

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

Petition #: 40-013-02-1-4-00003
Petitioner: Fidelity Federal Savings & Loan
Respondent: Center Township Assessor, Jennings County
Parcel: 09-34-032-061.000-12
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. Notice of the decision of the PTABOA was mailed on September 12, 2003.
3. The Petitioner appealed to the Board by filing a Form 131 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, as is shown on the property record card for parcel # 09-34-032-061.000-12.
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: \$49,000 Improvements: \$154,300.

10. Assessed Value requested by Petitioner:

Land: \$49,000 Improvements: \$136,000.

Contentions

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

- a. The bank is open with interior partitions; therefore a negative \$10.20 interior finish adjustment should be made. The walls have been measured and the cost schedules used to determine the adjustment that should be given. (*Petitioner Ex. H, I, & J, Smith Testimony*).
- b. The bank building was constructed with average quality materials and workmanship and should be graded a "C", not a "C+2" as shown on the property record card (*Petitioner Ex. K & L, Smith Testimony*).
- c. The State Tax Board made an on-site inspection in 1998 and the Final Determination issued for the subject property places the building with a "C" grade. Petitioner wishes to maintain that determination of a "C" grade. (*Petitioner Ex. K, Smith Testimony*).

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

- a. Values were placed on properties uniformly throughout Jennings County and Value-in-Use is the value based on the ability of the asset to produce revenue or utility through ownership. (*Kovacich Testimony*).
- b. The interior finish is typical of occupancy for a GCM Bank and no adjustments are needed for the partitions. (*Respondent Ex. C, Kovacich Testimony*).
- c. The Jennings County PTABOA believes the Final Determination on the property from 1998 for the assessment year 1995 was in error, and the grade should have remained at "B-1." In this respect, that is why the subject property was graded "C+2" for the current reassessment (2002). The "C" grade is too low for the subject property. (*Kovacich Testimony*).
- d. The subject property is not assessed according to the market. A comparable property sold on October 16, 2002, for \$394,000 to a company with the name of FFCA (as listed on the property record card) and it was a vacant, dilapidated building. This property is also located on North State Street. It is now completely remodeled as a bank and was acquired by Dupont State Bank as of December 31, 2003, for \$750,000. (*Respondent's Ex. D, Kovacich Testimony*).

- e. The property is under-assessed, if anything, for the comparable property sale in the same area.

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 #5867.
 - 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) True Tax Value
 - Petitioner Exhibit C: Page 2 – Introduction of 2002 Real Property Assessment Manual.
 - Petitioner Exhibit D: Page 3 – Use value definition from 2002 Real Property Assessment Manual.
 - Petitioner Exhibit E: Page 1 – Version A – Real Property Assessment Guide- Introduction for Assessment – Cost Tables.
 - Petitioner Exhibit F: Page 2 – Version A – Real Property Assessment Guide – Concepts of Cost.
 - Petitioner Exhibit G: Page 4 – Version A – Real Property Assessment Guide – Commercial and Industrial Depreciation.
 - Petitioner Exhibit H: The calculations and measurements for the partition adjustment requested.
 - Petitioner Exhibit I: Pages 43 & 44 – Version A – Real Property Assessment Guideline – Calculating the Schedule C-GC Base Price Components and Adjustments.
 - Petitioner Exhibit J: Page 19 – Version A – Real Property Assessment Guideline – Appendix G – Commercial and Industrial Cost Schedules.
 - Petitioner Exhibit K: State Board Final Assessment Determination dated July 22, 1998 for the 1995 Assessment Year for the subject property. The grade was changed from “B-1” to a “C” grade after inspection by the State Board.
 - Petitioner Exhibit L: Copy of the old property record card with the grade changed to a “C” grade to correspond with the Final Determination.
 - Petitioner Exhibit M: Copy of Power of Attorney for Milo Smith.

Respondent Exhibit A: Letter of Authorization authorizing Linda Kovacich as township representative.

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

Respondent Exhibit C: Page 8 – Version A – Real Property Assessment Guideline – General Commercial Models – Appendix D.

Respondent Exhibit D: Copy of comparable property located on North State Street, with a sale value of \$750,000 after remodeling, to Dupont State Bank. The sale prior to remodeling was for \$394,000.

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing case law is:
 - a. The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - b. The Board will not change the determination of the County Property Tax Assessment Board of Appeals (PTABOA) unless the Petitioner has established a prima facie case and, by a preponderance of the evidence proven, both the alleged errors in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
 - c. *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475 (Ind. Tax 2003): In the event the Petitioner sustains his burden, the burden then shifts to the Respondent to rebut Petitioner's evidence with substantial evidence. Should the respondent fail to rebut Petitioner's evidence, the Board will find for the Petitioner.
 - d. "The Petitioner must compare the features in the applicable improvement model with the features (or lack thereof) in its own improvement. The Petitioner must then attempt to calculate the value of the features in the model and translate that lack of value into a grade adjustment. A taxpayer cannot simply point to alleged deficiencies in a building and expect to make a prima facie case as to grade or any other issue." *Indian Industries v. Dep't. of Local Gov't Fin.*, 791 N.E.2d 286 (Ind. Tax 2003) (citing

Miller Structures v. State Bd. of Tax Comm'rs, 748 N.E.2d 943, 953 (Ind. Tax 2001)).

- e. “[T]he taxpayer could convert [the quantity of partitioning] to the cost of partitioning per square foot of floor space actually present on the improvement and comparing it to the typical cost of partitioning per square foot of floor space assumed by the model.” *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185 (Ind. Tax 2003).

Issue 1 - Partitioning Adjustments

15. Petitioner established a prima facie case to support a partitioning adjustment, however, the Respondent rebutted Petitioner’s contention that the true tax value is too high and an adjustment is warranted.

This conclusion was arrived at because:

- a. The Petitioner calculated and used the proper schedule to adjust for the partitions within the subject building. The Tax Court has determined the methodology used by the Petitioner is a valid means of computing the actual cost of partitioning compared to the cost of typical partitioning described in the model. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185 (Ind. Tax 2003).
- b. The Petitioner presented evidence that the property was not assessed in accordance with the Version A Guidelines. (*Petitioner Ex. I, Smith Testimony*).
- c. The Respondent argued that regardless of Petitioner’s contentions concerning the partitioning, independent market evidence supports Respondent’s position that lowering the true tax value is not justified and the bottom-line market value assigned to the property is not excessive. The Respondent presented a property record card of another commercial property of similar size and general features and character, located in the same designated neighborhood. The Respondent presented evidence that the comparable property was sold as a vacant building in 2002 for \$394,000, a sale price far exceeding the subject property’s true tax value. The vacant building was remodeled as a bank and sold again in 2003 for \$750,000.
- d. Other than the features revealed on the property record cards, the comparability of the remodeled bank property and the subject is not determinable from the record. Nevertheless, the Board finds the Respondent’s evidence persuasive. The import of the Respondent’s point is clear. The evidence strongly suggests that the market value in exchange of the subject is most likely closer to the price of the similar nearby property converted to an identical use, than the true tax value assigned. The Board will not ignore the logic associated with the Respondent’s

position and agrees that a partitioning adjustment is not appropriate under these circumstances.

- e. The Respondent's methodology is appropriate. If independent evidence supports the contention that the bottom-line value is a reasonable measure of market value-in-use, the Board will not make pricing ladder adjustments for features such as a lack of partitioning. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).

Issue 2 - Grade

16. Petitioner did not provide sufficient evidence to support Petitioner's contentions. This conclusion was arrived at because:
 - a. The Petitioner opined that the building was a "C" grade rather than "C+2". (*Smith Testimony*).
 - b. The Petitioner contends that a Final Determination made on July 22, 1998, should stand as evidence the subject improvement should be a "C" grade. The Final Determination was issued by the State Board after an inspection of the property. (*Petitioner Ex's. K and L, Smith Testimony*).
 - c. The State Final Determination issued on July 22, 1998, specifically addressed only the March 1, 1995 assessment. In Indiana, each assessment and each tax year stands alone. *Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713 (Ind. Tax 1995).
 - d. The Petitioner presented no evidence of the grade of comparable properties or a comparison of the features in the model to those in the structure under appeal. The Petitioner's conclusory statements that the grade should be a "C" do not constitute sufficient evidence to support the requested grade change.

Conclusions

Issue 1 - Partitioning Adjustments

17. The Petitioner met his burden and provided sufficient evidence to warrant a partitioning adjustment. The Respondent rebutted the prima facie case with market evidence showing that the assessed value is not excessive. The Board finds in favor of the Petitioner.

Issue 2 - Grade

18. The Petitioner failed to 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

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.