

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

Petition #: 82-029-02-1-4-00609; 82-029-02-1-4-00611
Petitioner: Busler Enterprises, Inc.
Respondent: Pigeon Township Assessor (Vanderburgh County)
Parcel #: 11-700-31-074-010; 11-700-31-074-009
Assessment Year: 2002

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 Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 6, 2003.
2. The PTABOA mailed notice of its decision on August 13, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Vanderburgh County Assessor on September 13, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued notice of the scheduled hearing to the parties dated February 27, 2006.
5. The Board held an administrative hearing with regard to the above referenced petitions on May 12, 2006, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Charles Wolfinger, President, Busler Enterprises, Inc.
 - b) For Respondent: Candy Wells, Real Estate Deputy, Vanderburgh County Assessor's Office
Jonah Sutton, Real Estate Deputy, Pigeon Township
Judy Stricker, Real Estate Deputy, Pigeon Township

Facts

7. The parcels under appeal are classified as commercial properties. The parcels are adjacent to each other and they are located at 2409 N. Sherman Street and 2412 Stringtown Road, Evansville, as shown on the property record cards for parcels 11-700-31-074-010 and 11-700-31-074-009. , The Board will refer to the parcels collectively as the “subject property” unless otherwise indicated.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Vanderburgh County PTABOA:

Parcel 11-700-31-074-010

Land: \$260,300 Improvements: \$54,400 Total: \$314,700

Parcel 11-700-31-074-009

Land: \$127,400 Improvements: \$19,200 Total: \$146,600

10. Assessed value requested by Petitioner on the Form 131:

Parcel 11-700-31-074-010

Land: \$54,900 Improvements: \$54,400 Total: \$109,300

Parcel 11-700-31-074-009

Land: \$26,841 Improvements: \$19,200 Total: \$46,041

Issue

11. Summary of the Petitioner’s contentions in support of alleged error in assessment:
 - a) A property located at the corner of Heidelback and Diamond (201 East Diamond) sold for \$100,000 on February 13, 2003. *Wolfinger testimony; Pet’r Ex. 5.* That lot contains 36,490 square feet. *Wolfinger testimony.*
 - b) A parcel located at 2411 N. Sherman Street is assessed at \$2 per square foot. *Wolfinger testimony; Pet’r Ex. 6A.* The subject property, by contrast, is assessed at \$13 per square foot. *Wolfinger testimony.*
 - c) Another parcel located at 2415 N. Sherman Street sold for \$51,000, or \$3.50 per square foot, on February 20, 2004. *Wolfinger testimony; Pet’r Ex. 7C.* The PTABOA changed the land value for that parcel to \$2 per square foot in August 2004. *Wolfinger testimony; Pet’r Ex. 8A.*

- d) The parcels at 2411 and 2415. Sherman Street are located directly to the north of the subject property. *Wolfinger testimony; Pet'r Ex. 7B.*
- e) Another comparable parcel located at 701 South Green River Road is assessed using a base rate of \$4 per square foot. *Wolfinger testimony; Pet'r Ex. 9A.* That parcel contains a Thornton's convenience store, and the area is similar to the area in which the subject property is located in terms of traffic count. *Wolfinger testimony.*
- f) As demonstrated by the minutes of the PTABOA hearing, the Respondent admits that land values in the area in which the subject property is located range from \$2 to \$13 per square foot. *Id; Pet'r Ex. 4A-4P.* In addition, there are discrepancies in the township assessor's statements at the PTABOA hearing, such as his erroneous claim that the American Red Cross building does not face Diamond Avenue. *Id.*
- g) Properties across the street from, and to the east and south of, the subject property are valued at \$13 per square foot. *Wolfinger testimony.* The street is a multi-lane highway. *Id.*

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

- a) The property that is the most comparable to the subject property is a bank located directly across the street from the subject property at 691 East Diamond Avenue. *Sutton argument.* The sale price equates to \$15.29 per square foot. *Sutton testimony; Resp't Ex. 9.* The land portion of that property is assessed using a base rate of \$13 per square foot, just like the subject property. *Sutton testimony; Resp't Ex. 12.*
- b) Other comparable properties located within Pigeon Township, are assessed using base rates ranging from \$8.20 to \$20.92 per square foot. *Sutton testimony; Resp't Exs. 9- 28.*
- c) Properties on S. Green River Road are located in Knight Township. *Sutton testimony; Stricker testimony; Resp't Ex. 29-44.* The land rates used by the Knight Township Assessor are too low. *Sutton argument; Stricker argument.*
- d) The sale of the property located at 201 East Diamond occurred in 2003, which is outside of the relevant period applicable to the 2002 reassessment. *Stricker testimony.* Moreover, the sale was a "bank sale," which cannot be used in valuing the subject property. *Id; Stricker argument.*
- e) The subject property faces Diamond Avenue, which is the main thoroughfare in the area. *Stricker testimony.* The subject property can be accessed both from Diamond Avenue and from Sherman Street. *Id.* The purportedly comparable properties located on Sherman Street cannot be accessed from Diamond Avenue. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing labeled IBTR 6186,
 - c) Petitioner Exhibits 1a -1d: Form 131,
Petitioner Exhibit 2a – 2c: Form 130,
Petitioner Exhibit 3a: Photograph of parcel 11-700-31-074-009,
Petitioner Exhibit 3b: Assessor Map of parcel 11-700-31-074-009,
Petitioner Exhibit 4a - 4p: Minutes from Property Tax Assessment Board of Appeals dated June 18, 2004.
Petitioner Exhibit 5a: Vanderburgh County Sales Disclosure Database for 201 East Diamond Avenue, parcel 11-670-31-007-001,
Petitioner Exhibit 5b: Vanderburgh County Assessor Map for 201 East Diamond Avenue, parcel 11-670-31-007-001,
Petitioner Exhibit 5c: Vanderburgh County Assessor Map for 201 East Diamond Avenue, parcel 11-670-31-007-003,
Petitioner Exhibit 5d: Vanderburgh County Assessor Map for 201 East Diamond Avenue, parcel 11-670-31-007-004,
Petitioner Exhibit 5e: Vanderburgh County Assessor Map for 201 East Diamond Avenue, parcel 11-670-31-007-005,
Petitioner Exhibit 6a: Vanderburgh County Assessor Administrative Information Sheet (Property Record Card) for 2411 N. Sherman Street, Tax ID 82-06-17-031-074.016-029,
Petitioner Exhibit 6b: Photographs of 2411 N. Sherman Street, Tax ID 82-06-17-031-074.016-029,
Petitioner Exhibit 7a: Vanderburgh County Sales Disclosure Database for 2415 N. Sherman Street, parcel 11-700-31-074-017,
Petitioner Exhibit 7b: Vanderburgh County Assessor Map for 2415 N. Sherman Street, parcel 11-700-31-074-017,
Petitioner Exhibit 7c: Photograph of 2415 N. Sherman St., parcel 11-700-31-074-017,
Petitioner Exhibit 8a - 8d: Vanderburgh County Assessor Administrative Information Sheet (Property Record Card) for 2415 N. Sherman Street, Tax ID 82-06-17-031-074.017-029,
Petitioner Exhibit 9a & b: Vanderburgh County Assessor Administrative Information Sheet (Property Record Card) for 701 S. Green River Road, Tax ID 82-06-26-017-121.010-027,
Petitioner Exhibit 9c: Photograph of 701 S. Green River Road, Tax ID 82-06-26-017-121.010-027,
Petitioner Exhibit 10: Photograph of American Red Cross property with a Diamond Avenue address.

Respondent Exhibit 1: Copy of Certified Letter sent to Mr. Wolfinger May 5, 2006,
Respondent Exhibit 2: Copy of Witness List,
Respondent Exhibit 3: Copy of Form 131,
Respondent Exhibit 4: PTABOA findings – Form 115,
Respondent Exhibit 5: Copy of the Property Record Cards¹
Respondent Exhibit 6: Photograph of subject property,
Respondent Exhibit 7: Plat Map,
Respondent Exhibit 8: List of Comparables with square foot calculation,
Respondent Exhibit 9: Comparable (1) sales disclosure,
Respondent Exhibit 10: Photograph of comparable (1),
Respondent Exhibit 11: Plat Map of comparable (1),
Respondent Exhibit 12: Property Record Card of comparable (1),
Respondent Exhibit 13: Comparable (2) sales disclosure,
Respondent Exhibit 14: Photograph of comparable (2),
Respondent Exhibit 15: Plat Map of comparable (2),
Respondent Exhibit 16: Property Record Card of comparable (2),
Respondent Exhibit 17: Comparable (3) sales disclosure,
Respondent Exhibit 18: Photograph of comparable (3),
Respondent Exhibit 19: Plat Map of comparable (3),
Respondent Exhibit 20: Property Record Card of comparable (3),
Respondent Exhibit 21: Comparable (4) sales disclosure,
Respondent Exhibit 22: Photograph of comparable (4),
Respondent Exhibit 23: Plat Map of comparable (4),
Respondent Exhibit 24: Property Record Card of comparable (4),
Respondent Exhibit 25: Comparable (5) sales disclosure,
Respondent Exhibit 26: Photograph of comparable (5),
Respondent Exhibit 27: Plat Map of comparable (5),
Respondent Exhibit 28: Property Record Card of comparable (5),
Respondent Exhibit 29: List of Sales in Knight Township,
Respondent Exhibit 30: 123 S. Green River Rd. sales disclosure,
Respondent Exhibit 31: Photograph of 123 S. Green River Rd.,
Respondent Exhibit 32: Plat of 123 S. Green River Rd.,
Respondent Exhibit 33: Property Record Card of 123 S. Green River Rd.,
Respondent Exhibit 34: 227 S. Green River Rd. sales disclosure,
Respondent Exhibit 35: Photograph of 227 S. Green River Rd.,
Respondent Exhibit 36: Plat of 227 S. Green River Rd.,
Respondent Exhibit 37: Property Record Card of 227 S. Green River Rd.,
Respondent Exhibit 38: 4705 Bellemeade Avenue sales disclosure,
Respondent Exhibit 39: Plat of 4705 Bellemeade Avenue,
Respondent Exhibit 40: Property Record Card of 4705 Bellemeade Avenue,
Respondent Exhibit 41: 5100 Bellemeade sales disclosure,
Respondent Exhibit 42: Photograph of 5100 Bellemeade Ave.,
Respondent Exhibit 43: Plat of 5100 Bellemeade Ave.,
Respondent Exhibit 44: Property Record Card of 5100 Bellemeade Ave.

¹ The Respondent submitted separate packets of exhibits with regard to each petition. The exhibits contained in those packets are identical, with the exception of Exhibits 5-7, which are parcel specific.

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Notice of Appearance for Marilyn Meighen
Board Exhibit D: Hearing Sign-In Sheet,
Board Exhibit E: Request to Petitioner for copy of blue print that was submitted to
the Respondent as Petitioner Ex. C, but not to the Board.

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A petitioner seeking review of a determination of a county property tax assessment board of appeals 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).
- 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 Twp. Assessor*, 802 N.E.2d 276 (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 did not provide sufficient evidence to support its contentions. This Board reaches this conclusion for the following reasons:

- a) The Petitioner contends that the base rate used to assess the subject property should be \$2 per square foot rather than \$13 per square foot, which is the rate currently applied to the property. In support of its position, the Petitioner points both to sale prices and land base rates of various properties that the Petitioner claims are comparable to the subject property.
- b) Thus, as far as the Board can discern, the Petitioner contends both that the subject property is assessed in excess of its market value and that it is not assessed in a uniform and equal manner in comparison to comparable properties. In either case, the Petitioner’s claim requires a showing that the properties for which the Petitioner

submitted assessment information are comparable to the subject property. *See* Manual at 3 (“[T]he sales comparison approach [] estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004)(rejecting taxpayer’s claim that its land was not assessed in a uniform and equal manner where the taxpayer did not establish that its property was comparable to other properties that were assessed and taxed differently). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470(Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. When seeking to establish comparability between parcels of land, the relevant characteristics to compare include things such as location, accessibility, and topography. *See Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The party offering the comparative evidence also must explain how any significant differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.

- c) The Petitioner offered sales information concerning two properties – 2415 N. Sherman and 201 E. Diamond. The Petitioner demonstrated that 2415 N. Sherman is located directly to the north of the subject property. The Petitioner, however, did nothing to compare that property to the subject property in terms of topography or accessibility, or indeed in terms of anything other than location. More importantly, the sale price of \$51,000 purports to be for a “1/2 undivided interest” in the property. The subject property, by contrast, is not assessed based upon the market value of a partial ownership interest. The Petitioner also did little to compare the subject property to the property located at 201 E. Diamond.
- d) Moreover, the sales of 2415 N. Sherman and 201 E. Diamond occurred on February 20, 2004, and February 13, 2003, respectively. Real property is valued as of January 1, 1999, for purposes of the 2002 general reassessment. MANUAL at 4, 8; *Long*, 821 N.E.2d at 471. Consequently, the Petitioner was required to explain how the 2003 and 2004 sale prices related to the properties’ values as of January 1, 1999. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The Petitioner did not provide such an explanation.
- e) As noted above, the Petitioner also submitted information concerning properties that are assessed using base rates substantially lower than the base rate applied to the subject property. Once again, the Petitioner did little to compare the salient features of those properties to the features of the subject property. At most, the Petitioner demonstrated that two of the properties (2411 and 2415N. Sherman) are located directly to the north of the subject property, and that the “traffic count” of a third

property (701 S. Green River Road) is similar to that of the subject property. While both of those facts are relevant, they are not sufficient by themselves to establish comparability. More importantly, the Petitioner acknowledged that several properties surrounding the subject property are assessed using the same base rate as the rate applied to the subject property. Thus, even if there is a disparity in assessments between the subject property and similarly assessed properties on the one hand and the properties located at 2411 N. Sherman 2415 N. Sherman and 701 S. Green River Road on the other hand, the Petitioner has not demonstrated which of the two groups is correctly assessed.

- f) For the reasons set forth above, the Petitioner failed to make a prima facie case of error in the assessment of the subject property. Where a taxpayer has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Industries v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Accordingly, there is no change in the assessment.

Conclusion

16. The Petitioner failed to make a prima facie case. 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 assessment should not be changed.

ISSUED: _____

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>.