

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

Petition #: 40-013-02-1-4-00004
Petitioner: Country Development, LLC
Respondent: Center Township Assessor, Jennings County
Parcel: 09-33-012-017.002-12
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 Jennings County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated May 19, 2003.
2. The Petitioner received notice of the decision of the PTABOA on September 12, 2003.
3. The Petitioner appealed to the Board by filing a Form 131 petition with the County Assessor on October 10, 2003. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 16, 2004.
5. The Board held an administrative hearing on May 20, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at the hearing:
 - a. For Petitioner: Milo Smith, Tax Consultants, Inc.
 - b. For Respondent: Linda Kovacich, Jennings County Assessor

Facts

7. The property is classified commercial (auto showroom), as is shown on the property record card for parcel # 09-33-012-017.002-12.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Jennings County PTABOA:

Land: \$340,800 Improvements: \$238,400 Total: \$579,200
10. Assessed Value requested by Petitioner:

Land: \$150,000 Improvements: \$238,400 Total: \$388,400

Contentions

11. Summary of Petitioner's contentions in support of alleged error in assessment is:
 - a. The Neighborhood Valuation Form recommends that a negative 25% influence factor be applied to tracts of land between three and five acres in size. (*Petitioner Exhibit H*).
 - b. The Petitioner contends that the negative influence factor should be applied to the subject property as recommended in the Neighborhood Valuation Form.
 - c. Alternatively, the Petitioner contends that the parcel under appeal is platted. It should therefore be assessed from the platted values contained in the Neighborhood Valuation Form rather than the acreage values.¹
12. Summary of Respondent's contentions in support of the assessment is:
 - a. The Neighborhood Valuation Form recommends a negative 25% influence factor, but the area in which the influence factor is to be applied does not include the location of the subject property. (*Respondent Exhibit D*).
 - b. Further, the Neighborhood Valuation Form describes the application of a negative influence factor as "recommended." There is no requirement that a negative influence factor be applied to any individual parcel. The high visibility of the car dealership to potential customers is an important factor in determining the value of this property.

¹ The Petitioner's Form 131 petition also alleges that "the land to building ration is inappropriate," and that the land "should be priced according to its value-in-use, not "value-in-exchange." *Form 131 Petition*. The Petitioner did not address these contentions at the hearing in this matter. To the extent these contentions specify additional grounds for relief, the Board denies them without further discussion.

- c. The property under appeal is platted, but it is surrounded by acreage. At the time the Neighborhood Valuation Form was prepared, the local officials concluded that some large platted areas would be priced as acreage. This fact was taken into account by the PTABOA when determining the front foot values to assign to the platted areas. These front foot values were determined without considering larger platted areas such as the Petitioner's property, which were always intended to be assessed as acreage.
- d. Sales for comparable properties in the area were submitted as evidence that the subject property is assessed properly and if anything, is currently priced below the market value. (*Respondent Exhibits E - H*). These sales were of properties across the street and within two blocks of the property under appeal.
- e. Values were placed on properties uniformly throughout Jennings County. Value-in-Use is the value based on the ability of the asset to produce revenue or utility through ownership. (*Respondent Exhibit C*).

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled BTR #5865.
 - c. Exhibits:
 - Petitioner Exhibit A: Pages 1 and 2 of the 2002 Real Property Assessment Manual.
 - Petitioner Exhibit B: Page 1 – 50 IAC 2.3-1-1(d), defining True Tax Value.
 - Petitioner Exhibit C: Page 2 – Introduction of the 2002 Real Property Assessment Manual.
 - Petitioner Exhibit D: Page 3 – Use value definition from the 2002 Real Property Assessment Manual.
 - Petitioner Exhibit E: Page 1 – Version A – Real Property Assessment Guideline- Introduction for Assessment – Cost Tables.
 - Petitioner Exhibit F: Page 2 – Version A – Real Property Assessment Guideline – Concepts of Cost.
 - Petitioner Exhibit G: Page 4 – Version A – Real Property Assessment Guideline – Commercial and Industrial Depreciation.
 - Petitioner Exhibit H: Copy of page 6 of Jennings County Neighborhood Valuation Form pertaining to the subject property.
 - Petitioner Exhibit I: Copy of the property record card for subject property.

Petitioner Exhibit J: Copy of Ind. Code § 6-1.1-4-13.6.
Petitioner Exhibit K: Disclosure letter from Mr. Smith to the property owner.
Petitioner Exhibit L: Copy of Power of Attorney for Mr. Smith.

Respondent Exhibit A: Letter of Authorization authorizing Linda Kovacich to represent the Center Township Assessor.

Respondent Exhibit B: Copy of property record card for subject property.

Respondent Exhibit C: Copy of Page 12 from 2002 Real Property Assessment Manual –Value-in-Use defined.

Respondent Exhibit D: Copy of Neighborhood Valuation Form – Page 6, referring to subject property.

Respondent Exhibit E: Property record card for Parcel No. 09-28-000-070.000-12.

Respondent Exhibit F: Property record card for Parcel No. 09-33-012-019.000-12.

Respondent Exhibit G: Property record for Parcel No. 09-33-014-044.000-12.

Respondent Exhibit H: Property record card for Parcel No. 09-33-014-045.000-12

d. These Findings and Conclusions.

Analysis

14. The most applicable governing case law is:
 - 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 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. Wash. 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”).
 - 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.

- d. Indiana's system of tax assessment is based upon the "true tax value" of property. I.C. § 6-1.1-31-5; *State Board of Tax Comm'rs v. Town of St. John et. al.*, 702 N.E.2d 1034, 1037 (Ind. 1998). "[T]rue tax value" is defined as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL, at 2 (incorporated by reference at 50 IAC 2.3-1-2).
15. The Petitioner made two distinct arguments: (1) The land should have received a negative 25% influence factor, and (2) the land should have been assessed as platted land under the Neighborhood Evaluation Form.
 16. Petitioner did not provide sufficient evidence to support its contentions concerning the application of a negative influence factor. This conclusion was arrived at because:
 - a. For the 2002 assessment, land values were determined by the township assessor and submitted to the PTABOA for approval using Neighborhood Valuation Forms. In turn, the PTABOA was required to hold a public hearing to allow input concerning the proposed values. *Version A – Real Property Assessment Guideline, Chapter 2, pages 7-11*.
 - b. The Petitioner provided a copy of the relevant Neighborhood Valuation Form recommending the application of a negative 25% influence factor to tracts of land that are three to five acres in size. (*Petitioner Exhibit H*).
 - c. The Respondent contends that the Petitioner misinterpreted the Neighborhood Valuation Form and that the negative influence factor is only applicable to three to five acre tracts located in the area "decreasing down heading to inter[section] of [Highways] 3,7 & 50." The Respondent contends that the property under appeal is located north of this area. (*Respondent Exhibit D; Kovacich Testimony*).
 - d. The Neighborhood Valuation Form is ambiguous. The Board cannot determine from the face of the document whether the negative influence factor is recommended for all three-to-five acre tracts or only for three-to-five acre tracts within a specified area. Neither party presented sufficient evidence to resolve this ambiguity.
 - e. Regardless, the Neighborhood Valuation Form indicates that the application of a negative influence factor is merely a "recommendation." The plain language of the Neighborhood Valuation Form creates no entitlement to a negative influence factor. Instead, the application of a negative influence factor is discretionary on the part of assessing officials.
 - f. To prevail on the issue of the failure to apply an influence factor, the taxpayer must present probative evidence to support the application of a negative influence factor and to quantify that influence factor. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E.2d 1099, 1106 (Ind. Tax Ct. 1999). Here, the Petitioner failed to identify any conditions or

features peculiar to the property that would support the application of a negative influence factor or to quantify the negative effect of those features on the fair market value-in-use of the subject property.

- g. Accordingly, the Petitioner did not establish a prima facie case for the application of a negative influence factor.
- h. Even if Petitioner were viewed as having established a prima facie case, the Respondent rebutted the Petitioner's evidence. The Respondent presented evidence concerning the sale of four vacant parcels of land. One of the parcels, consisting of .9560 acres, is located directly across the street from the subject property and is classified as primary commercial/industrial land. (*Kovacich Testimony; Respondent's Exhibit E*). That parcel sold for \$175,000 on June 17, 1998. (*Id.*). Another parcel that is also located in the subject property's assessment neighborhood consists of .646 acres and is classified as "undeveloped usable" land. (*Kovacich Testimony, Respondent's Exhibit F*). That parcel sold for \$150,000 on March 9, 2001. (*Id.*)
- i. These parcels are comparable to the subject property. *See, Blackbird Farms, LP v. Department of Local Government Finance, 765 N.E.2d 711 (Ind. Tax Ct. 2002)* (properties within the same geographic area, subdivision, or neighborhood in a land order are presumed to be comparable, both in distinguishing characteristics and market value). Moreover, the per-acre sale price for each comparable property greatly exceeded the per-acre assessed value of the subject property. Although the Respondent did not provide information regarding what, if any, changes to the market occurred between the dates of the respective sale and January 1, 1999 (the relevant date for assessment), the evidence is sufficient to demonstrate that the assessment of the subject property is equal to, or less than, its fair market value-in-use.

17. Petitioner did not provide sufficient evidence to support its contentions that the land should have been assessed from the platted portion of the Neighborhood Valuation Form. This conclusion was arrived at because:
- a. The Neighborhood Valuation Form is divided into platted lots and unplatted sections. Platted lots are valued within a range of \$200 - \$500 per front foot. Unplatted acreage is valued within a range of \$50,000 – \$100,000 per acre of primary land.
 - b. The parties agreed the parcel under appeal is platted. The Petitioner contends that the subject property therefore should have been valued on a front foot basis like other platted properties under the Neighborhood Valuation Form instead of on an acreage basis. (*Smith Testimony*).
 - c. However, the Petitioner offered no authority to support its argument that platted lots may never be assessed on an acreage basis. Indeed, the Petitioner's position is at odds with the intent of the relevant administrative guidelines, which provide that "[I]t should be stressed that the pricing method for valuing the neighborhood is of less importance than

arriving at the correct value of the land as of the valuation date.” 2002 *Real Property Assessment Guideline – Version A*, Ch. 2, p. 16.

- d. Testimony indicated that, at the time the Neighborhood Valuation Form was prepared, the local officials recognized that the area contained large platted parcels. The values contained in the Neighborhood Valuation Form (for both platted lots and unplatted acreage) were determined after concluding that those large platted parcels should be assessed using acreage values. (*Kovacich Testimony*).
- e. Even if the Respondent erred in using an acreage basis to assess the subject property, the Petitioner presented no evidence to demonstrate that the error resulted either in an incorrect valuation or an assessed value that differed from the assessed value of comparable properties. Moreover, although the Petitioner’s Form 131 petition requested total land value of \$150,000, the Petitioner presented no explanation concerning how it reached its proposed valuation.
- f. Consequently, the Petitioner failed to establish a prima facie case.
- g. Even if it were determined that the Petitioner presented a prima facie case, the Respondent rebutted the Petitioner’s contentions. As explained above, the Respondent presented evidence concerning the sale of comparable properties sufficient to demonstrate that the assessment of the subject property is equal to, or less than, its True Tax Value. (*Respondent Exhibits E through H; Kovacich Testimony*).

Conclusion

- 18. The Petitioner failed to make a prima facie case. The Board finds in favor of 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

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.