

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

Petition No.: 29-013-06-1-4-00312
Petitioner: Hartsville Partners LLC
Respondent: Hamilton County Assessor
Parcel No.: 1111050001004000
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated June 25, 2007.¹
2. The PTABOA issued notice of its decision on March 14, 2008.
3. The Petitioner filed a Form 131 petition with the Board on April 18, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.²
4. The Board issued a notice of hearing to the parties dated November 19, 2008.

¹ Mr. Fader testified that Chick-fil-A entered into a ground lease agreement with Noblesville Partners, LLC, on August 1, 2002, which was acquired by Hartsville Partners, LLC, in 2005. *Petitioner Exhibit 5*. Pursuant to the ground lease, Chick-fil-A is responsible for paying the property taxes. *Fader testimony; Id.* Under the Board's procedural rules, a taxpayer responsible for paying the property taxes on a property is a proper party to an appeal of the assessed value of that property. 52 IAC 2-2-13 (1) and (2).

² The Board's small claims procedures apply to, *inter alia*, "a parcel of land, as improved, with an assessed value for the land and improvements not in excess of one million dollars." 52 IAC 3-1-2(a)(2). The property at issue is assessed in excess of \$1,500,000. A party to an appeal concerning property that does not meet the criteria for small claims may still elect to have the petition heard pursuant to the Board's small claims procedures by "(1) requesting so upon filing the appeal petition or by notifying the board, in writing, within thirty (30) days of filing his or her petition; and (2) obtaining the written consent to such election from the other parties to the proceeding." 52 IAC 3-1-2(d). The main differences between the Board's regular procedural rules and its small claims rules lie in its document exchange rules and the small claims procedures' limitation on the issues that can be presented at hearing and the time allotted for presenting evidence at hearing. Here there is no evidence that the Petitioner or the Petitioner's representative obtained written consent to have the petition heard pursuant to the Board's small claims procedures. The Respondent, however, did not object to the exhibits offered by the Petitioner or the presentation of evidence by the Petitioner's representative. Therefore, the Board views any objection to the application of the Board's small claims procedures to these matters to be waived by the Respondent.

5. The Board held an administrative hearing on January 29, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: David C. Fader, Financial Services, Chick-fil-A
 - b. For Respondent:³ Debbie Folkerts, Hamilton County Assessor
Terry McAbee, Hamilton County Deputy Assessor

Facts

7. The property is a 4,489 square foot, one-story fast food restaurant on 1.3 acres located at 16685 Mercantile Boulevard, Noblesville, Noblesville Township, in Hamilton County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed value to be \$965,300 for the land and \$598,900 for the improvements, for a total assessed value of \$1,564,200.
10. The Petitioner requested an assessed value of \$689,200 for the land and \$598,900 for the improvements, for a total assessed value of \$1,288,100.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the assessed value of the land is overstated when compared to the assessed values of similar properties. *Fader testimony*. In support of this contention, Mr. Fader offered a comparable analysis of the 2006 land assessed values of four nearby properties. *Petitioner Exhibit 2*. The Petitioner contends the comparable properties are similar to the subject property in the amount of acreage and they are all located in the same area. *Fader testimony; Id.* Further all of the properties are operated as fast food restaurants. *Id.* According to the Petitioner, the 2006 assessed values of the land at the comparable properties ranged from \$5.67 to \$12.17 per square foot. *Id.* The subject land, however, was assessed for \$17.05 per square foot. *Fader testimony*. Therefore, Mr. Fader contends, the land of the property under appeal should be assessed at no more than \$12.17 per square foot. *Id.*

³ Marilyn S. Meighen, Meighen & Associates, P.C., appeared as counsel for the Respondent.

- b. The Petitioner argues that the Petitioner's purchase of the land for \$1,000,000 does not represent the land's value. *Fader testimony*. Mr. Fader testified that Chick-Fil-A has a ground lease with Hartsville Partners, whereby it rents the land for a period up to 15 years, with the option to extend to 35 years. *Fader testimony; Petitioner Exhibit 5*. The building, however, is owned by Chick-Fil-A. *Fader testimony*. According to Mr. Fader, when the lease is terminated the owner of the land gains the building as an additional asset. *Id.* Mr. Fader argues that Hartsville Partners, therefore, paid more for the land because of the security of receiving basic monthly rent plus an asset at the termination of the lease. *Fader testimony; Petitioner Exhibit 5*. According to Mr. Fader, to fairly calculate the land value, the assessor must apply an abstraction method whereby the building's assessed value of \$589,000 is subtracted from the \$1,000,000 sales price to arrive at the value of the land. *Fader testimony; Respondent Exhibit 2*.

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends the Petitioner's land is correctly assessed. *Meighen argument; McAbee testimony*. According to the Respondent's witness, Mr. McAbee, Hartsville Partnership purchased the land under appeal on March 23, 2005, for \$1,000,000. *McAbee testimony*. In support of this contention the Respondent submitted the sales disclosure form. *Respondent Exhibit 1*. The Respondent contends the Petitioner's purchase price supports the land's assessed value. *Meighen argument*.
- b. The Respondent's witness, Mr. McAbee, argued that the Petitioner's comparable properties should not be given any weight because the comparable properties are not located in the same neighborhood as the property under appeal. *McAbee testimony*. According to Mr. McAbee, the Petitioner's comparables, which are located directly across the highway from the property under appeal, sold for an average of \$528,185 per acre, while the land in the Petitioner's neighborhood sold for an average of \$722,730 per acre. *McAbee testimony; Respondent Exhibit 2A and 2B*. In support of this contention, the Respondent submitted an aerial map, property record cards and a comparable analysis for eight properties. *Respondent Exhibits 2A - 10*. Thus, the Respondent concludes, the sales support the assessed value. *Meighen argument*.
- c. Finally, the Respondent argues that the Petitioner failed to raise a prima facie case because it just argues that its value is different from comparable properties primarily located across the highway. *Meighen argument*. According to Ms. Meighen, the Tax Court determined in *Westfield Golf*

Practice Center, LLC v. Washington Township Assessor, 859 N.E.2d 396 (Ind. Tax Ct. 2007), that a petitioner cannot just claim a disparity in the values between the subject property and comparable properties but must show the property under appeal's market value-in-use. *Meighen argument*.⁴

Record

13. The official record for this matter is made up of the following:
 - a. The Form 131 petition and related attachments.
 - b. The digital recording of the hearing.
 - c. Exhibits:
 - Petitioner Exhibit 1 – Five aerial maps of the area and construction plans for Chick-Fil-A,
 - Petitioner Exhibit 2 – Petitioner's property comparison analysis and Hamilton County property card reports for 16685 Mercantile Boulevard, 16732 Clover Road, 16676 Clover Road, 2650 Cherry Street, and 1810 Conner Street, Noblesville,
 - Petitioner Exhibit 3 – Notice of County Property Tax Assessment Board of Appeals Hearing on Petition – Form 114, dated January 28, 2008,
 - Petitioner Exhibit 4 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
 - Petitioner Exhibit 5 – Letter from Hartsville Partners to Chick-Fil-A, dated June 28, 2007, Special Warranty Deed between Hartsville Partners to Canterbury Court Properties, LLC, Form W9 for Canterbury Court Properties and Ground Lease between Noblesville Partners, LLC, and Chick-Fil-A, Inc., dated August 1, 2002,

⁴ Ms. Meighen argues that although Hartsville Partners owned the land and that Chick-fil-A owned the improvements of the property under appeal on the March 1, 2006, assessment date, Ind. Code § 6-1.1-2-4, prohibited the county from assessing the land and improvements as two separate parcels. *Meighen argument*. Ind. Code § 6-1.1-2-4 (c), states in pertinent part, "An improvement or appurtenance to land that, on the assessment date of a year, is held, possessed, controlled, or occupied by a different person than the owner of the land may be listed and assessed separately from the land only if the improvement or appurtenance is held, possessed, controlled, or occupied under a memorandum of lease or other contract that is recorded with the county recorder before January 1, 1998." The record shows that Noblesville Partners, LLC entered into a lease agreement with Chick-fil-A on August 1, 2002. *Petitioner Exhibit 5*.

Petitioner Exhibit 6 – Correspondence between John Taylor, Chick-Fil-A, and Jim Pee, Hamilton County Assessor’s office, dated October 30 and 31, 2007,

Respondent Exhibit 1 – Sales Disclosure Form between Noblesville Partners, LLC, and Hartsville Partners, LLC, dated March 23, 2005,

Respondent Exhibit 2A – Aerial map of the area,

Respondent Exhibit 2 B – Respondent’s comparable sales analysis,

Respondent Exhibit 3 – Property record card for 16685 Mercantile Boulevard, Noblesville,

Respondent Exhibit 4 – Property record card for 17115 Mercantile Boulevard, Noblesville,

Respondent Exhibit 5 – Property record card for 16725 Mercantile Boulevard, Noblesville,

Respondent Exhibit 6 – Property record card for 16855 Mercantile Boulevard, Noblesville,

Respondent Exhibit 7 – Property record card for 16625 Mercantile Boulevard, Noblesville,

Respondent Exhibit 8 – Property record card for 16940 Clover Road, Noblesville,

Respondent Exhibit 9 – Property record card for 16978 Clover Road, Noblesville,

Respondent Exhibit 10 – Property record card for 16676 Clover Road, Noblesville,

Respondent Exhibit 11 – Copy of Ind. Code § 6-1.1-2-4, Liability for tax; assessment of improvement or appurtenance separately from land,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- 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, for 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). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
 - b. Regardless of the method used to show a property’s market value-in-use, however, a 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. Here, the Petitioner contends the land is over-valued based on the assessment of neighboring properties. *Petitioner Exhibit 2; Fader testimony*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality

claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*

- d. To the extent that the Petitioner can be seen as arguing the property is over-assessed based on its market value, the Board similarly finds the Petitioner failed to raise a prima facie case. According to the Petitioner's witness, Hartsville Partners purchased the land for \$1,000,000 in 2005. *Fader testimony.* In that land purchase agreement, Hartsville Partners obtains ownership of the building when the term of the lease ends. *Id.* Thus, Mr. Fader contends, the \$589,000 assessed value of the improvement should be subtracted from the purchase price of the property to arrive at the value of the land. *Id.* The Board notes, however, that Mr. Fader testified that Hartsville Partners will not obtain ownership of the building for 15 or 35 years under terms of the lease. *Id.* While the improvements may be valued at \$589,000 presently, the Petitioner's evidence does not show what the improvements would be worth to a purchaser 15 to 35 years in the future. In addition, Mr. Fader testified that Hartsville Partners was purchasing a steady stream of lease payments made by Chick-fil-A. *Id.* Mr. Fader presented no evidence to support any specific value for the land, the future value of the property, or the present value of the lease payments. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, while a Petitioner can show error in the assessed value of a property by presenting evidence of market value-in-use, the Board is not persuaded that the proper method to determine the value of the land from the existing land lease is to simply subtract the assessed value of a building that will not transfer ownership for decades.
- e. Even if the land lease could be considered sufficient to show an error in the assessed value, the Board finds that the Respondent rebutted that evidence. According to the Respondent's witness, land in the Stony Creek Commercial Center where the subject property is located sold for between \$676,230 and \$769,231 per acre, with an average sale price of \$704,436 during the period between of June 30, 2004, to December 19, 2006. *McAbee testimony; Respondent Exhibits 2-10.* Each of the properties in the subject property's neighborhood is assessed for \$675,000 per acre. *Id.* Thus, the Respondent's sales comparison valuation supports the assessed value of the subject property.

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to support a change in the assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.