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

William Yelton Trucking,	)	Petition No.: 15-016-06-1-4-00146
	)	Parcel: 15-07-02-304-023.000-016
Petitioner,	)	
	)	
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 8, 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 Petitioner focused on claims that the Board should change the land classification for 3.745 acres of the subject property to unusable/undeveloped land and it should reduce the assessment for the remaining 8.582 acres with negative influence factors. Those assessment methodology issues, however, are not the fundamental, determinative questions in this case. The Board finds the real issues are as follows: Did the Petitioner prove that the current assessment of $909,100 fails to accurately reflect the market value-in-use of the subject property and did the Petitioner prove specifically what the correct assessment amount should be?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is 12.327 acres of unimproved land located on Eads Parkway (U.S. Highway 50).

2. On May 5, 2008, the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the 2006 assessment on the subject property is $909,100.

3. On May 22, 2008, the Petitioner filed a Form 131 Petition seeking the Board's review of that determination and opted out of small claims procedures. The Form 131 stated the assessed value should be $115,475. The Petitioner's Proposed Findings, however, state the assessed value should be $132,900.

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. The following persons were sworn as witnesses and testified at the hearing:

   For the Petitioner – William Yelton,
   Aaron Durwin,
   Wayne House,
   For the Respondent – County Assessor Gary Hensley.

6. The Petitioner presented the following exhibits:

   Exhibit 1 – Plat map showing the subject property highlighted in pink,
   Exhibit 2 – Plat map showing part of the subject property highlighted in pink,
   Exhibit 3 – Property record card (PRC) for the subject property,
   Exhibit 4 – Assessment history of the subject property from 2001 to 2005,
   Exhibit 5 – Greendale zoning map,
   Exhibit 6 – Complaint filed against the Petitioner by the City of Greendale,
   Exhibit 7 – An elevation map of the subject property,

Exhibit 8 – Fourteen photographs of the subject property (8a-8n),
Exhibit 9 – Proposed findings,
Exhibit 10 – List of assessments for ten other properties along U.S. Highway 50 and the corresponding PRCs,
Exhibit 11 – Table 2-14 from the Real Property Assessment Guidelines for 2002—Version A.

7. The Respondent presented the following exhibits:

Exhibit 1 – Appraisal for the 8.582 acres without U.S. Highway 50 frontage,
Exhibit 2 – Appraisal for the 3.745 acres with U.S Highway 50 frontage.

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

Board Exhibit A – The 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign in Sheet.

9. The Petitioner 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 the admission of the Complaint in *City of Greendale v. Yelton*, Cause Number 15C01-0604-OV-001 (Petitioner Exhibit 6), because that lawsuit is not relevant and any negative impact on the subject property would be purely speculative. The Petitioner provided evidence that the complaint relates to the subject property and is relevant to value because any potential buyer would consider potential liabilities associated with the outcome of the case. Consequently, Exhibit 6 is admitted.[1]

11. The Respondent objected to Mr. Durwin's testimony that the residue of a coal pile and possible contamination would reduce the value of the subject property. The Respondent argued that Mr. Durwin did not establish that he is qualified to testify about such matters. The Petitioner argued that Mr. Durwin is qualified to give the testimony because he is a

[1] The Respondent's argument about the speculative nature of any impact on value goes to the weight of this evidence, rather than its admissibility. The Respondent also noted that the Petitioner misrepresented that case as being filed by the Environmental Protection Agency. The Complaint, however, clearly shows that the City of Greendale is the Plaintiff. It never mentions the EPA. The contradiction is a relevant consideration regarding statements about EPA involvement, but it is not a valid reason to keep a copy of the Complaint out of the record.

certified appraiser (although Mr. Durwin specifically testified that he did not do an appraisal on the subject property). Mr. Durwin offered no detailed testimony about the contamination or the cost of remediation. He did not attempt to quantify what this point might do to value. The limited, general conclusions he offered about those things being factors a potential buyer would consider do not require particular expertise. Therefore, the objection is denied. The real question about Mr. Durwin's testimony is its weight, not its admissibility.

12. Similarly, the Respondent made several objections to Mr. House's testimony about the value of the subject property and even moved to strike part of it because the witness lacked qualifications to give an expert opinion.[2] The Petitioner argued that the fact Mr. House purchased two other commercial properties along Highway 50 gives him experience and some expertise on that subject. Much of this testimony was simply confined to general conclusions that the pond, the remains of a coal pile, and a sloping area in the back eight acres would reduce what someone would be willing to pay. They do not require particular expertise. Some of his testimony, however, was more specific—for example, about the cost to fill the pond and what Mr. House would pay for the property. Again, the real question about all of this testimony is how much weight it has, not its admissibility. The objections are denied.

13. The Petitioner 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 about them. That point is essentially a hearsay objection.[3] The Respondent argued that the appraisals are admissible under

[2] Mr. House testified about another property that was identified as an old dry cleaning establishment. He said the cost to cleanup contamination of that property was $1,000,000 and implied the effects of the old coal pile might be similar for the subject property. The Respondent moved to strike this portion of his testimony because the two situations are completely different. While the Board does not find this reason to be sufficient cause to strike the testimony, its relevance was not established. Furthermore, the Petitioner failed to establish what qualifications Mr. House might have to quantify the impact of the old coal pile on value. These points, however, go to the weight of this testimony, rather than its admissibility.

[3] "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.

administrative law rules, which is correct. Hearsay evidence is admissible, but with significant limitations:

> 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 PETITIONER'S CASE

14. The front 3.745 acres of the subject property are assessed higher than comparable assessments and higher than its market value-in-use. This part should be valued at $24,000 an acre ($30,000 an acre less a negative 20% influence factor due to location) for a total land value of $90,000. *Yelton testimony; Pet'r Ex. 9.*

15. These 3.745 acres are currently classified as secondary commercial land. Under the assessment guidelines, secondary land is land surrounding a primary site, but the subject property is vacant with no commercial building or business. This land does not serve to support any primary site. The 3.745 acres should be vacant, unuseable/undeveloped land. *Holland argument; Durwin testimony; Pet'r Ex. 3 and 11.*

16. The subject property is zoned for local business, not industrial. It does not have any paving or utilities. It is located in a flood plain, but is protected by a levee. It is also located within the federally protected Greendale wellhead. *Yelton testimony; Pet'r Ex. 5.*

17. The subject property is approximately 8 to 10 feet below the level of Highway 50. To build on it or sell it, the land needs to be filled up to the level of the highway. Filling it would cost $1,000,000. *Yelton testimony; Durwin testimony; Pet'r Ex. 8a through 8k.*

18. The Bolduc property has Highway 50 frontage and is located approximately the same distance from the Highway 50/I-275 exchange as the subject property. Unlike the subject property, it is filled and above the flood plain. The Buldoc property is currently valued at $880 an acre with a negative 30% influence factor. The Buldoc property is worth more than the subject property because it is at grade and ready for construction, while the subject property is 5 feet below grade. *Yelton testimony; Durwin testimony; Pet'r Ex. 10.*

19. The Performance Land Development property has Highway 50 frontage with open land valued at $8,000 an acre. The Ande Chevrolet property (not in the wellhead area) has a large sales lot with a repair garage and 4.4 acres of useable/undeveloped land valued at $30,000 an acre. The Lewis Equity property is comparable to the subject property, but it is valued at $5,000 an acre. The Haag Ford property has 2.77 acres of primary land valued at $80,000 an acre. The Dr. Kohlhass property is primary commercial land valued at $80,000 an acre. The land next to the McDonalds is open, unusable/undeveloped land valued at $12,500 an acre. The Perfects property is valued at an average of $1,500 an acre. The Maxwell property is valued at an average of $1,300 an acre. The land in the industrial park is valued in a range from $15,000 to $50,000 an acre. *Yelton testimony; Pet'r Ex. 10.*

20. The back 8.582 acres does not have road access. The Petitioner gave land to the City of Greendale for a dedicated roadway, but the roadway has yet to be built. *Yelton testimony.*

21. In the back part, 5 acres is a pond created by the removal of fill dirt, 3 acres is a steep hillside located at the rear of the property, and 0.5 acres has the remnants of a coal pile. The pond, hillside, coal storage area, and location over the Greendale wellhead have negative impact on the value of this area. The pond area has no commercial use and could not be built on unless the pond was filled. The fill cost for the pond would exceed $12,500 an acre. *Yelton testimony; Durwin testimony; Pet'r Ex. 7 and 8j and 8k.*

22. The City of Greendale filed a lawsuit against the Petitioner regarding the area used for coal storage. While the outcome is unknown, the complaint seeks the removal of any

coal from the site, the abatement of any contamination, the imposition of a fine, and any other relief that is just and proper. Potential buyers would consider any associated costs of cleanup before purchasing the subject property and that has a negative effect on value. *Yelton testimony; Pet'r Ex. 6; Durwin testimony.*

SUMMARY OF THE RESPONDENT'S CASE

23. The county hired Mr. Jeffrey D. Thomas, a certified Indiana general appraiser, to perform an appraisal of the subject property. He appraised the subject property in two separate appraisals. One appraisal is for the front 3.745 acres. The other appraisal is for the rear 8.582 acres. *Hensley testimony; Resp't Ex. 1 and 2*.

24. He appraised the 8.582 acre portion of the subject property at $193,000 as of March 1, 2007. This is higher than the current assessed value. *Hensley testimony; Resp't. Ex. 1.*

25. He appraised the 3.745 acre portion of the subject property at $655,500 as of March 1, 2007. This is lower than the current assessed value. *Hensley testimony; Resp't Ex. 2.*

ADMINISTRATIVE REVIEW AND BURDEN

26. 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).

27. 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").

28. 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

29. 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.

30. 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); Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3.

31. The Petitioner presented evidence comparing the assessments of other properties to the assessment of the subject property in an attempt to show that the subject property is over

assessed. But the Petitioner failed to establish that this evidence conforms to generally accepted appraisal principles. While the Petitioner brought out a few isolated facts about how the subject property and the others compared (including several PRCs in Exhibit 10), the Petitioner failed to provide the kind of detailed facts and analysis that would be required to establish how the value-in-use of the properties truly compares.[4] A party is responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties. Without sufficient, meaningful facts and analysis, conclusory comparisons are not probative evidence. *See Long*, 821 N.E.2d at 470-471; *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

32. 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 Petitioner offered the testimony of an Indiana certified general appraiser, Aaron Durwin, in support of this claim. But Mr. Durwin did not appraise the subject property and he did not offer an opinion about the specific value of the entire property. To the extent that his testimony and conclusions have any probative value, the weight is far less under such circumstances. His testimony mainly provides factual support that none of the subject property meets the technical definition of "Secondary Commercial and Industrial Land" and that the back part of the property includes "negative influence factors" (a pond, remnants of a coal pile, and some area with a steep slope) reducing its value. None of his testimony, however, establishes what a more accurate value-in-use for the property might be. Although Mr. Durwin testified that he

[4] Furthermore, the Petitioner almost completely ignored what appear to be substantial differences between the subject property and many of the comparables. For example, the PRCs show the Bolduc, Perfect, and Maxwell properties were assessed as agricultural land. The Performance and Lewis properties were assessed as residential. For another example, the PRCs show the subject property is located in neighborhood 916903, while most of the comparables are in other neighborhoods. Only the Haag, KVH Partnership, and Greendale Professional properties are identified as being in the same neighborhood as the subject property.

agreed with other testimony that the value of the back part of the property was approximately $5,000 per acre, he never established the steps to that conclusion. Consequently, that statement is not probative evidence. *See Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Ultimately, Mr. Durwin's testimony did little, if anything, to help make the Petitioner's case.

33. Mr. House contributed similar evidence—the pond, the remnants of a coal pile and the steep slope on the back part of the property have a negative effect on what a buyer would pay. As previously discussed, Mr. House bought two other commercial properties along Highway 50 and that fact purportedly gives him qualifications for putting a value on the subject property. He testified that he would pay no more than $5,000 per acre for the back 8.582 acres, but the record contains very few facts and little explanation about how Mr. House arrived at that number. It fails to show his conclusory figure is supported by comparable sales or any other kind of analysis according to generally accepted appraisal principles. Consequently, this testimony has no probative value.

34. Mr. Yelton's testimony also established many of those same facts about his property and added others that probably are relevant to value: zoning, road access, topography, and pending litigation. But he only made conclusory statements about value that are not probative evidence. The totality of the evidence presented fails to overcome the presumption in favor of the existing assessment *and to prove what a more accurate value-in-use might be*.

35. 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) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007)(explaining that beginning in 2002, Indiana overhauled its property tax system—the new benchmark is market value-in-use. "As a result, the new system shifts the focus from examining how the regulations were applied … to examining whether a

property's assessed value actually reflects the external benchmark of market value-in-use."); *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).

36. Much of the Petitioner's case focused on assessment methodology issues such as proper land classification and negative influence factors. The evidence and arguments regarding a strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating "when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") The Petitioner did not show the assessor's methodology resulted in an assessment that fails to accurately reflect market value-in-use.

37. When a taxpayer fails 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 front part of the subject property and the other is for the back part. The total value based on adding together both appraisals would be only $848,500. 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 value that the appraisals suggest. In addition, the appraisals purport to establish a value as of March 1, 2007, and there is nothing relating that value to the required valuation date for this case, which would be January 1, 2005. Consequently, the assessment cannot be changed to the total appraised value.

SUMMARY OF FINAL DETERMINATION

38. The Petitioner failed to make a prima facie case for a lower assessed value. The Board finds in favor of the Respondent. The assessment will not be changed.

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

_____
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