

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

Petition #s: 16-016-02-1-4-00013
16-016-02-1-4-00014
Petitioner: Kalb & Kalb, Inc.
Respondent: Washington Township Assessor (Decatur County)
Parcel #s: 09510090212100b
09510090212100c
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 assessment appeals with the Decatur County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated September 8, 2003.
2. The PTABOA issued its decision on October 31, 2003, but it does not appear that the Petitioner received notice of the assessment until on or after April 7, 2004. *See Board Exhibit A.* The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on May 5, 2004. The Petitioner elected to have this case heard in small claims.
3. The Board issued notices of hearings to the parties dated December 14, 2004.
4. The Board held administrative hearings on February 23, 2005, before the duly appointed Administrative Law Judge (ALJ) Jennifer Bippus.
5. Persons present and sworn in at hearings:
 - a) For Petitioner: Milo Smith, Petitioner Representative
 - b) For Respondent: Helen Wagener, Appraisal Research Company, Washington Township Representative

Facts

6. The properties are classified as industrial vacant lands, located on N. Broadway, Greensburg, Washington Township, Decatur County, Indiana as is shown on the property record cards (PRC) for parcels #09510090212100b and #09510090212100c.
7. The ALJ did not conduct an inspection of the properties.
8. Assessed Values of subject properties as determined by the Decatur County PTABOA:
For parcel #09510090212100b: Land \$46,800 Improvements \$0

For parcel #09510090212100c: Land \$23,500 Improvements \$0
9. Assessed Values requested by Petitioner per the Form 131 petitions:
For parcel #09510090212100b: Land \$5,200 Improvements \$0

For parcel #09510090212100c: Land \$2,500 Improvements \$0

Issues

10. Summary of Petitioner's contentions in support of alleged error in assessment of the land:
 - a) The subject land currently is described by metes and bounds, and the parcel would have to be re-platted in order to be used. The Petitioner submitted a letter from David Neuman, Area Plan Director, stating that the subject property would have to be "re-platted if it is to be built on."
 - b) This would be similar to a farmer who wants to sell his property for a large price. Until the farmer actually sells the land, it must be assessed as farmland. The subject property currently cannot be built upon; therefore, it should be classified as unusable undeveloped until it is sold and actually re-platted. *Smith argument.*
 - c) The Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") contain four (4) main classifications for commercial and industrial land, the last of which is "unusable undeveloped." The neighborhood valuation forms for townships in Decatur County do not provide any values for the unusable undeveloped land category. *Smith testimony; Petitioner Exhibit 3.*
 - d) Because the relevant neighborhood valuation form does not provide any values for unusable undeveloped land, it is appropriate to look to the values set forth for that land category in neighborhood valuation forms for Bartholomew County. Most of the land categories values used in Bartholomew County are within ten percent (10%) of the values in Decatur County. Moreover, the Guidelines provide that land values should be equitable for surrounding counties. In Bartholomew County, the land value for unusable undeveloped land is \$1,500. *Smith testimony;*

Petitioner Exhibits 5- 6. The subject land therefore should be valued at the rate of \$1,500 per acre. *Id.*

11. Summary of Respondent's contentions in support of the issue of land:

- a) Equity between the townships and surrounding counties only means that land directly across the road must be equal, not the total land values in general. Decatur County made sure that land is valued equitably with other land directly across the county line. On the other hand, the City of Decatur and the City of Columbus are quite different, and their land values necessarily would reflect such differences. The land values are based upon actual sales within those respective cities. *Wagener testimony.*
- b) Land values in Decatur County were not determined by Appraisal Research (Ms. Wagener's company). Ms. Wagener did not know why the county's neighborhood valuation forms do not set forth values for unusable undeveloped land. *Wagener testimony.*
- c) Regardless, the subject parcel is usable undeveloped land upon which improvements may be constructed. There are no restrictions such as contamination or anything running through the property that would prevent the land from being used. The Respondent therefore correctly valued the subject land as usable undeveloped land. *Wagener testimony.*
- d) The subject parcel was given a negative influence factor of fifty percent (50%) for being vacant. The subject property is not agricultural land; it is industrial land that simply has yet to be developed. *Wagener testimony; Respondent Exhibit 1.*
- e) Each of the subject properties currently has a negative influence factor of twenty-five percent (25%) for "shape and size." In order to be uniformly assessed with other vacant parcels, however, the properties should receive a negative influence factor of fifty percent (50%) for vacancy. A negative influence factor of seventy-five percent (75%) would be too high, so the current influence factor should be removed and the fifty percent (50%) factor applied in its place.

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #5891.
- c) Exhibits:

Petitioner Exhibit 1: Copy of the current PRCs

Petitioner Exhibit 2: Copy of the letter from the Decatur County Area Plan Director

Petitioner Exhibit 3: Copy of the Neighborhood Valuation Form for the subject area

Petitioner Exhibit 4: Copy Version A – Real Property Assessment Guidelines, page 84, Chapter 2

Petitioner Exhibit 5: Copy Version A – Real Property Assessment Guidelines, page 11, Chapter 2

Petitioner Exhibit 6: Copy of the Neighborhood Valuation Form for Columbus Township, Bartholomew County

Petitioner Exhibit 7: Copy of the proposed PRCs with changes

Respondent Exhibit 1: Subject PRCs

Respondent Exhibit 2: Copy of the land sales used for the subject area

Respondent Exhibit 3: Copy of authorization given to Ms. Wagener to represent Washington Township

Board Exhibit A – Form 131 Petitions

Board Exhibit B – Notices of Hearings on Petitions

d) These Findings and Conclusions.

Analysis

13. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 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 276 (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.

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

- a) The Petitioner contends that the land was assessed incorrectly as *usable* undeveloped and should be classified as *unusable* undeveloped. *Smith argument*. To support this contention, the Petitioner submitted a copy of a letter from the Area Plan Director for Decatur County stating that “[the subject] property would have to be re-platted if it is to be built on.” *Petitioner Exhibit 2*.
- b) The Guidelines establish four (4) general categories of commercial and industrial land, the following two (2) of which are at issue in this appeal:
 - Usable Undeveloped – the amount of acreage that is vacant and held for future development
 - Unusable Undeveloped – the amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 85 (incorporated by reference at 50 IAC 2.3-1-2).

- c) The Guidelines also describe what the base rate for each of the above referenced types of land represents:

For usable undeveloped land, the base rate represents the January 1, 1999, value of vacant or raw land that is zoned for commercial and industrial purposes. This type of land has incurred no on-site development cost. . . .

For unusable undeveloped land, the base rate represents the January 1, 1999, value of undeveloped land that is zoned for commercial or industrial purposes. This type of land has incurred no on-site development costs and normally represents an area of vacant land with restrictions. There may be restrictions against building because there are environmental hazards on the property or because the area has been designated as a wetland area by the federal government. . . .

Id. at 86.

- d) The Petitioner identified only one limitation on the use of the subject land for commercial or industrial purposes – the need to re-plat the land. The Petitioner did not describe why such limitation existed, or what expense re-platting would entail. On its face, this does not appear to be analogous to the significant restrictions, such as environmental hazards or designation as a wetland area, set forth by the Guidelines in their description of unusable undeveloped land.

Instead, the subject land fits well within the Guidelines' description of usable undeveloped land.

- e) Based on the foregoing, the Petitioner failed to establish a prima facie case of error based upon the Respondent's valuation of the subject properties as usable undeveloped land.
15. The evidence does support the application of an additional negative influence factor to the subject properties. This conclusion was reached because:
- a) The Respondent's representative testified that, in order for the subject properties to be assessed in a uniform and equal manner with other vacant commercial and industrial land, a negative influence factor of fifty percent (50%) should be applied to each parcel. This would be in lieu of the negative influence factor of twenty-five percent (25%) currently applied to the parcels.
 - b) While the Respondent did not present any evidence in support of that proposition, Ms. Wagener's testimony amounts to an admission that the current assessment is excessive, and that a correct assessment would require the application of an additional negative influence factor.
 - c) The Petitioner did not dispute Ms. Wagener's testimony on that point.
 - d) Based on the foregoing, the evidence supports a finding that the current assessments should be changed to reflect a negative influence factor of fifty percent (50%) for each property, in lieu of the negative influence factor of twenty-five percent (25%) currently applied to those properties.

Conclusion

16. The Petitioner failed to make a prima facie case for a change in land classification from usable undeveloped to unusable undeveloped. The Board finds in favor of the Respondent on that issue. The Board further finds that the current assessments should be changed to reflect a negative influence factor of fifty percent (50%) for each property in lieu of the negative influence factor of twenty-five percent (25%) currently applied to those properties.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to reflect a negative influence factor of fifty percent (50%) for each property in lieu of the negative influence factors currently applied to those properties.

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. 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>.