

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

Petition #: 16-016-02-1-3-00009
Petitioner: Kalb & Kalb, Inc.
Respondent: Washington Township Assessor (Decatur County)
Parcel #: 09510090212100a
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 Decatur County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 5, 2003.
2. The PTABOA issued its decision on October 31, 2003, but it does not appear that the Petitioner received notice of the assessment until on or after April 7, 2004. *See Board Exhibit A.* The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on May 5, 2004. The Petitioner elected to have this case heard in small claims.
3. The Board issued a notice of hearing to the parties dated December 14, 2004.
4. The Board held an administrative hearing on February 23, 2005, before the duly appointed Administrative Law Judge (ALJ) Jennifer Bippus.
5. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Petitioner Representative
 - b) For Respondent: Helen Wagener, Appraisal Research Company, Washington Township Representative

Facts

6. The property is classified as an industrial property, located on N. Broadway, Greensburg, Washington Township, Decatur County, Indiana as is shown on the property record card (PRC) for parcel #09510090212100a.

7. The ALJ did not conduct an inspection of the property.
8. Assessed Values of subject property as determined by the Decatur County PTABOA:
Land \$59,000 Improvements \$48,700
9. Assessed Values requested by Petitioner per the Form 131 petition:
Land \$5,000 Improvements \$36,000

Issues

10. Summary of Petitioner's contentions in support of alleged errors in assessment are:

Land

- a) A 3.9 acre portion the subject property is not developed. The entire parcel would have to be re-platted in order for the undeveloped land to be used. The Petitioner submitted a letter from David Neuman, Area Plan Director, stating that the subject property would have to be "re-platted if it is to be built on." *Smith testimony; Petitioner Exhibit 2.*
- b) This would be similar to a farmer who wants to sell his property for a large price. Until the farmer actually sells the land, it must be assessed as farmland. The undeveloped portion of the subject property currently cannot be built upon; therefore, it should be classified as unusable undeveloped land until it is sold and actually re-platted. *Smith argument.*
- c) The Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") contain four (4) main classifications for commercial and industrial land, the last of which is "unusable undeveloped." The neighborhood valuation forms for townships in Decatur County do not provide any values for the unusable undeveloped land category. *Smith testimony; Petitioner Exhibit 3.*
- d) Because the relevant neighborhood valuation form does not provide any values for unusable undeveloped land, it is appropriate to look to the values set forth for that land category in neighborhood valuation forms for Bartholomew County. Most of the land categories values used in Bartholomew County are within ten percent (10%) of the values in Decatur County. Moreover, the Guidelines provide that land values should be equitable for surrounding counties. In Bartholomew County, the land value for unusable undeveloped land is \$1,500 per acre. *Smith testimony; Petitioner Exhibits 5- 6.* The undeveloped portion of the subject property therefore should be assessed at the rate of \$1,500 per acre.

Base Rate for Improvement

- e) The Petitioner also contended that the base rate used by the Respondent to assess the utility storage portion of the 21,600 square foot subject building was in error. The parties resolved this issue pursuant to a Stipulation Agreement by which they agreed to split the difference on the cost of the gauge of the roof, thus changing the base rate from \$12.95 to \$12.08. The Base Rate Calculation Sheet and the Stipulation Agreement have been entered into the record and labeled as Respondent Exhibits 2 and 2A, respectively.

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

Land

- a) The primary land classification takes care of the land, parking lot and existing building. The rest of the land is usable and can be built on. It is part of the whole parcel and the platting has nothing to do with whether it is usable or unusable land. There is a negative twenty-five percent (25%) influence factor applied to both the primary and extended acreage to account for the vacant portion of the land. The land portion of the assessment is correct as it stands. *Wagener testimony.*

Base Rate for Improvement

- b) The Respondent submitted a Base Rate Calculation Sheet and a Stipulation Agreement agreed to by the parties regarding the base rate for the utility storage portion of the subject building.

Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #5891.
- c) Exhibits:

Petitioner Exhibit 1: Copy of the current PRC

Petitioner Exhibit 2: Copy of the letter from the Decatur County Area Plan Director

Petitioner Exhibit 3: Copy of the Neighborhood Valuation Form for the subject area

Petitioner Exhibit 4: Copy Version A – Real Property Assessment Guidelines, Chapter 2, page 84

- Petitioner Exhibit 5: Copy Version A – Real Property Assessment Guidelines, Chapter 2, page 11
- Petitioner Exhibit 6: Copy of the Neighborhood Valuation Form for Columbus Township, Bartholomew County
- Petitioner Exhibit 7: Version A – Real Property Assessment Guideline, Appendix G - “Schedule A.4, GCK pricing
- Petitioner Exhibit 8: Copy of letter from Tom Kalb, owner, with copy of blue print of subject structure attached
- Petitioner Exhibit 9: Copy of “Sheetmetal Chart”
- Petitioner Exhibit 10: Copy of \$12.95 base rate price breakdown, per Assessor
- Petitioner Exhibit 11: Copy of the proposed PRC with changes
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- Respondent Exhibit 1: Copy of PRC for subject property
- Respondent Exhibit 2: Copy of calculations for Stipulation Agreement
- Respondent Exhibit 2A: Signed Stipulation Agreement
- Respondent Exhibit 3: Copy of land sales for subject area
- Respondent Exhibit 4: Copy of authorization given to Ms. Wagener to represent Washington Township
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- Board Exhibit A – Form 131 Petition
- Board Exhibit B – Notice of Hearing on Petition

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 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 regarding the assessment of the subject land. This conclusion was arrived at because:

- a) The Petitioner contends that a 3.9 acre portion of the subject land was assessed incorrectly as *usable* undeveloped and instead should be classified as *unusable* undeveloped. *Smith argument*. To support this contention, the Petitioner submitted a copy of a letter from the Area Plan Director for Decatur County stating that “[the subject] property would have to be re-platted if it is to be built on.” *Petitioner Exhibit 2*.
- b) The Guidelines establish four (4) general categories of commercial and industrial land, the following two (2) of which are at issue in this appeal:
 - Usable Undeveloped – the amount of acreage that is vacant and held for future development
 - Unusable Undeveloped – the amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 85 (incorporated by reference at 50 IAC 2.3-1-2).

- c) The Guidelines also describe what the base rate for each of the above referenced types of land represents:

For usable undeveloped land, the base rate represents the January 1, 1999, value of vacant or raw land that is zoned for commercial and industrial purposes. This type of land has incurred no on-site development cost. . . .

For unusable undeveloped land, the base rate represents the January 1, 1999, value of undeveloped land that is zoned for commercial or industrial purposes. This type of land has incurred no on-site development costs and normally represents an area of vacant land with restrictions. There may be restrictions against building because there are environmental hazards on the property or because the area has been designated as a wetland area by the federal government. . . .

Id. at 86.

- d) The Petitioner identified only one limitation on the use of the subject land for commercial or industrial purposes – the need to re-plat the land. The Petitioner

did not describe why such limitation existed, or what expense re-platting would entail. On its face, this does not appear to be analogous to the significant restrictions, such as environmental hazards or designation as a wetland area, set forth by the Guidelines in their description of unusable undeveloped land. Instead, the subject land fits well within the Guidelines' description of usable undeveloped land.

e) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the current assessment.

16. The Board accepts the Stipulation Agreement entered into by the parties. Pursuant to such agreement, the parties stipulate and agree that the utility storage area of the 21,600 square foot subject building is to be assessed using a base rate of \$12.08. The Board's acceptance of the Stipulation Agreement should not be construed as a determination regarding the propriety of the base rate agreed to by the parties.

Conclusion

Land

17. The Petitioner failed to make a prima facie case for a change in the land classification. The Respondent rebutted the Petitioner's evidence. The Board finds in favor of the Respondent.

Base Rate

18. The Petitioner and the Respondent agreed to change the base rate for the utility storage area the subject structure from \$12.95 to \$12.08.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the land valuation should not be changed, and that the base rate for the utility storage area of the subject building should be changed in accordance with the Stipulation Agreement entered into by the parties.

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>.