

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

Petition #: 40-013-04-1-4-00003
Petitioner: James Hudson
Respondent: Center Township Assessor (Jennings County)
Parcel: 093301200200012
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 a vacant commercial property as is shown on the property record card for parcel #09-33-012-002.000-12, Tax I.D. #0130238600.
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: \$165,100.

10. Assessed Value requested by Petitioner at the hearing: Land: \$1,900.

Issues

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

- a) The subject property is unusable and should be classified as unusable undeveloped land. *Smith testimony.*
- b) The subject property is located behind other commercial buildings, has no frontage on State Road 3, and has difficult access. *Smith testimony.*
- c) The land valuation form shows recommended influence factors of 25 to 50% for properties with limited to no visibility and difficult access. *Smith testimony; Petitioner Exhibit 6.*
- d) The subject property has no on-site development. It is part of a site that has been reserved for future development. It cannot be farmed. *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 \$1,900 and submitted a property record card computing the value. *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. *Smith testimony; Petitioner Exhibit 3.*
- g) The subject property should not be valued the same as properties that front Highway 3. *Smith testimony.*

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 subject property is the primary egress and ingress of Home Federal. The PTABOA changed the assessment after the PTABOA hearing. The Petitioner owns adjoining properties that are leased to Home Federal and Shell. *Kovacich testimony; Respondent Exhibits 3-5.*

- 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. *Kovacich testimony.*
- d) The percentages on the land order (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. There is a turn lane and access is not difficult. *Kovacich testimony.*
- e) Comparable property sales in the area show that the current property value is more than fair. *Kovacich testimony. Respondent Exhibits 6 –9.*

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: *There is no Exhibit 2.*
 - 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 Exhibits 6 thru 9: Copy of sales in the area.
 - Respondent Exhibit 10: Copy of plat with location of 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. Here, the Petitioner’s representative testified that the subject property has been reserved for future development. The Petitioner provided no evidence to show the subject property is unusable for commercial and industrial purposes. The Petitioner therefore failed to make out a prima facie case that the subject property was incorrectly assessed as usable undeveloped land.
- 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 contends that access to the subject property is difficult and visibility is low. The Petitioner contends that these factors negatively impact the value of the subject property.
- e) The Petitioner did not specifically explain how the lack of access and visibility should be accounted for in valuing the subject property. However, the Petitioner did point to the Neighborhood Valuation form, which recommends the application of negative influence factors of between 25% and 50% for properties with limited to no visibility and difficult access.
- f) A petitioner who seeks 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).
- g) Even if one were to view the Petitioner's statements regarding the subject property's lack of visibility and access as having some probative value regarding the existence of factors negatively impacting 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. 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.
- h) The Petitioner further argues that true tax value does not mean fair market value, but instead equals the property's market value-in-use. *Smith argument.* Thus, reasons the Petitioner, the subject property is essentially valueless because it is not currently being used. *Smith argument.*
- i) 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").
- j) 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.*

- k) Here, the evidence demonstrates that the Petitioner receives *some* utility from the subject property and that a similar user would also receive utility. The Respondent testified that the subject property is used for ingress and egress to an adjacent property that the Petitioner leases to Home Federal. The Petitioner’s representative also testified that the subject property has been reserved for future development. Even if one were to take the Petitioner’s claim at face value, 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.
- l) 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.
- m) In fact, the Petitioner indicated that his “asking price” for the subject property would be more than \$100,000. *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 of \$165,100. *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.
- n) Finally, the Petitioner argues that the subject property should not be valued the same as properties that front Highway 3. *Smith argument*. Once again, even if the Petitioner were correct in his assertion, he has not presented any evidence to demonstrate the amount by which the lack of frontage affects the market value-in-use of the subject. *See Meridian Towers*, 805 N.E.2d at 478 (holding that a petitioner seeking review of an assessment must demonstrate both that the assessment is incorrect and what the correct assessment would be).

- o) Based on the foregoing, the Petitioner failed to make a prima facie case for a change in assessment.¹

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

¹ At the hearing, both the Petitioner and Respondent agreed there was a discrepancy in the pricing of a portion of the subject property designated as primary commercial /industrial land. However, the parties did not submit evidence regarding what effect this discrepancy has on the valuation of the subject land. The parties indicated that they would pursue this issue through the filing of a Form 133. The Board therefore does not address this issue in issuing its final determination in this matter.

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.