

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-4-00439
Petitioners: Vernon & Sandra J. Sieb
Respondent: Department of Local Government Finance
Parcel: 007-16-27-0411-0020
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the "DLGF") determined that the tax assessment for the subject property is \$174,500 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated June 14, 2005.
4. Special Master Patti Kindler held the hearing on July 19, 2005.

Facts

5. The subject property is located at 10001 Express Drive in Highland.
6. The subject property is a 5,000 square foot industrial building located on a 0.400 acre lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$73,200 Improvements \$101,300 Total \$174,500.
9. The assessed value requested by Petitioners on the Form 139L Petition is:
Land \$69,000 Improvements \$55,000 Total \$124,000.
10. The following persons were present and sworn as witnesses at the hearing:
For Petitioners – Vernon Sieb, property owner,
For Respondent – Terry Knee, auditor/assessor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The subject industrial building is valued at least 25 to 30 percent too high in comparison to other similar buildings located in the same industrial subdivision. *Sieb testimony; Petitioner Exhibit 2, 3.* A 30 percent reduction was made to the land after the informal hearing. That adjustment brought the value in line with other values in the subdivision, but a further reduction to the land from \$73,200 to \$69,000 is warranted due to the subject's lack of a public access and its close proximity to Spring Ditch. *Sieb testimony; Petitioner Exhibit 3.*
 - b) Similar "Metallic" or "Star Steel" brand buildings located within the industrial subdivision, as shown on the plat map, are valued between \$50,000 and \$88,000, while the subject building is valued at \$101,300, even though the subject building is "identical" to the comparable buildings. *Sieb testimony; Petitioner Exhibits 3, 4.* The comparable structures are prefabricated buildings with between 5,000 and 9,500 square feet like the subject building. The only difference between the subject building and some of the comparable buildings is the interior finish. *Sieb testimony; Petitioner Exhibit 3.*
 - c) The 2 buildings owned by the Petitioners are identical, but one building is assessed at \$66,500 and the subject building is assessed at \$101,300. *Sieb testimony.* Both pre-engineered buildings were built in 1980 and contain 5,000 square feet, so the disparity between the pricing of the two buildings is evidence of an excessive assessment. *Sieb testimony.*
 - d) The subject building is accessible only by a 20 foot private easement. There is 10 feet on each side for ingress and egress. The ingress and egress for the subject property is dependent upon the person who owns the land containing the easement. If the easement is revoked, according to local zoning, the subject property could become landlocked. *Sieb testimony; Petitioner Exhibit 8.*
 - e) The lack of a public access and close proximity of the Spring Ditch to the subject structure have a detrimental affect on the value of the subject property. *Sieb testimony.*
 - f) The property located on Lot 8 in the same industrial subdivision as the subject property sold for \$175,000 and was used as a comparable property in an appraisal of the subject property. *Sieb testimony.* The comparable property, while it is the same size as the subject property, is superior to the subject property because it has actual street frontage and is not affected by Spring Ditch. *Sieb testimony.* The subject property is assessed at \$174,500. *Sieb testimony.* Due to the lack of street frontage, the subject should be valued lower than the sale price of the comparable property, or any other building in the subdivision. *Sieb testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The pricing of properties in Indiana is based on their value-in-use and the use does vary from building to building within the subdivision. *Knee testimony.*
 - b) The land pricing is based on the same rate per square foot for all the lots located in the subdivision. *Respondent Exhibit 3.* The square footage of the parcels and the difference in the land values is due to a difference in land sizes. *Knee testimony; Respondent Exhibit 3.*

Record

13. The official record for this matter is made up of the following:
- a) The Form 139L Petition,
 - b) The tape recording of the hearing labeled Lake County 1642,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Form 139L Petition,
 - Petitioner Exhibit 2 – Summary of argument,
 - Petitioner Exhibit 3 – A list of comparable properties,
 - Petitioner Exhibit 4 – A plat map showing location of comparables,
 - Petitioner Exhibit 5 – Photographs of the front and rear view of the subject property,
 - Petitioner Exhibit 6 – Two pages from appraisal report showing site improvements, description of improvements, history, estimated exposure time and appraisal development and reporting process,
 - Petitioner Exhibit 7 – Notice of Final Assessment from informal hearing,
 - Petitioner Exhibit 8 – Subject property record card,
 - Petitioner Exhibit 9 – A plat map showing the location of an extra lot valued in the certified appraisal,
 - Petitioner Exhibit 10 – Letter from the Board regarding preparation for hearings,
 - Petitioner Exhibit 11 – Notice of Hearing,
 - Petitioner Exhibit 12 – A plat survey showing building location on Lot 8,
 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – A photograph of the subject property,
 - Respondent Exhibit 3 – Neighborhood land valuation form and incremental/decremental land pricing data,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 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 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.

Land Valuation

15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners claim the land valuation should be reduced by approximately 10 percent to a value of \$69,000 because the site has no frontage, is serviced only by a private easement, and the Spring Ditch renders part of the commercial land unusable. The plat maps show the location of the Spring Ditch in relation to the commercial building and the limited access area to and from the property. In addition, the Petitioners submitted purportedly comparable assessments for properties to show the relationship between the land values.
 - b) The Petitioners’ submission of 9 assessments in the industrial area lists land valuations that range from \$68,500 to \$79,200 for the platted lots, which vary widely in size. *Petitioner Exhibit 3*. One of the comparables represents the lot just north of the Petitioners’ land. It appears to be a rear lot that is identical in size to the subject and without public ingress and egress. *Petitioner Exhibit 4*. The Petitioners’ evidence shows this lot is assessed at \$79,200, which is \$6,000 more than the Petitioners’ land assessment. *Petitioner Exhibit 4*. Further, the lots listed with assessments lower than the subject property were all noticeably smaller in square footage than the subject property. *Petitioner Exhibit 3, 4*. The Petitioners’ evidence does not support a reduction in the Petitioners’ land assessment.

- c) The Petitioners failed to make the necessary connections between the evidence they submitted and their claims that the land assessment should be reduced. The Petitioners simply requested that the subject land be lowered by approximately 10 percent based on the lack of a public access, frontage, and the encroachment of Spring Ditch on the property. The record lacks probative evidence that these factors reduce the land value by 10 percent.

Improvement Valuation

16. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
 - a) The comparable assessment data submitted by the Petitioners includes 9 structures located in the same subdivision as the subject property with square footages ranging from 5,000 to 9,500. *Petitioner Exhibit 3*. The data shows assessed values for the structures ranging from \$50,400 to \$117,300. *Petitioner Exhibit 3*. Several items of comparability, however, are not listed on the comparable assessment sheet. The Petitioners did not offer any evidence of the finish type, age, use-type, condition, or any other units of comparability of any the buildings they claim are comparable to the subject. Without this information, the Petitioners' statements of comparability are merely conclusory statements and do not constitute probative evidence. Conclusory statements that something is comparable, do not constitute probative evidence. Because the Petitioners did not present evidence that the other buildings were comparable to their own, they did not present a prima facie case. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471, (Ind. Tax Ct. 2005).
 - b) Additionally, the Petitioners contended that the structure on an adjoining lot is identical to the subject building, but is assessed for only \$66,500, while the subject building is assessed for \$101,300. The Petitioners' did not submit any probative evidence explaining how or why the building on the adjoining lot is comparable to the subject building. The Petitioners' statements of comparability are merely conclusory statements and do not constitute probative evidence. *Id.*
 - c) The Petitioners argued that the lack of street frontage, public access to the subject property and the location of the ditch with respect to the subject building diminish the value of the subject structure. While the Petitioners submitted evidence of assessments of other properties in the area, they did not explain how the assessments of the other properties show that the subject property's land assessment should be reduced more than the reduction already applied by the local assessing officials. The Board does not doubt that the lack of frontage, public access and the location of the ditch on the property may affect its value, but the record does not show or quantify the loss in value or show that the assessment does not already reflect that loss.
 - d) The Petitioners' contentions that a similar building located next to the subject property with actual street frontage and no ditch on it sold for \$175,000 is not enough to support a change in the assessment. Again, bare claims of comparability are not

enough to establish an error in the assessment. Without evidence of how and why the alleged comparable property is comparable to the subject property, the Petitioners' statements are merely conclusory and do not constitute probative evidence. *Id.*

18. Because Petitioners failed to make a prima facie case for any change to their assessment, the Respondent's burden to support the current assessment with probative evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

19. The Petitioners did not 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>.