

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

Petition #: 40-013-04-1-4-00001
Petitioner: James Hudson
Respondent: Center Township Assessor (Jennings County)
Parcel: 092800007000012
Assessment Year: 2004

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 (PTABOA) by written document dated May 10, 2004.
2. The Petitioner received notice of the decision of the PTABOA on July 1, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on July 30, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 18, 2004.
5. The Board held an administrative hearing on November 18, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo E. Smith, Taxpayer Representative
 - b) For Respondent: Linda Kovacich, County Assessor (Authorized Representative for Center Township)

Facts

7. The property is classified as vacant commercial property as is shown on the property record card for parcel #09-28-000-070.000-12, Tax I.D. #0130220100.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Jennings County PTABOA:
Land: \$29,600.

10. Assessed Value requested by Petitioner at the hearing: Land: \$1000.

Issues

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

- a) The subject property is .822 acres of vacant undeveloped land and has incurred no on-site development. The subject property is classified as usable undeveloped. The Petitioner contends the property is unusable and should be classified as unusable undeveloped. *Smith testimony.*
- b) The subject property, which is located behind an Auto Zone store, has no frontage on State Road 3, and has difficult access. *Smith testimony.*
- c) The subject property is part of a larger parcel that was purchased for future development. It is the remaining parcel of an old field that has sold off lots over the last ten (10) years. The Petitioner hopes to sell the subject property in the future. *Smith testimony.*
- d) There is a ravine in the middle of the subject property that can be filled. The subject property is unusable until the ravine is filled. *Smith testimony.*
- e) There is nothing on the land valuation form for unusable undeveloped land; therefore, the Petitioner applied the agricultural land base rate of \$1,050 to the subject property. The Petitioner testified the subject property should have a value of \$1,000. The Petitioner submitted a property record card computing the value of the subject property to be \$900. *Smith testimony; Petitioner Exhibit 5.*
- f) True Tax Value does not mean fair market value and that the subject property should be valued based on the current use. The Petitioner contends there is no current use for the subject property. The subject property has no value and cannot be farmed. *Smith testimony; Petitioner Exhibit 3.*

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

- a) The subject property is being held for future development and the County has valued it as usable undeveloped land. *Kovacich testimony.*
- b) The PTABOA made a mistake lowering the value after the PTABOA hearing. The PTABOA had the wrong piece of land and thought the land was woodsy. The 10% influence factor should not have been granted. *Kovacich testimony.*

- c) The subject property is adjacent to another parcel that is also on appeal. Essentially the property is divided into two pieces because of a section line. The two parcels could be developed as one property. If the Petitioner sells off one piece then there may be a change in access. *Kovacich testimony.*
- d) The percentages on the Neighborhood Valuation Form (influence factors) are recommendations that can be used for difficult access and location. The County can apply these factors if needed. In the case of the subject property, there is access off of Highway 7 and access is not difficult. The property has good visibility. *Kovacich testimony; Respondent Exhibit 6.*
- e) Comparable property sales in the area show that the current assessment is more than fair. *Kovacich testimony; Respondent Exhibits 7-10..*

Record

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

- a) The Petition, and all subsequent pre-hearing, or post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 5885.
- c) Exhibits:
 - Petitioner Exhibit 1: Copy of the subject property record card.
 - Petitioner Exhibit 2: Copy of plat supplied by PTABOA.
 - Petitioner Exhibit 3: Copy of Ind. Code § 6-1.1-31-6(c) and Ind. Code § 6-1.31-7(d).
 - Petitioner Exhibit 4: Copy of Table 2-14 from Version A – Real Property Guideline, page 85.
 - Petitioner Exhibit 5: Copy of subject property record card with land pricing requested by Petitioner.
 - Petitioner Exhibit 6: Copy of Land Valuation Form.

 - Respondent Exhibit 1: Copy of subject property record card.
 - Respondent Exhibit 2: Copy of platted area.
 - Respondent Exhibit 3: Copy of Land Valuation Form for subject Area VI.
 - Respondent Exhibit 4: Copy of property record card for the parcel that connects to parcel on appeal.
 - Respondent Exhibit 5: Copy of property record card for the parcel that connects to the parcel on appeal.
 - Respondent Exhibit 6: Copy of platted area that the parcel is located in.
 - Respondent Exhibits 7 thru 10: Copy of vacant land sales.
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing law is:

- 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. Wash. 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 Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property is unusable and that it should not have been assessed as usable undeveloped land. *Smith testimony*; *Smith argument*.
- b) The GUIDELINES describe useable undeveloped land as land that is vacant and held for future development. GUIDELINES, ch. 2 at 85, table 2-14. The Petitioner’s representative testified that the Petitioner hoped to sell the property in the future. Although the Petitioner’s representative mentioned a ravine in the subject property, he testified that the ravine could be filled and the property could be used. *Smith testimony*. The subject property therefore appears to fit within the definition of useable undeveloped land set forth in the GUIDELINES.
- c) Even if the Petitioner were correct in his assertion that the subject property should have been assessed as unusable undeveloped land, he did not provide evidence regarding what the correct amount of the assessment should be. *See, Meridian Towers*, 805 N.E. 2d at 478 (holding that a petitioner has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be). The

Petitioner sought to have the land valued at the rate used for farmland, even though his representative acknowledged that the subject property is not being farmed. *Smith testimony; Smith argument*. The Petitioner did not present any evidence that such an assessment would reflect the subject property's fair market value-in-use.

- d) The Petitioner also contends that the subject property has no frontage on State Road 3, suffers from poor visibility and is difficult to access. The Petitioner seeks a negative 25% influence factor as a result of these those problems.
- e) A petitioner who seeks to modify an assessment to include a negative influence factor must submit probative evidence that both supports the application of a negative influence factor and quantifies that factor. *Talesnick v. State Bd. of Tax Comm'rs* 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- f) Even if one were to view the Petitioner's statements regarding the subject property's lack of frontage, visibility and access as demonstrating some negative impact on the value of the subject property, the Petitioner did not present probative evidence to quantify the extent to which those factors affect the market value-in-use of the subject property.¹ At most, the Petitioner pointed to a statement in the Neighborhood Valuation Form recommending the application of a negative 25% to 50% influence factor for properties with limited to no visibility and limited access. Reliance on vague language concerning the recommended application of influence factors is not a substitute for probative evidence quantifying the amount of the influence factor to be applied.
- g) The Petitioner further argues that true tax value does not mean fair market value, but instead equals the property's value-in-use. *Smith argument*. Thus, reasons the Petitioner, the subject property is essentially valueless because it is not currently being used. *Smith argument*.
- h) The Petitioner is mistaken in his interpretation of the meaning of true tax value under Indiana law. Real property in Indiana is assessed on the basis of its "true tax value." See I.C. § 6-1.1-31-6(c). "True tax value" is defined as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(hereinafter "Manual").

¹ The same is true with regard to the existence of the ravine. Although the Petitioner did not specifically argue that he was entitled to a negative influence factor based upon the existence of the ravine, he did indicate that the ravine impacted the value of the subject property. However, as with the alleged lack of frontage, access and visibility, the Petitioner did not present any evidence to quantify the negative impact of the ravine on the value of the subject property.

- i) In order to satisfy requirements imposed by the courts and legislature, “True Tax Value uses fair market value data of property wealth, but derives values that are not based strictly on market value.” MANUAL at 3. Thus, in markets where “sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors such as the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange.” *Id.* at 2. However, “[i]n markets where there are regular exchanges, so that ask price and offer price converge, true tax value will equal value in exchange.” *Id.*
- j) Here, the evidence demonstrates that the Petitioner receives *some* utility from the subject property and that a similar user would also receive utility. The Petitioner’s representative testified that the Petitioner hopes to sell the subject property in the future. The fact that the Petitioner is not currently using the property is a voluntary decision – it does not negate the fact that the Petitioner receives utility from the property. If the Board were to adopt the Petitioner’s position, a taxpayer could avoid taxation on his property simply by vacating the property on the assessment date every year. Such a result clearly is not intended by the statutes and administrative regulations governing the assessment of real property.
- k) Moreover, the Petitioner presented no evidence that fair market value is not indicative of the market value-in-use of the subject property. The Petitioner has not pointed to any non-market factors - such as his desire to maintain a farming lifestyle or to otherwise utilize the subject property for anything other than its highest use - that would render the subject property’s market value-in-use as something less than its value in exchange.
- l) In fact, the Petitioner indicated that his “asking price” for the subject property would be more than its current assessed value of \$29,600. *Smith testimony; Board Exhibit A (Form 131 petition)*. The Petitioner also indicated that the market value of the property is “similar” to its current assessed value. *Board Exhibit A (Form 131 petition)*. While these statements may not be conclusive as to the subject property’s fair market value-in-use, they clearly contradict the Petitioner’s contention that the property is valueless.
- m) Based on the foregoing, the Petitioner failed to establish a prima facie case that the current assessment is incorrect.

Conclusion

16. The Petitioner did not make a prima facie case. The Board finds in favor of the Respondent. There is no change to the assessment.

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.