

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

Petitions: 55-019-02-1-4-00003
55-019-02-1-4-00004
Petitioner: Paragon Holdings Ltd.
Respondent: Ray Township Assessor (Morgan County)
Parcels: 066-12-18-278-007-000
066-12-18-278-008-000
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the Morgan County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 9, 2003.
2. The PTABOA issued notice of its decision on August 10, 2004.
3. The Petitioner appealed to the Board by filing Forms 131 with the county assessor on September 8, 2004. The Petitioner elected to have these cases heard according to small claim procedures.
4. The Board issued notices of hearing to the parties dated February 13, 2006.
5. The Board held an administrative hearing on April 12, 2006, before the duly appointed Administrative Law Judge Brian McKinney.
6. Persons sworn as witnesses at the hearing:
Duane R. Zishka, Uzelac & Associates, tax representative,
Gary E. Brinley, Sr. Vice President, The Peoples State Bank,
Reva Brummett, PTABOA member,
Brenda Brittain, Morgan County Assessor, on behalf of the Ray Township Assessor.

Facts

7. The two parcels are classified as commercial properties. They are used as a bank and an adjacent parking lot. The parcels are located on State Road 67 in Paragon, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The total assessed value of both parcels is currently \$160,500. The assessed values determined by the PTABOA for each parcel are listed below.

<u>Parcel</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
066-12-18-278-007-000	\$22,000	\$130,000	\$152,000
066-12-18-278-008-000	\$7,600	\$900	\$8,500

10. The Petitioner contends the parcels should have a combined assessed value of \$86,260.¹

Issue

11. Summary of the Petitioner's contentions in support of alleged error in the assessment:

- a) Key Bank built this bank, but subsequently closed it. The building was vacant for approximately seven years. The Peoples State Bank (Peoples Bank) purchased the property for \$35,000 in 1996.² *Brinley testimony; Pet'r Ex. 1.* That price would amount to a value of \$37,000 as of January 1, 1999. *Zishka testimony; Pet'r Ex. 2.*
- b) The Petitioner acknowledged that it purchased the subject property in a distressed sale situation. The Petitioner would not sell the property for \$35,000. *Zishka testimony.*
- c) The primary reason Peoples Bank opened a branch in Paragon was its ability to purchase the subject property very inexpensively. The main factor in determining the profitability of a bank branch is its ability to generate deposits and loans. This branch has had a deposit base of approximately \$5 million for the last five or six years. *Brinley testimony; Pet'r Ex. 4.* In contrast, the Citizens Bank in Eminence has deposits of nearly \$10 million due in part to a larger deposit base resulting from businesses and a school located there. *Brinley testimony; Pet'r Ex. 3.* Although the communities of Eminence and Paragon are similar, the Petitioner's bank has actually seen its total deposits decrease slightly since 2001. There is no expectation that the amount of deposits will increase in the near future. *Brinley testimony.* The subject property is either the lowest or the second lowest volume of transactions of all Peoples Bank branches. This branch has approximately 3,000 customer transactions each month, while its busiest branch has 9,000 transactions a month. *Id.*
- d) The car lot located next to the subject property is not comparable because the land to building ratio is so different. Furthermore, the buyer for that purpose was more interested in the land than the building. *Zishka testimony.*

¹ The Petitioner had requested a total value of \$37,000 on its Forms 131 based on obsolescence depreciation, but at the hearing the Petitioner sought a reduction based on the total value of the property, allegedly \$86,260, and did not pursue the obsolescence claim.

² Paragon Holdings Ltd. was created to separate these two parcels from other Peoples Bank properties because of potential environment contamination of the land. *Brinley testimony.*

- e) Two of the properties identified by the Respondent, the pizza shop and the Citizens Bank in Eminence, are the best evidence of value. *Id.* When trended to 1999, the pizza shop sold for \$46.18 per square foot. The Citizens Bank is assessed for \$42.83 per square foot. *Id.* Based on those comparables, the subject property should have an assessed value of \$86,260. *Id.*

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

- a) The subject property originally was assessed for \$243,000. At the PTABOA hearing, the Petitioner did not identify a proposed value, claiming only that the value was somewhere between \$35,000 and \$243,000. *Brummett testimony.*
- b) No "for sale" sign was posted in front of the bank. *Brittain testimony.*
- c) From 2000 through 2004, there were two sales of commercial property in Paragon. In 2000, a car lot located next to the subject property sold for \$50,000 (\$72.67 per square foot). *Brummett testimony; Resp't Ex. 10.* In 2004, a pizza shop one block from the subject property sold for \$65,000 (\$49.39 per square foot). *Brummett testimony; Resp't Ex. 11.* As of 1999, those respective square foot prices would have been \$71.73 and \$46.18. *Brummett testimony.*
- d) The subject property did not have to be used as a bank after it closed. *Brummett testimony.* An old bank in Plainfield was marketed for sale as office space. *Id.; Resp't Exs. 13-14.* Evidence concerning that Plainfield property was offered only to show the subject property could have been used for purposes other than as a branch bank. *Brummett testimony.*
- e) The Respondent reviewed the assessments of other Peoples Bank branches in Morgan County. *Brummett testimony.* Three other banks have square foot values between \$110.32 and \$132.00. *Id.; Resp't Exs. 15-19.* Using those values, the subject property would be worth between \$223,410 and \$265,000. *Brummett testimony.*
- f) The Respondent compared the Petitioner's Paragon branch to the smallest bank in Morgan County, the Citizens Bank in Eminence. That building is 1,306 square feet larger and 57 years older than the subject property. It was assessed for \$42.83 per square foot for a total of \$86,260. *Brummett testimony; Resp't Ex. 20.*
- g) These banks should be used to determine the value of the subject property. The Peoples Bank's Morgantown branch is physically most comparable to the subject property. *Brummett testimony; Resp't Ex. 21.* The Citizens Bank in Eminence is the most comparable property based on business volume. *Id.* The average square foot values of the Morgantown branch (\$110.32 per square foot) and the Citizens Bank (\$42.83 per square foot) support a \$76.58 square foot value for the subject property. On that basis, the Petitioner's two parcels are worth \$154,200. *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,
 - c) Petitioner Exhibit 1 – Purchase agreement,³
Petitioner Exhibit 2 – Inflation calculator,
Petitioner Exhibit 3 – Summary of deposits for Citizens Bank,
Petitioner Exhibit 4 – Summary of deposits for Peoples Bank,
Respondent Exhibit 1 – Form 130 for petition 55-019-02-0-4-00003,
Respondent Exhibit 2 – Form 130 for petition 55-019-02-0-4-00004,
Respondent Exhibit 3 – Form 115, PTABOA determination for petition 55-019-02-0-4-00003,
Respondent Exhibit 4 – Form 115, PTABOA determination for petition 55-019-02-0-4-00004,
Respondent Exhibit 5 – Transcript of the PTABOA hearing on July 20, 2004,
Respondent Exhibit 6 – 2002 Real Property Assessment Manual, page 2,
Respondent Exhibit 7 – 2002 Real Property Assessment Manual, page 12,
Respondent Exhibit 8 – Inflation calculator,
Respondent Exhibit 9 – Cover sheet with photograph and property record cards (PRCs) for the subject parcels,
Respondent Exhibit 10 – Commercial market data with photograph and PRCs for 2300 S. State Road 67, Paragon,
Respondent Exhibit 11 – Commercial market data with photograph and PRC for 100 W. Union St., Paragon,
Respondent Exhibit 12 – Map showing location of the properties shown in Exhibits 9, 10 and 11,
Respondent Exhibit 13 – Statement regarding Multiple Listing Service (MLS) listing 2454297,
Respondent Exhibit 14 – MLS listing 2454297 for 119 W. Main St., Plainfield,
Respondent Exhibit 15 – Statement about bank comparables,
Respondent Exhibit 16 – “About Us” webpage from Peoples Bank,
Respondent Exhibit 17 – Information and PRC for the Peoples Bank branch in Morgantown,
Respondent Exhibit 18 – Information and PRC for the Peoples Bank branch in Nashville,
Respondent Exhibit 19 – Information and PRC for the Peoples Bank branch in Ellettsville,
Respondent Exhibit 20 – Information and PRC for the Citizens Bank in Eminence,
Respondent Exhibit 21 – Summary of value determination,

³ The purchase agreement with a “CONFIDENTIAL” stamp is attached to the Form 131. The Petitioner also introduced this document without the “CONFIDENTIAL” indication at the administrative hearing as Exhibit 1.

Respondent Exhibit 22 – Notice of intent to appear as additional party and notice as a representative for Ray Township,
Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of hearing,
Board Exhibit C – Hearing sign-in sheet,

- 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 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.

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) The Petitioner bought the subject property for \$35,000 in 1996. The Petitioner trended that amount to a value of \$37,000 as of January 1, 1999. The Petitioner acknowledged that its purchase of the subject property resulted from a distressed sale and that the property was worth more than \$35,000 at the time of purchase. This 1996 purchase price has no probative value.
- b) The subject property is a one-story brick structure with 2014 square feet and a drive-up canopy with 621 square feet. It was built in 1976. *Resp't Ex. 9*. The Petitioner argued that two properties identified by the Respondent as comparables are the best evidence of value. The Petitioner asserted the values of the pizza

shop in Paragon⁴ (*Resp't Ex. 11*) and the Citizens Bank in Eminence⁵ (*Resp't Ex. 20*) prove its property should be assessed for \$86,260.

- c) Evidence of the pizza shop was introduced by the Respondent because it was one of only two commercial properties sold in Paragon during the period 2000 through 2004. The Petitioner and the Respondent both failed to present probative evidence establishing comparability of the pizza shop property to the subject property, and neither party explained how differences between the pizza shop and the bank affect market value-in-use. *See Long*, 821 N.E.2d at 471 (A party must explain the characteristics of its own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties). Accordingly, this evidence does not support the assessed value claimed by the Petitioner.
- d) The Petitioner also argued that the Citizens Bank (currently assessed for \$86,260) is comparable to its property and the two banks should be assessed for similar amounts. Again, the record does not contain probative evidence sufficient to establish comparability, nor does the record explain how differences between the properties affected market value-in-use. *Id.*
- e) The Petitioner cannot rely on the fact that evidence regarding the pizza shop and Citizens Bank was introduced by the Respondent. Although the record contains a photograph of each property, the property record card for each property and a summary comparison of a few features, the parties failed to establish how these properties might be comparable to the Petitioner's property. *See Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075 (Ind. Tax Ct. 2005) ("The Assessor was therefore responsible for explaining to the Indiana Board the characteristics of Fidelity's property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties. The record is completely devoid of such explanation, and therefore the Assessor's evidence carries no probative value.") For example, the exhibits describing the pizza shop and the Citizens Bank properties establish they both are substantially different in size and older than the subject property. *Resp't Ex. 11; Resp't Ex. 20.*
- f) When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See 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).

⁴ The pizza shop building is a concrete block structure with 1316 square feet that was built in 1911. *Resp't Ex. 11.*

⁵ The Citizens Bank in Eminence is 1306 square feet larger than the subject property and was built in 1914. *Resp't Ex. 20.*

- g) Neither party offered substantial, probative evidence for the Board to determine what the value-in-use of this property really is. The Respondent presented a calculation based on both the Citizens Bank and the Peoples Bank in Morgantown to arrive at an average square foot value for the parcels under appeal. *Resp't Ex. 21*. The Respondent's calculation produces a proposed value (\$154,200) that is less than the current assessment. Without evidence to establish comparability, this calculation lacks probative value. Nevertheless, the Respondent's proposed value is an admission that the current assessment is too high and is sufficient to support an assessment change.

Conclusion

16. The Petitioner failed to make a prima facie case. The Respondent testified that the total assessment of the two parcels should be reduced to \$154,200. There must be a change in the assessment based on this concession.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: July 11, 2006

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>.