

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

Petition #: 72-007-02-1-4-00002
Petitioner: Kooshtard Property II, LLC
Respondent: Vienna Township Assessor, Scott County
Parcel: 051930001100007
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 Scott County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 9, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioner on September 19, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the County Assessor on October 17, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 19, 2004.
5. The Board held an administrative hearing on June 23, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. On December 13, 2004, the Board issued its order extending the time within which to issue its determination through and including February 3, 2005.
7. Persons present and sworn in at the hearing:
 - a. For Petitioner:
Milo Smith, Petitioner’s representative
 - b. For Respondent:
Teresa Rigsby, Scott County Assessor
Richard Schultz, Accurate Assessments, representing Vienna Township.

Facts

8. The property is classified commercial, as is shown on the property record card (PRC) for parcel # 051930001100007.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. Assessed Values of the subject property as determined by the Jennings County PTABOA (2002 assessment year) are:
Land: \$243,800 Improvements: \$191,000
11. Assessed Values requested by Petitioner as shown on the Form 131 petition are:
Land: \$53,000 Improvements: \$191,000

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The land assessment is the only issue under review in this appeal. *Smith testimony & Board Exhibit A.*
 - b. The Petitioner contends that the Scott County Neighborhood Valuation Form allows for platted lots to be assessed at a maximum of \$400 per front foot. *Smith testimony.*
 - c. According to the Petitioner, in order to be uniform and equal, all lots must be valued at the rate of \$400 per front foot. *Smith testimony.* The Petitioner contends that, by valuing the subject parcel according to a base rate of \$250,000 per acre, the Respondent has not treated the subject parcel in a uniform and equal manner when compared to similar properties. *Smith testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that it valued the subject parcel uniformly with other land in the area in accordance with the appropriate Neighborhood Valuation Form. *Schulz testimony.* The Respondent contends that the subject parcel is located in a mixed area of commercial and residential properties. *Schulz testimony.* According to the Respondent, all of the commercial lots in the area were converted to acreage. *Schultz testimony; Respondent Exhibit C.*
 - b. The Respondent presented a copy of a map showing the locations of purportedly comparable properties and the subject property. *Shultz testimony; Respondent Exhibit L.*

- c. According to the Respondent, the PRC shows the subject parcel to be commercial property with a legal description of acreage. The property was assessed on the acreage basis. *Respondent Exhibit D*.

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 #5868.
 - c. Exhibits:
 - Petitioner Exhibit 1: Commercial Area 1 – Neighborhood Valuation Form
 - Petitioner Exhibit 2: Ind. Code § 6-1.1-4-13-6 Submission of values to county property tax assessment board of appeals
 - Petitioner Exhibit 3: 2002 Real Property Assessment Manual, page 2
 - Petitioner Exhibit 4: 2002 Real Property Assessment Manual, page 3
 - Petitioner Exhibit 5: Real Property Assessment Guidelines for 2002 – Version A, Ch. 2 page 7
 - Petitioner Exhibit 6: PRC for the subject property

 - Respondent Exhibit A: Authorization for Richard Schultz to represent Vienna Township/Scottsburg Corp. Assessor
 - Respondent Exhibit B: Authorization for Teresa Rigsby to represent Vienna Township/Scottsburg Corp. Assessor
 - Respondent Exhibit C: Commercial Area I Neighborhood Valuation Form – Scottsburg Corp.
 - Respondent Exhibit D: Subject PRC, photograph and Sales Disclosures
 - Respondent Exhibit E: Comparable Property Sales Disclosure with PRC
 - Respondent Exhibit F through K: Comparable Property Sales Disclosures with PRCs and photographs
 - Respondent Exhibit L: Map of comparable properties

 - Board Exhibit A – Form 131 petition
 - Board Exhibit B – Notice of Hearing On Petition
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing case law is:
- a. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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 Township 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 its contentions that the land should have been assessed from the platted portion of the Neighborhood Valuation Form. This conclusion was arrived at because:
- a. The Petitioner contends that the subject property should have been valued at a maximum of \$400 per front foot, because that is the rate set forth for platted lots on the Neighborhood Valuation Form. *Smith Testimony*.
 - b. The Petitioner takes this position even though it does not allege that the subject lot is platted. Instead, the Petitioner argues that the \$250,000.00 per acre base rate leads to a substantially higher value than does application of a rate of \$400 per front foot. *Smith Testimony*. The Petitioner contends that this necessarily leads to a lack of uniformity in the pricing of similar lots.
 - c. However, the Petitioner did not present any probative evidence that comparable properties were assessed at a lower amount than the subject property. The fact that platted residential properties might be valued lower than a commercial property in a different location within the area covered by the Neighborhood Valuation Form does not demonstrate a lack of uniformity or equality.
 - d. The Petitioner similarly failed to present any probative evidence to demonstrate that the assessment of the subject land does not represent its market value-in-use. Even if the Petitioner had established an error in assessment, it did not present any evidence to support its requested valuation of \$42,000. A mere assertion of a property’s value is

insufficient to establish a prima facie case. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998)(mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error).

- e. The Petitioner therefore failed to present a prima facie case of error with regard to the assessment of the subject land.

Conclusion

- 16. The Petitioner failed to make a prima facie case that the land value was incorrect. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for the land 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.