

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

Petitions: 19-001-10-1-5-00017
19-002-10-1-5-00063
Petitioners: Terry Lottes & Mary Lou Yurin
Respondent: Dubois County Assessor
Parcels: 19-06-23-100-012.000-001
19-06-23-100-012.001-002
Assessment Year: 2010

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

Procedural History

1. The Petitioners initiated these assessment appeals with the Dubois County Property Tax Assessment Board of Appeals (PTABOA) on November 1, 2010.
2. The PTABOA issued notices of its decisions on December 15, 2010.
3. The Petitioners filed Form 131 petitions with the Board on February 3, 2011. They elected to have the cases heard according to the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the Board's administrative hearing on January 10, 2012. He did not inspect the properties.
5. The Petitioners were not present at that hearing, but they were represented by Attorney John S. Chappell. The Assessor was represented by Attorney Marilyn Meighen. County Assessor Gail Gramelspacher, chief deputy Angie Giesler, and Natalie Jenkins were sworn as witnesses; however, only Ms. Jenkins actually testified.

Facts

6. The subject properties are adjoining land-only parcels of .70 acres and 2 acres. They are located near Mill Street in or near Jasper.
7. The PTABOA determined that the 2010 assessment for the .70-acre parcel (number ending in 001) is \$9,800 and for the 2-acre parcel (number ending in 002) is \$50,000.
8. The Petitioners claimed the assessment should be \$5,000 for the smaller parcel and \$10,000 for the larger one.

Contentions

9. Summary of the Petitioners' case:

- a. The disputed assessments are too much because the subject parcels are classified as excess residential land rather than agricultural land. *Chappell argument.*
- b. The subject properties are the parcels marked as 12 and 12.1 on the aerial view shown on Exhibit 6. They could not be used as residential land because they have no street frontage and no utilities. Furthermore, a large portion of the smaller parcel is under water in Lottes Lake. *Chappell argument; Petitioner Exhibit 6.*
- c. Two letters dated January 19, 2011, to Terry Lottes from Patrick W. Mullen, (one letter for each parcel) state as follows:

Dear Mr. Lottes:

Pursuant to your instructions, I made a personal inspection the property owned by you and Mary Lou Yurin located near Mill St., Jasper, Indiana. The legal description of is Part of the East half of the NE Quarter of Section 23, Township 1South, Range 5West, and containing .7 acres, more or less.

This vacant lot is zoned residential and lies within the City of Jasper. The problem with this as a residential lot is that it has no frontage on any street and is unimproved. There are no City Utilities that are connected to the property and the Utility Mains and Street would need to be extended to make the property buildable for Residential purposes. Since there are no easements of right-of-way to the property, the cost of development would be very high.

The topography ranges of this parcel is rolling and part of the land is under water in what is referred to as Lottes Lake. The current use of the property is for agricultural purposes and recreation. Changing the use of this land would be expensive, if a building permit could be obtained.

Based on current market conditions this property has a value of \$5,000.

Respectfully submitted,

Patrick W. Mullen
PB51216591

Dear Mr. Lottes:

Pursuant to your instructions, I made a personal inspection the property owned you and Mary Lou Yurin located near Mill St., Jasper, Indiana. The legal description of is Part of the East half of the NE Quarter of Section 23, Township 1South, Range 5West, and containing two acres, more or less.

This vacant lot is zoned residential and lies within the City of Jasper. The problem with this as a residential lot is that it has no frontage on any street and is unimproved. There are no City Utilities that are connected to the property and the Mains would need to be extended to make the property buildable for Residential purposes. Since there is no easement of right-of-way to the property, the cost of development would be high.

The topography ranges from nearly level to rolling. The current use of the property is for agricultural purposes, changing the use would be expensive, if a building permit could be obtained.

Based on current market conditions this property has a value of \$10,000.

Respectfully submitted,

Patrick W. Mullen
PB51216591

Petitioner Exhibits 7. Counsel argued that Mr. Mullen is a real estate broker, but failed to present probative evidence of that fact. Some of the argument characterized his letters as appraisals—which they clearly are not. They do not satisfy the Uniform Standards of Professional Appraisal Practice (USPAP). *Chappell argument.*

- d. The subject property is subject to the following agreement:

This lease is between Lottes Family Trust and Lou Lottes Yurin known as owners and Randy Mehringer dba Mill Creek Farms as tenant.

The effective date is October 1st, 2010 and continuing on a year to year bases to renew automatically unless either party gives 60 day notice to cancel this lease.

Tenant has permission to cut hay and any crop off parcels 7,22-1/12-1/12 which lies in the city of Jasper and Dubois County.

For using this land as agriculture and keeping weeds cut and fences repaired, the tenant will pay the owners \$1.00 (one dollar) per year payable on or before October 1st of each year beginning October 1st, 2010.

This extends the verbal agreement that you had with Louise Lottes and myself for the last twenty years.

Terry Lottes

Randy Mehringer

Dated: 9/20/10

Petitioner Exhibit 8.

- e. Attorney Chappell was not sworn as a witness at the hearing, but his Affidavit was introduced into the record. In substance it states as follows:

1. I am a resident of the County of Dubois residing at 894 East 36th Street, near the City of Jasper, Indiana.
2. I have physically resided at that address for more than 33 years.
3. The only ingress or egress to my residence is via 36th Street which intersects with Mill Street, in the City of Jasper.
4. Each time I enter or leave my residence, I can personally observe the real estate of Terry Lottes and Mary Lou Yurin located near Mill Street near the City of Jasper.
5. I have personally observed the real estate for all of the 33 years preceding the date of this affidavit.
6. During all of the preceding 33 years, the real estate has either been used to graze cattle or has had its grasses removed on an annual or semi-annual basis for hay.

Further affiant sayeth not.

Dated this 2 day of January, 2012.

Petitioner Exhibit 9.

- f. The lack of personal property farm equipment tax returns from the Petitioners does not prove the use of the subject property is not agricultural because owners who lease land to other people for agricultural operations, but who own and use no farm equipment themselves, correctly would not have to file such forms. *Chappell argument.*

10. Summary of the Respondent's case:

- a. The Petitioners did not made a prima facie case that these assessments should be changed. *Meighen argument.*
- b. Natalie Jenkins is employed by Tyler Technologies, an assessing firm used by the Respondent. Two or three times a week for the past eight years Ms. Jenkins has driven down Mill Street near the two parcels under appeal. During that time she has never seen grazing animals, hay being harvested or any agricultural activity on the subject property. Part of the fence has a huge break—if livestock were allowed to graze on the subject property they would be roaming onto Mill Street. Ms. Jenkins recently took the photographs that show the subject property (as well as some of the contiguous property) as seen from Mill Street. One of the photographs shows the subject property while looking through the two rental properties. Although the photographs are recent, the subject property has looked the same for the past eight years. There has not been any change in use. *Jenkins testimony; Respondent Exhibits E, G.*
- c. The subject property and several surrounding parcels are shown on the aerial map identified as Respondent Exhibit E. The ownership of the surrounding parcels also is listed on the second page of this exhibit as follows:
- parcels 12 and 12.1 (the subject property) owned by Terry Lottes and Mary Lou Yurin,
 - parcels 7 and 11 owned by the Lottes Family Trust,
 - parcel 22.1 owned by Terry Lottes and Mary Lou Yurin,
 - parcel 13 owned by Mary Lou Yurin,
 - parcels 14 and 15 owned by Lou Lottes Yurin.
- While the Lottes Family Trust land (7 and 11) immediately south and west of the subject property is assessed as agricultural, the Petitioners' rental properties (13 and 22.1) immediately east of the subject property, as well as the remaining property to the east and north (14 and 15) all are assessed as residential. *Jenkins testimony; Respondent Exhibit E.*
- d. Since at least 2002, the subject property has not been assessed as agricultural land, but rather, as residential land, specifically excess residential acreage. *Jenkins testimony; Respondent Exhibits B, D.* The part of the smaller parcel that is underwater is assessed as 0.3121 acres of farm pond with a valuation of \$140. *Jenkins testimony; Respondent Exhibit A.*

- e. Just cutting the grass once or twice a year should not be considered to be agricultural use. “The parcels in question have mostly been the backyard of the rental houses.” *Jenkins testimony*.
- f. The Petitioners have not filed personal property returns, Form 102, related to farming operations. *Jenkins testimony; Respondent Exhibit H*.
- g. The exhibits identified by Mr. Chappell as appraisals of each subject property by real estate broker Patrick Mullen include no sales comparisons to calculate values and the report does not indicate it was prepared in compliance with the Uniform Standards of Professional Appraisal Practice. *Meighen argument*.
- h. The contentions that the two parcels should be classified as agricultural land based on a letter referred to as a lease between the property owners and Mill Creek Farms (MCF) fails as probative evidence of the use of the land. The document, signed September 20, 2010 by Terry Lottes and Randy Mehringer, merely states the agreement will result in MCF keeping weeds cut and fences repaired and MCF paying the property owners \$1 per year. (Admittedly, the letter states that it extends an agreement MCF had with Louise Lottes, the former owner of the property, for the last twenty years.) *Meighen argument*.

Record

- 11. The official record contains the following:
 - a. The Petitions,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Appearance,
 Petitioner Exhibit 2 – Form 130 county PTABOA appeal for each parcel,
 Petitioner Exhibit 3 – Form 115 PTABOA decision for each parcel,
 Petitioner Exhibit 4 – Form 131 IBTR appeal for each parcel,
 Petitioner Exhibit 5 – Request to take official notice,
 Petitioner Exhibit 6 – Aerial map of subjects and surrounding area,
 Petitioner Exhibit 7 – Letter by Patrick Mullen for each parcel,
 Petitioner Exhibit 8 – Lease between Petitioners and Mill Creek Farms,
 Petitioner Exhibit 9 – Affidavit from John S. Chappell,
 (Petitioners presented a separate, similar set of exhibits for each parcel and both sets are identified as Exhibit 1 through 9.),
 - d. Respondent Exhibit A – PRC for subject property ending 001,
 Respondent Exhibit B – PRC history for property ending 001,
 Respondent Exhibit C – PRC for subject property ending 002,
 Respondent Exhibit D – PRC history for property ending 002,
 Respondent Exhibit E – Aerial map of subject area,

Respondent Exhibit F – PRCs for properties on aerial map,
Respondent Exhibit G – Photographs of subject properties,
Respondent Exhibit H – Personal property search results,

- e. Board Exhibit A – Form 131 Petitions and attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
- f. These Findings and Conclusions.

Analysis

12. 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).
13. 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”).
14. Once a petitioner establishes a prima facie case, the burden of going forward with the case shifts. Then a respondent needs to impeach or rebut that 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.
15. The Petitioners did not make a case for any assessment change.
 - a. Indiana Code § 6-1.1-4-13 provides land may be assessed as agricultural only when it is devoted to agricultural use. Much of the Petitioners’ argument focused on whether the land classification should be changed from excess residential to agricultural, which would result in a significantly lower valuation. But they offered no testimony to support that claim, only the Affidavit of Attorney Chappell (“I have personally observed the real estate *** [it] has either been used to graze cattle or has had its grasses removed on an annual or semi-annual basis for hay.”) and a document dated September 20, 2010, purporting to lease the subject property as well as some contiguous property for \$1 per year. The Respondent offered testimony from Ms. Jenkins, who observed the property as she drove by it two or three times a week for the past eight years, and who never has seen grazing animals, hay being harvested, or any agricultural activity on the subject property. The Respondent also offered some photographs Ms. Jenkins took to support her testimony. Therefore, the credibility of the conflicting evidence on this point must be weighed. Neither side presented evidence that is particularly compelling. Nevertheless, under these circumstances the actual

testimony from Ms. Jenkins is slightly more credible than the documents submitted by the Petitioners. We conclude that the subject property should not be changed to agricultural land classification.¹

- b. 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). 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. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. 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.
- c. Accordingly, an appraisal performed in accordance with generally recognized appraisal principles can be an excellent way to make a case. *See Meridian Towers*, 805 N.E.2d at 479. But the letters incorrectly identified as appraisals are not in that category. The letters seem to indicate that Mr. Mullen is a realtor, but otherwise nothing indicates what his qualifications to form an opinion about the value of each of the subject parcels might be or that he used generally accepted appraisal principles in doing so. The letters specifically refer to the subject parcels as lacking street frontage and city utilities, but the undisputed fact that the Petitioners own contiguous rental properties is not even mentioned in the letters. Ultimately, the letters offer conclusory statements that "[b]ased on current market conditions" one parcel has a value of \$5,000 and the other has a value of \$10,000. Such conclusory statements, however, are not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, this evidence apparently values the property as of January 19, 2011, while the required valuation date was March 1, 2010. To be relevant, the record would need to establish how the evidence relates to market value-in-use as of the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 864 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 472 (Ind. Tax Ct. 2005). But nothing in the record ties the Mullen letters to the required valuation date. Therefore, they do not help prove a more accurate assessed valuation. *Id.*

¹ Although we resolve the credibility issue in favor of the Respondent, the lack of personal property farm equipment returns from the Petitioners is entirely irrelevant to our determination.

CONCLUSION

16. The Petitioners failed to make a case for any change in assessed values. The Board finds in favor of the Respondent on both parcels.

Final Determination

In accordance with these findings and conclusions, the assessments 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>.