

REPRESENTATIVE FOR PETITIONER:
John Johantges, Property Tax Group 1

REPRESENTATIVE FOR RESPONDENT:
Dixie Packard, Clay Township Assessor
Kevin Poore, Clay Township Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

GC BOYD CORPORATION,)	Petition Nos.: 29-018-02-1-4-00168
)	29-018-02-1-4-00169
Petitioner,)	Parcels: 16-09-26-04-02-008.000
)	16-09-26-04-02-009.000
v.)	
)	County: Hamilton
CLAY TOWNSHIP ASSESSOR,)	Township: Clay
)	Assessment Year: 2002
Respondent.)	

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

February 23, 2006

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE 1: *Does the appraisal present a prima facie case of value?*

ISSUE 2: *Is the property correctly classified as commercial?*

PROCEDURAL HISTORY

1. The Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) issued its assessment determinations on May 21, 2004. Pursuant to Ind. Code § 6-1.1-15-3, on June 7, 2004, Gregg Boyd filed Forms 131, Petitions for Review of Assessment, on behalf of GC Boyd Corporation (the Petitioner), seeking the Board's administrative review.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Brian McKinney, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3, held the hearing on September 8, 2005, in Noblesville, Indiana.
3. The following persons were sworn as witnesses at the hearing:¹
 - John Johantges, Petitioner's representative,
 - Gregg Boyd, owner, GC Boyd Corporation,
 - Debbie Folkerts, Hamilton County Assessor,
 - Dixie Packard, Clay Township Assessor,
 - Kevin Poor, Clay Township Field Appraiser.
4. The Petitioner presented one exhibit, identified as Petitioner's Exhibit 1, an appraisal as of October 22, 2003.
5. The Respondent presented one exhibit, identified as Respondent's Exhibit 1, a summary of argument with attached sales information.
6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Petitions,
 - Board Exhibit B – Notice of Hearing dated July 6, 2005.

¹ Kim Powell, Hamilton County Assessor's Office, was present, but not sworn as a witness.

7. The subject parcels together consist of 4.4 acres of vacant land (the property) located on Old Meridian Street in Carmel, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2002, the PTABOA determined the assessed value of the properties are:
Petition # 29-018-02-1-4-00168 – Land \$139,000,
Petition # 29-018-02-1-4-00169 – Land \$200,800.
10. The Petitioner contends the total assessed value for both parcels should be \$210,000.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

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 its 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 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

15. The Petitioner contends the assessed value of the property is in error for the following reasons:
 - A. The appraisal indicates the property is worth \$210,000. The appraisal was prepared by a certified appraiser in accordance with USPAP. This appraisal is the best evidence of value. *Johantges testimony*.
 - B. Petitioner overpaid when it purchased the property on December 29, 1999. *Boyd testimony*.
 - C. The property is not being used in any commercial manner. When the Petitioner purchased the property it was classified as agricultural. The taxes were assessed as agricultural land for about the first 3 years. The Respondent improperly changed the classification of the property, even though there was no change in use and no structures added to the property. The property still should be considered to be agricultural because there are trees growing on it that could be harvested. *Id.*
 - D. Properties neighboring the subject property are assessed for less than the subject. Those neighboring properties are classified as residential. *Id.*
16. The Respondent contends the assessed value of the property should not be changed for the following reasons:
 - A. The value of the property was primarily based on the purchase price of the property in December of 1999. The Petitioner bought the property at that time for \$341,250. *Poor testimony*.
 - B. The Petitioner bought the property from Flanner & Buchanan. There was a no-compete clause included in the purchase agreement and the value of that clause should have been included in the appraisal. *Id.*

- C. The two sales used in the appraisal are not similar to the subject property. One of the sales is an improved church property. Other sales would be closer to the subject property than the ones used. *Id.*
- D. The zoning of the land was changed by the City of Carmel in 2001. The property was assessed as commercial land after reassessment because it was vacant land zoned for commercial use. There are trees and vegetation on the property, but there is no evidence establishing the land was being farmed or harvested. *Id.*

Does the appraisal present a prima facie case of value?

- 17. The Petitioner failed to establish a prima facie case. While an appraisal completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) can be the most effective method to show an assessment is incorrect, the evidence must establish a value as of January 1, 1999. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) (stating an appraisal is the most effective method to show an error in an assessment); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (stating evidence of value must be connected to a value as of January 1, 1999).
- 18. In the present case, the appraisal established a value as of October 22, 2003, which is nearly 5 years after the valuation date. The Petitioner made no effort to establish how the 2003 appraisal value was relevant to the value as of January 1, 1999. Because the Petitioner failed to do so, the appraisal carries no probative value. *Long*, 821 N.E.2d at 471.
- 19. The burden never shifted to the respondent to rebut the Petitioner's evidence. Nevertheless, had the burden shifted to the Respondent, the evidence would have rebutted the Petitioner's case. The Respondent established without contradiction that the property was purchased by the Petitioner on December 29, 1999, for \$341,250.² Testimony also established that the assessment was based in part on the sale price of the subject property.

² The sales date and price is listed on the appraisal as well.

In this case, the sale of the subject property at a time so close to the required valuation date is substantial evidence to support the current assessment.

20. The Board finds against the Petitioner on its appraisal claim.

Is the property correctly classified as commercial?

21. The Petitioner contends the land is improperly classified and it should be valued as agricultural. To be assessed as agricultural, the land must actually be devoted to an agricultural use. Ind. Code § 6-1.1-4-13(a). The Petitioner's witness testified that there were trees on the property and they have harvesting potential. The record is devoid of evidence showing the property was devoted to an agricultural use. For example, no crop records, receipts of sales, or any other kind of evidence was presented that one would expect when a property is devoted to an agricultural use. The Petitioner's claims that the property has harvesting potential or that the property could be used in this manner is conclusory. These conclusory statements do not constitute probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 239 (Ind. Tax Ct. 1999); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner failed to make a prima facie case that the property is devoted to an agricultural use. Furthermore, undisputed testimony established that the property was rezoned to commercial classification in 2001, but the Petitioner's argument fails to address Ind. Code § 6-1.1-4-12, which requires reassessment when land is rezoned. *See also, Howser Development v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). The burden never shifted to the Respondent.
22. Finally, the Petitioner contends that the assessor improperly valued the land as commercial property when there are surrounding properties valued as residential property with a lower assessed value. The Petitioner failed to provide evidence that the subject property is comparable to the neighboring properties. In fact, the neighboring properties are zoned residential and the subject property is zoned commercial. The Petitioner is responsible for explaining to the Board the characteristics of its property, how those

characteristics compare to those of purportedly comparable properties, and how any differences affect the relevant market value-in-use of the properties. *Long*, 821 N.E.2d at 471. The record lacks any such explanation. The Petitioner's evidence does not establish the property should be assessed as residential land. The burden never shifted to the Respondent.

23. The Petitioner failed to present a prima facie case that the property should be classified as agricultural or residential property. The burden did not shift to the Respondent. The Board finds for the Respondent.

This Final Determination is issued by the Indiana Board of Tax Review on the date first written above.

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.