

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

Petition: 82-030-06-1-4-12312
Petitioner: Busler Enterprises, Inc.
Respondent: Vanderburgh County Assessor
Parcel: 07-010-09-012-006
Assessment Year: 2006

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 an assessment appeal with the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 22, 2007.
2. The PTABOA issued notice of its decision on July 27, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on September 7, 2007. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 4, 2008.
5. Administrative Law Judge Debra Eads held the Board's hearing on August 18, 2008.
6. Charles Wolfinger, on behalf of the Petitioner, Marcia Roberts, Deputy County Assessor, and Tiffany Collins, Deputy County Assessor, were sworn as witnesses.

Facts

7. The subject property is a truck stop on approximately 58 acres of located at 20100 North Highway 41, Evansville.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the land is \$3,464,000 and the assessed value of the improvements is \$549,600 (total \$4,013,600).
10. The Petitioner requested a total assessment of \$1,850,000.

Summary of Evidence

11. The Petitioner presented the following evidence:
 - a. The appraisal prepared by Brian Shelton establishes the value of the subject property at \$1,850,000 as of January 26, 2004. *Petitioner Exhibit 2.*
 - b. Environmental contamination results in a loss of value due to the cost for clean-up. Although a specific cost to address the environmental issues has not been prepared, the cost would be approximately \$750,000 to \$1,500,000. *Wolfinger testimony.*
 - c. The Respondent's sales offered as comparables are not truly comparable because those parcels were not affected by environmental issues and did not require contamination clean-up or demolition of existing buildings. *Wolfinger testimony.*

12. The Respondent presented the following evidence:
 - a. At the preliminary conference, the township assessor met with Nancy Markham and agreed to lower the land assessment because of limited access to the ground behind or west of the prime commercial land and buildings. The secondary commercial land was reduced by 25%. The undeveloped usable land and the undeveloped unusable land were reduced by 35%. Due to that agreement, no additional adjustment should be made. *Collins testimony.*
 - b. Multiple sales of vacant land in the same area support the assessed value of the subject property. A tract of land measuring 6.07 acres sold for \$396,670, or \$65,000 per acre, while the subject property is valued at approximately \$61,000 per acre. *Collins testimony; Roberts testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Aerial photographs showing the property, photographs of the buildings, and a summary of the Petitioner's case,
Petitioner Exhibit 2 – Appraisal of the subject property dated January 15, 2004,
Respondent Exhibits – None,
Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – 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 provided sufficient evidence to make a case for changing the assessment. The Board reached this decision for the following reasons:
 - a. Real property in Indiana is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “the market value in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” Ind. Code 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. Such evidence may include actual construction cost, sales information regarding the subject or comparable properties, appraisals, and any other information compiled to accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. The Tax Court has stated that “the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *French Lick Twp. Tr. Assessor v. Kimball Int'l, Inc.*, 865 N.E.2d 732, 736 (Ind. Tax Ct. 2007); *Kooshtard Prop. VI, LLC v. White Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
 - c. Brian Shelton is an Indiana Certified General Appraiser with license number CG49300150. He performed an appraisal for the subject property and concluded that in his opinion the subject property had a market value of \$1,850,000 as of January 26, 2004. He certified that his work conforms to USPAP standards. The Respondent did not dispute Mr. Shelton’s qualifications or object to his appraisal.

- d. For 2006 assessments, a property's value is determined as of January 1, 2005. Ind. Code 6-1.1-4-4.5; 50 IAC 21-3-3. Sales that occurred within a 12 month window before and after January 1, 2005, are recognized as having relevance to value. *See* 50 IAC 21-3-3(a). An appraisal establishing a value within that same period is relevant to determining the correct assessment. Consequently, the Shelton appraisal for \$1,850,000 is sufficient to establish a prima facie case for the Petitioner.
- e. The Respondent did not offer probative evidence to rebut or impeach the appraisal—the conclusory testimony that nearby commercial land sold for \$65,000 per acre is not probative evidence. Sales information regarding comparable properties certainly can be probative evidence. MANUAL at 5. But the limited evidence and explanation the Respondent provided is not enough to establish comparability in this case. “[A] conclusory statement that something is comparable does not constitute probative evidence.” *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). The probative value of comparables depends on providing an explanation of the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the relevant market value-in-use of the properties. The record is devoid of such explanation.¹ Therefore, the Respondent's evidence about other land sales has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- f. The Respondent also relied on a purported agreement with Nancy Markham at the informal conference with the township assessor that the assessment would be \$3,464,000 for land and \$549,600 for improvements. This argument appears to relate to Form 130, page 4 (part of Board Exhibit A), which states that both the petitioner and the township assessor contend the assessment should be \$3,464,000 for land and \$549,600 for improvements.² The most pertinent part of the statement is:

The Scott Twp Assessor met with Nancy Markham and agreed to lower the land assessment because of limited access to the ground behind or west of the prime commercial land and their buildings.
(see map)

Secondary comm. Land receives -25% for limited access
Undeveloped usable land receives -35% for limited access
Undeveloped unusable land receives -35% for limited access.

The form also contains what purports to be the signature of Nancy Markham as the taxpayer's authorized representative. The record is unclear about the status of Nancy Markham or her authority to bind the Petitioner to any such agreement. More

¹ And the lack of any such explanation is particularly significant in this case because the Respondent did not dispute Mr. Wolfinger's testimony that the purportedly comparable land sale involved clear, uncontaminated land that differed substantially from the subject property, which has environmental contamination problems and existing "improvements" that would need to be removed.

² The other pages of the Form 130 are not in the record.

importantly, however, the purported agreement and other evidence in this case are not sufficient to establish that the Petitioner gave up any right to pursue this case with an appeal to the Board and claim that the market value-in-use is even less.

Conclusion

16. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the assessment must be changed to \$1,850,000.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>