appeal from the Final Determination of the
Dearborn County Property Tax Assessment Board of Appeals

December 18, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUES

The Petitioners focused on claims that the Board should change the land classification and apply negative influence factors to reduce the assessments on their property. Those assessment methodology issues, however, are not the fundamental, determinative questions. The real issues are as follows: Did the Petitioners prove that the current assessments of $104,800 for one parcel and $250,800 for the other fail to accurately reflect the market value-in-use of the subject property and did they prove specifically what the correct assessment amounts should be?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is two contiguous, but separate parcels located on Eads Parkway (U.S. Highway 50). Parcel 15-07-02-304-001.001-016 is 1.02 acres of vacant, unimproved commercial land (Vacant Property). Parcel 15-07-02-304-010.000-016 is 0.63 acres of commercial land with a motel (Motel Property).

2. On May 5, 2008, the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the 2006 assessment on the Vacant Property is $104,800 and the 2006 assessment on the Motel Property is $250,800. On May 21, 2008, the Petitioners filed a Form 131 Petition seeking the Board's administrative review of that determination. They opted out of small claims procedures.

3. The Petitioners contend the assessed value should be $14,500 for the Vacant Property and $118,000 for the Motel Property.

4. The Board's designated Administrative Law Judge, Kay Schwade, held the hearing in Lawrenceburg on September 30, 2008. She did not conduct an on-site inspection of the property.

5. Maurice Kuebel, Aaron Durwin, Wayne House, and County Assessor Gary Hensley were sworn as witnesses and testified at the hearing.

6. The Petitioners presented the following exhibits:

    Exhibit 3 – Aerial plat map with the subject property highlighted in pink,
    Exhibit 6 – Property record card for the Motel Property,
    Exhibit 7 – Property record card for the Vacant Property,
    Exhibit 8 – Proposed findings for Maurice & Teresa Kuebel,
    Exhibit 9 – Transcript of testimony from the PTABOA hearing,
    Exhibit 10 – Various pages from the 2002 Assessment Guidelines,
    Exhibit 11 –Table 2-17, Influence Factors for Commercial and Industrial Land,
    Exhibit 12 – Table 2-14, Categories of Commercial and Industrial Land.

7. The Respondent presented the following exhibits:

Exhibit 1 – Appraisal for the Motel Property,
Exhibit 2 – Appraisal for the Vacant Property.

8. The following additional items are recognized as part of the record of proceedings:

Board Exhibit A – The 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit D – Motion for Evidence.

9. The Petitioners requested to submit a brief following the hearing. The Respondent declined the opportunity to respond. The Petitioner's brief and proposed findings were received timely. They are recognized as part of the record.

OBJECTIONS

10. The Respondent objected to Mr. House's testimony about things a buyer would consider in deciding how much to pay for a commercial property. The Respondent argued that he was not qualified as an expert in the area of land purchasing or valuation. The Petitioners argued that Mr. House has purchased other commercial property along Highway 50 and that fact gives him experience and some expertise. Much of his testimony was simply confined to general conclusions that do not require particular expertise. The objection to Mr. House's testimony is denied. The real question about all of his testimony is how much weight it has, not its admissibility.

11. The Petitioners objected to the admission of two appraisals of the subject property (Respondent's Exhibits 1 and 2) because the appraiser who did them, Jeffrey Thomas, was not present to testify and be cross-examined. That point is essentially a hearsay objection.[1] The Respondent argued that the appraisals are admissible under Indiana administrative rules, which is correct. Hearsay evidence is admissible, but with significant limitations:

[1] "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a "statement" can be either oral or written. These appraisals are hearsay.

> 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. Therefore, the appraisals are admitted into the record. But because the Petitioner objected, they cannot serve as the sole basis for the Board's decision.

SUMMARY OF THE PETITIONERS' CASE

12. The Vacant Property is not developed and has never been used for commercial purposes. It does not have utilities, road frontage, or direct access. It is zoned for local business rather than commercial/industrial use. The land classification should be changed to unuseable/undeveloped because without direct access and road frontage it cannot be developed. The value should be $12,500 an acre with a negative 10% influence factor to account for lack of access, road frontage, and utilities. *Holland argument; M. Kuebel testimony; Durwin testimony*. The value of the Vacant Property is not more than $5,000 or $6,000 because it is landlocked and does not have direct access. *House testimony*.

13. The Motel Property also is zoned for local business rather than commercial/industrial use. The Petitioners have a twelve-unit motel with a gravel parking lot. The motel is more than fifty years old and always in need of repair. It is highly depreciated. It competes with newer, national franchise motels in the area such as the Quality Inn, the Comfort Inn, and the Holiday Inn Express. The subject property is on the lower end of the market and charges lower rates to attract business. The existing structure is a negative influence on the value of the land. The location (next to a truck stop that operates all night) negatively impacts the value because of high traffic, noise, and gasoline odor. The land value for the Motel Property should get a negative influence factor. The land value of the Motel Property had been $80,000 per acre and that was reasonable. *Holland argument; M. Kuebel testimony; Durwin testimony.*

14. The Motel Property's income stream would be considered if purchasing the property. Consequently, the lower rates affect the value of the Motel Property. *House testimony*.

15. The subject property (both parcels) was listed for sale at $1,375,000 in the hope that some nationally franchised business would be interested, but there were no offers. The income from the current use of the property would not even be enough to make the monthly payments on a debt of $1,375,000. *M. Kuebel testimony.*

SUMMARY OF THE RESPONDENT'S CASE

16. The appraisal by Mr. Jeffrey D. Thomas valued the Vacant Property at $46,000 as of March 1, 2007. His appraisal valued the Motel Property at $236,000 as of March 1, 2007. *Ewbank argument; Resp't Ex. 1 and 2.*

ADMINISTRATIVE REVIEW AND BURDEN

17. 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).

18. 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").

19. 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.

ANALYSIS

20. 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 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. The primary method for assessing officials to determine fair market value-in-use is the cost approach. MANUAL at 3. To that end, 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.

21. Regardless of the approach used to prove a property's value-in-use, a 2006 assessment must reflect its value as of January 1, 2005. An appraisal or any other evidence of value must have some explanation as to how it demonstrates or is relevant to value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

22. The Tax Court has stated "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Petitioners offered the testimony of an Indiana certified general

appraiser, Aaron Durwin. But there is no evidence that Mr. Durwin appraised the subject property and he did not offer an opinion about the specific value of either parcel. To the extent that his testimony and conclusions have any probative value, the weight is far less under such circumstances. Primarily, Mr. Durwin's testimony provides a mixture of facts and conclusions that age, location next to a truck stop, noise, traffic, and lack of road access for the back acre are detrimental to the value of the subject property. These points probably are "negative influence factors" that reduce value. None of his testimony, however, establishes what a more accurate value-in-use for the property might be. Such testimony did little, if anything, to help make the Petitioners' case.

23. The Petitioners' other witnesses contributed similar evidence about things that probably lower the value of the subject property. The Vacant Property has never been developed or used for commercial purposes. It lacks utilities and road frontage. Access would be a problem for developing the Vacant Property separately or selling it to someone else.[2] The Motel Property is contiguous and has frontage on Highway 50. The motel is about fifty years old and only has gravel parking. A truck stop next to the motel is not good for the business. The motel has a difficult time competing with several newer motels in the same general area. But no probative evidence established a more accurate number for the assessments—conclusory statements about value are not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). And the testimony that the land value for the Motel Property had been $80,000 per acre is not relevant or probative evidence because each tax year stands alone. *Indianapolis Racquet Club v. State Bd. of Tax Comm'rs*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 n. 14 (Ind. Tax Ct. 1998). The totality of the evidence fails to overcome the presumption in favor of the existing assessment *and to prove what a more accurate value-in-use might be.*

[2] Some statements identified the Vacant Property as "landlocked." That term means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." BLACK'S LAW DICTIONARY 894 (8th ed. 2004). Other, undisputed evidence establishes that the Petitioners have access to the Vacant Property through their contiguous Motel Property. Therefore, it is not landlocked. Speculation that a rear parcel without access would be less valuable if they were to attempt to sell that part by itself is irrelevant to the value-in-use for the 2006 assessment.

24. Even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of market value-in-use in order to prevail. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (explaining that Indiana overhauled its property tax system and the new benchmark is market value-in-use, which shifts the focus from examining how the regulations were applied to examining whether an assessed value actually reflects that external benchmark.); *O'Donnell*, 854 N.E.2d at 94-95 (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system).

25. Much of the Petitioners' case focused on assessment methodology issues such as proper land classification and negative influence factors. The evidence and arguments regarding strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating that a taxpayer must show that the assessor's assessed value does not accurately reflect the property's value-in-use and strict application of the regulations is not enough to rebut the presumption that the assessment is correct). The Petitioners did not show the assessor's methodology failed to result in accurate assessments.

26. When taxpayers fail 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. 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. Nevertheless, in this case the Respondent offered two appraisals as evidence of what the value-in-use should be. One appraisal is for the Vacant Property and the other is for the Motel Property. The final estimates of value on both appraisals are less than the current assessments. As previously discussed, the Petitioner objected to these appraisals because the appraiser who did them did not appear at the hearing to be cross examined—the appraisals are hearsay. Although they were admitted as evidence, the rules are specific that "the resulting determination may not be based solely upon the hearsay evidence." 52 IAC 2-7-3. There is no other evidence to support the values that the

appraisals suggest. In addition, the appraisals purport to establish values as of March 1, 2007, and there is nothing relating those values to the required valuation date for this case, which would be January 1, 2005. Consequently, the assessments cannot be changed to the appraised values.

SUMMARY OF FINAL DETERMINATION

27. The Petitioners failed to make a prima facie case for a lower assessed value on either parcel. The Board finds in favor of the Respondent. The assessments will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

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Commissioner, 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, 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