INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Contentions and Analysis

Petition Nos.:	**03-014-18-1-5-01254-18**
	03-014-18-1-5-01255-18
Petitioner:	**RAW Corporation**
Respondent:	**Bartholomew County Assessor**
Parcel Nos.:	**03-07-20-140-002.900-014**
	03-07-20-140-003.001-014
Assessment Yr.:	**2018**

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes as follows.

PROCEDURAL HISTORY

1. RAW Corporation claims the Bartholomew County Assessor incorrectly assessed the value of the parcels referenced above. RAW filed separate appeals with the Bartholomew County Property Tax Assessment Board of Appeal ("PTABOA") contesting the 2018 assessments for these two parcels. Parcel 1 is located at the corner of Market and South Street in Hope. Parcel 2 is contiguous to Parcel 1. The PTABOA issued determinations upholding the assessments. RAW appeals the following values:

Parcel	Land	Improvements	Total
1	$12,400	$0	$12,400
2	$12,000	$43,600	$55,600
Total	$24,400	$43,600	$68,000

2. On June 26, 2019, our designated Administrative Law Judge ("ALJ"), Jeremy Owens, held two hearings, one for each parcel. But during the hearings, the parties often addressed the property as a whole rather than as individual parcels. Moreover, the parties did not dispute the fact that the parcels have a garage that straddles the line between the parcels or the fact that RAW purchased both properties together. We consider these

parcels to be "one economic unit." Therefore, we address both parcels together in this determination.

3. Neither the ALJ nor the Board inspected the property. RAW elected to proceed under our small claims procedures and the Assessor did not exercise its right to remove. Virginia Whipple and Dean Layman represented the Assessor's Office. Janice Whittington represented RAW. Whipple, Layman, and Whittington were sworn and testified at the hearing.

RECORD

4. The parties offered the following exhibits for Parcel 03-07-20-140-002.900-014:

Petitioner's Exhibit 1:	Purchase Agreement for both parcels (lots 301, 302, 303, and 304) dated October 10, 2016
Respondent's Exhibit A:	Whipple Resume
Respondent's Exhibit B:	Statement of Professionalism
Respondent's Exhibit C:	2017 Property Record Card
Respondent's Exhibit D:	2018 Property Record Card
Respondent's Exhibit E:	Aerial Photograph of Parcel
Respondent's Exhibit F:	10/9/2018 PTABOA Minutes
Respondent's Exhibit G:	Whittington email to Assessor regarding attached evidence dated June 19, 2019

5. The parties offered the following exhibits for Parcel 03-07-20-140-003.001-014:

Respondent's Exhibit A:	Whipple Resume
Respondent's Exhibit B:	Statement of Professionalism
Respondent's Exhibit C:	2017 Property Record Card
Respondent's Exhibit D:	2018 Property Record Card
Respondent's Exhibit E:	Aerial Photograph of Parcel
Respondent's Exhibit F:	10/9/2018 PTABOA Minutes

6. The record includes all pleadings, motions, briefs, and documents filed in these appeals, as well as all orders and notices issued by the Board or our ALJ. It also includes a digital recording of each hearing.

OBJECTIONS

7. The Assessor objected to Petitioner's Exhibit 1, the 5-page purchase agreement for the subject property, because RAW did not timely provide a copy under our small claims procedures. In a small claims hearing, if a party makes a request at least ten business days prior to hearing, the other party must provide copies of any documentary evidence intended to be presented at the hearing. The copies must be provided at least five business days before the hearing. 52 IAC 3-1-5(d). The Assessor made the request on June 5, 2019. Whittington responded by email on June 19, 2019, apparently around 5:30 p.m. The hearing was on June 26, 2019. According to Whipple, this email was sent just four business days before the hearing, not five. While we note that June 22 and 23 were not business days, Whipple failed to explain how she concluded that this interval was only four days. Whittington stated that this purchase agreement previously was introduced as an exhibit at the PTABOA hearing for the 2017 appeal of this same property—a point that the Assessor did not dispute. We conclude that Assessor was not surprised to see this document offered again as evidence for the 2018 appeal. In fact, the Assessor made no claim of surprise or any other kind of prejudice resulting from the time a copy of this document was received. Under these circumstances, we will not exclude the document based on the purportedly late disclosure.

8. The Assessor objected to Whittington's testimony about the purchase of the subject property because that point was not stated on the Form 131 Petitions. But the Assessor cited no authority and made no substantial argument to support a claim that such specificity is necessary. RAW filed petitions that sufficiently identify the property, the tax year, and the issue (claim) that the assessed value was excessive. The Assessor suggests that RAW's petitions needed to be more specific about the prior sale of the subject property before that sort of evidence could be offered to the IBTR. There is no such requirement. We overrule the Assessor's objection. Although not specifically stated in the Form 131 Petitions, Whittington's testimony about the purchase of the subject property is relevant to these appeals and to determining the market value-in-use for the property.

CONTENTIONS

RAW Corporation's Contentions:

9. RAW contends that the property is assessed too high, and claims the correct assessed value is between $43,000-$50,000. *Whittington Testimony.*

10. RAW bought both parcels for $55,000. In October 2016, (three days before the seller died), RAW and the seller reached an agreement on a price of $55,000. Several months later, the seller's estate completed the sale with the agreed upon terms. The closing was in April or May 2017. The sale price included personal property such as a stove, refrigerator, sheds, and the contents of the garage. *Whittington Testimony.*

11. The Assessor valued the total land at $24,400. Parcel 1's land is assessed at $12,400 and contains three lots. The Assessor has the wrong front footage. The parcel has 146 feet of frontage rather than 170 feet and this error led to an incorrect assessed value. Parcel 2's land is assessed at $12,000 and contains one lot. The inequality in the ratio of lots to assessed value is not understandable. *Whittington Testimony.*

12. Parcel 2 actually contains most of the improvements. The house and garage are assessed at $43,600 on this parcel. The house and half of the garage are on Parcel 2, but the other half of the garage is physically on Parcel 1. During the winter before the closing, the pipes in the house broke. The house became uninhabitable. That fact should lower the assessed value. *Whittington Testimony.*

13. The property is in an industrial area with heavy traffic. This point also should lower the assessed value. *Whittington Testimony.*

Assessor's Contentions:

14. The Assessor contends the assessed value and the PTABOA's determination of $68,000 is correct. RAW purchased the entire property at an estate sale, which was not an arm's length transaction. According to the Assessor, RAW provided no evidence to show the

true market value-in-use of the property, let alone that the sale was an arm's length transaction.

15. The Assessor concedes that the frontage for Parcel 1 is incorrect, but contends the depth is also incorrect. Correcting both would lead to a higher assessed value. Parcel 1 has a 20% negative influence factor that helps to negate the incorrect frontage calculation. *Whipple Testimony; Resp. Ex. D.*

16. Admittedly, the Assessor has little information about the value for Parcel 2. But according to the Assessor, RAW offered no probative evidence for a lowered assessment. *Whipple Testimony.*

17. Proximity to the industrial area does not inhibit the value of the subject property. Rather, that location enhances the value of the subject property. *Whipple Testimony.*

BURDEN OF PROOF

18. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d).

19. At the hearings, which were held separately, our ALJ preliminarily ruled that the Assessor had the burden on one petition and RAW had the burden on the other. The Board, however, sees this question differently. After the parties presented both cases, it is clear that it would have been more realistic to hold a single hearing for both parcels. RAW purchased these parcels together. And all the evidence indicates they really form a single economic unit. The garage sits on both parcels. On that basis, the total assessed value for the property was $68,200 in 2017 and $68,000 in 2018. Because the total assessment decreased from 2017 to 2018, RAW has the burden of proving what a more accurate assessed value would be.

ANALYSIS

20. The goal of our real property assessment system is to arrive at an assessment reflecting "true tax value." 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined according to the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1- 31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market-value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.

21. Parties may offer evidence that is consistent with the definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id*.; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices).

22. Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id*. The valuation date for the year under appeal was January 1, 2018. We have held that sales of the subject property that occur within a year of the valuation date are relevant and probative. Because RAW bought the property in April or May of 2017 for $55,000, it is possibly the most probative and relevant evidence of the correct market value-in-use.

23. We are somewhat concerned about the lack of specificity in the testimony about the closing date as well as the lack of documentation regarding the closing. The Assessor,

however, did not dispute that RAW closed on the purchase of the subject property for $55,000 in April or May of 2017. Similarly, the Assessor did not dispute Whittington's testimony that RAW and the prior owner agreed to this purchase for $55,000 in October 2016, which was three days before he died. The death delayed the closing. These circumstances are unusual, but we emphasize that they are undisputed.

24. A recent sale is often probative evidence of the value of a property. Nevertheless, the Assessor argues that the purchase price for the subject property has no probative value. The Assessor tried to attack RAW's evidence about the purchase of the subject property by using the terms "invalid sale," "estate sale," and "not an arm's length transaction." But the small amount of testimony and argument offered in that regard was not persuasive because it was conclusory and simply disregarded undisputed facts. The Assessor offered absolutely no reason to indicate that the original agreement lacked the elements of an arm's length transaction. The Assessor offered no facts, no authority, and no substantial reason for us to conclude this particular transaction was not a reliable indication of market value-in-use when the estate finally completed the deal that had been agreed upon approximately six months earlier. Thus, it is evidence that we will not entirely disregard. And here we must weigh that evidence against the complete lack of valuation evidence from the Assessor. Ultimately, some valuation evidence from RAW is more persuasive than no valuation evidence from the Assessor.

25. Based on what it paid for this property, RAW made a prima facie case that the total assessment for both parcels should be no more than $55,000. But RAW did not support its request for lowering the assessed value to the range of $43,000 to $50,000, which apparently was based on testimony that the $55,000 included appliances and the contents of the garage that should not be included in the assessed value. The record, however, contains no probative evidence about the value of those additional items. Therefore, no further reduction can be allowed.

FINAL DETERMINATION

26. In accordance with the above findings of fact and conclusions of law, the Board orders the total 2018 assessment for both parcels together must be lowered to $55,000.

DATE: September 24, 2019

The Board issues this Final Determination of the above-captioned matter on the date first written above.

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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 after 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>.