

REPRESENTATIVE FOR PETITIONER:

David Summerlot, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Michael West, Vigo County Cyclical Reassessment Supervisor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David Summerlot)	Petition Nos.: 84-017-10-1-3-01741
)	84-017-10-1-3-01740
Petitioner,)	
)	Parcel Nos.: 84-08-13-100-003.000-017
)	84-08-13-100-005.000-017
v.)	
)	County: Vigo
)	
Vigo County Assessor)	Township: Prairieton
)	
Respondent.)	Assessment Year: 2010

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

JULY 5, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. Petitioner filed the appeals with the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) which issued its final determinations on March 28, 2013. Petitioner filed Form 131 petitions with the Board on May 10, 2013. When Petitioner filed the Form 131 petitions, he elected to opt-out of the Board’s small claims procedural rules.
2. John J. Thompson, the Board’s administrative law judge (“ALJ”), held a hearing on February 3, 2016. Neither the ALJ nor the Board inspected the property.
3. David Summerlot, owner, was sworn as a witness for Petitioner. Michael West, Vigo County Cyclical Reassessment Supervisor, was sworn as a witness for Respondent.

FACTS

4. The subject property consists of two vacant parcels located at S. Morris Place.¹ Parcel 84-08-13-100-003.000-017 (“Parcel 003”) consists of 10 acres. Parcel 84-08-13-100-005.000-017 (“Parcel 005”) consists of 48.92 acres.
5. For 2009, the assessed values were as follows:

Parcel	Land	Improvements	Total
003	\$18,100	\$0	\$18,100
005	\$66,000	\$0	<u>\$66,000</u>
			\$84,100

¹ Both parcels are described as being located at S. Morris Place on both the property record cards and the Forms 131. There are no street numbers associated with either parcel.

6. The PTABOA determined the following values for 2010:

Parcel	Land	Improvements	Total
003	\$18,800	\$0	\$18,800
005	\$68,400	\$0	<u>\$68,400</u>
			\$87,200

RECORD

7. Petitioner offered the following exhibits:

Petitioner Exhibit 1: Letter from ReMax Broker Jack Crapo regarding Parcel 003,
 Petitioner Exhibit 2: Letter from ReMax Broker Jack Crapo regarding Parcel 005,
 Petitioner Exhibit 3: Addendum from ReMax containing various parcel numbers,
 Petitioner Exhibit 4: Letter from ReMax Broker Jack Crapo regarding land on South Morris Place,
 Petitioner Exhibit 5: Letter from Indiana Department of Natural Resources (“DNR”) Land Acquisition Division,
 Petitioner Exhibit 6: Records of taxes paid for subject property,
 Petitioner Exhibit 7: Aerial photograph of subject property,

8. Respondent offered the following exhibits for Parcel 003:

Respondent Exhibit 1: Sales disclosure form,
 Respondent Exhibit 2: 50 IAC 2.4-1-1,
 Respondent Exhibit 3: Excerpt from INDIANA REAL PROPERTY ASSESSMENT GUIDELINES (Guidelines),
 Respondent Exhibit 4: Valuation form for Neighborhood #112302,
 Respondent Exhibit 5: Memo for 2008 appeal,
 Respondent Exhibit 6: Memo for 2010 appeal,
 Respondent Exhibit 7: Page 2 of Form 131,
 Respondent Exhibit 8: GIS map of parcel,
 Respondent Exhibit 9: 2010 property record card (“PRC”),

9. Respondent offered the following exhibits for Parcel 005:

Respondent Exhibit 1: Sales disclosure form,
 Respondent Exhibit 2: 50 IAC 2.4-1-1,
 Respondent Exhibit 3: Excerpt from Guidelines,

Respondent Exhibit 4: Valuation form for Neighborhood #112302,
Respondent Exhibit 5: Memo for 2008 appeal,
Respondent Exhibit 6: Memo for 2010 appeal,
Respondent Exhibit 7: GIS map of parcel,
Respondent Exhibit 8: 2010 PRC,

10. The following additional items are officially recognized as part of the record:

Board Exhibit A: Form 131 petition and attachments,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

OBJECTIONS

11. Respondent objected to Petitioner Exhibits 1 and 2 on the grounds that there is no support as to how the fair market values in the letters were calculated. Respondent's objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner Exhibits 1 and 2 over Respondent's objection.
12. Respondent objected to Petitioner Exhibit 3 on the grounds that the values for the parcels indicated in the addendum are for the 2011 assessment rather than 2010. He further contends that the parcels are classified differently than the parcels at issue. Respondent's objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner Exhibit 3 over Respondent's objection.
13. Respondent objected to Petitioner Exhibit 4 on the grounds that there is no identifying parcel number contained in the letter. Respondent's objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner Exhibit 4 over Respondent's objection.
14. Respondent objected to Petitioner Exhibit 5 on the grounds that the letter is dated October 17, 2014, but the year under appeal is 2010. He further contends that the letter does not identify any parcels or characteristics as to what property is being discussed. Respondent's objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner Exhibit 5 over Respondent's objection.

15. Respondent objected to Petitioner Exhibit 7 on the grounds that the aerial photograph does not reference a particular parcel. Respondent's objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner Exhibit 7 over Respondent's objection.

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should 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). A burden-shifting statute creates two exceptions to that rule.
17. First, Indiana Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
18. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township

assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

19. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
20. In this case, the total assessed value of the parcels increased by approximately 3.7% from \$84,100 for 2009 to \$87,200 for 2010. The parties agreed that Petitioner has the burden.

PETITIONER’S CONTENTIONS

21. Petitioner believes the property is over-assessed. He contends that there are no buildings and that no business is being conducted there. He characterizes the property as “two holes in the ground.” *Summerlot testimony.*
22. Petitioner presented three letters from Jack Crapo, a broker/associate with ReMax. All of the letters are regarding the “Appraisal of Land on South Morris Place.” In the letters, Mr. Crapo opines that, on March 1, 2010, the fair market values of Parcel 003 and Parcel 005 were \$6,250 and \$30,575 respectively. He further opines that, on December 6, 2010, “these properties” had a fair market value of \$625 per acre. Petitioner also presented an addendum on ReMax letterhead showing five parcel numbers with corresponding prices per acre, presumably supporting the per acre price of the subject property. Petitioner contends Mr. Crapo used these parcels to “arrive at his figures.” *Summerlot testimony; Pet’r Exs. 1-4.*
23. Petitioner presented a letter from the DNR Land Acquisition Division dated October 17, 2014. He contends the DNR had shown interest in acquiring his property. The letter instructs Petitioner on what steps to take should he wish to consider having the state acquire his land. The letter states that, should Petitioner follow through with the plan described in the letter, the DNR will offer him \$730 per acre. *Summerlot testimony; Pet’r Ex. 5.*

24. Ultimately, Petitioner believes the assessed value of the subject property should be its “fair market value.” *Summerlot testimony.*

RESPONDENT’S CONTENTIONS

25. The subject property consists of industrial land that was properly assessed for 2010 pursuant to the Guidelines. *West testimony.*
26. Respondent offered sales disclosure documents for both parcels. The documents indicate that the parcels at issue were part of a 2006 sale of five parcels from the Summerlot Family Revocable Trust to David and Jack Summerlot. *West testimony; Resp’t Ex. 1.*
27. Respondent offered a neighborhood valuation form showing the subject neighborhood as a commercial/industrial neighborhood in Prairieeton Township. It shows the base rates for the different types of land in the township, including the base rate of \$1,689 for unusable/undeveloped land that was used to calculate the assessed values at issue. *West testimony; Resp’t Ex. 4.*
28. Respondent offered 2010 PRCs for both properties showing the formula purportedly used to arrive at the assessed values. Ultimately, Respondent believes the county has adhered to the standards as set forth by the Guidelines and that the assessment is correct. *West testimony; Resp’t Exs. 8 and 9.*

ANALYSIS

29. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “the 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.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of the

Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

30. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
31. Petitioner offered two identical one-page letters, one for each parcel at issue, from Jack Crapo of ReMax. Each letter purports to be an "Appraisal of Land on South Morris Drive." The letters state that, at Petitioner's request, Mr. Crapo "inspected and appraised" the subject property for the purpose of determining fair market value. Mr. Crapo ultimately opined that, as of March 1, 2010, Parcel 003 had a fair market value of \$6,250 and Parcel 005 had a fair market value of \$30,575.
32. While the letters may be labeled as appraisals, Mr. Crapo is only listed as a "Broker/Associate." There is no information with regard to his credentials or qualifications as an appraiser or whether or not he is licensed to perform appraisals in Indiana. Furthermore, there is no indication that Mr. Crapo's analysis was undertaken pursuant to the Uniform Standards of Professional Appraisal Practice. In light of these considerations, the Board finds that the letters containing Mr. Crapo's opinions with regard to value lack probative weight.

33. Petitioner offered an additional letter from Mr. Crapo in which he opines that on December 6, 2010, the subject property had a fair market value of \$625 per acre. Apparently to support that opinion, Mr. Crapo provided an addendum listing five other parcels and their purported per acre prices. By providing this information, the Board can infer that Petitioner is attempting to prove the property's value by using the sales-comparison approach.
34. In order to use a sales comparison approach as evidence in an assessment appeal, however, the party must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Petitioner did nothing to compare the properties. He also failed to offer any market-based adjustments for differences between the properties. Accordingly, Petitioner's comparison analysis lacks probative value.
35. Finally, Petitioner offered a letter dated October 17, 2014, from the DNR Land Acquisition Division instructing Petitioner how to proceed in the future should he be interested in the acquisition program. He further offered tax payment records for each parcel as well as an aerial photograph. Petitioner provided little or no explanation with regard to this information.
36. As part of making a prima facie case, "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). Because Petitioner offered no testimony indicating how these items related to the market value-in-use of the subject property, the evidence lacks probative value.

37. Petitioner failed to make a prima facie case that the assessment is incorrect. When a taxpayer fails to provide probative evidence supporting its 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).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2010 assessed values will not be changed.

Chairman, 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, 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 Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.