

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00548
Petitioner: Pride Group
Respondent: The Department of Local Government Finance
Parcel #: 007-16-27-0434-0003
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held in November 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$332,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated June 2, 2005.
4. Special Master Kathy J. Clark held a hearing at 3:15 P. M. on July 5, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 3737 45th Street, Highland. The location is in North Township.
6. The subject property consists of 13,983 square feet of land with a one-story brick office building.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$182,600 Improvements \$150,200 Total \$332,800.

9. Assessed value requested by Petitioner:

Land \$62,900 Improvements \$150,200 Total \$213,100.

10. Persons sworn in as witnesses at the hearing:

Charles C. Puntillo, Owner (Pride Group),
Lori Harmon, Assistant Director of Assessment, DLGF.

Tom Rucinski, Attorney of Record for Petitioner, was also present at the hearing.

Issues

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

- a. The Petitioner is satisfied with the assessed value of the subject structure. The only issue believed to be in error is the value of the subject land. *Rucinski testimony.*
- b. Parcel #007-16-27-0001, an unimproved 17,119 square foot parcel of land located at 3713 45th Street and parcel #007-16-27-0434-0002, an unimproved 13,983 square foot parcel of land located at 3725 45th Street, are immediately adjacent to the subject parcel. *Petitioner Exhibits 3A, 3B, 4A; Rucinski argument.*
- c. Parcel #0001 was originally assessed for \$199,400. After the informal hearing held in December 2003 with Cole Layer Trumble, this assessed value was lowered to \$179,000. *Petitioner Exhibit 3E.* Parcel #0002 was originally assessed for \$182,000 and its value was not lowered as a result of the informal appeal. The Petitioner then filed appeals on those two parcels and the subject parcel in 2004. *Petitioner Exhibit 2, Table; Rucinski argument.*
- d. At another meeting held with the DLGF's contractor prior to today's hearing, the contractor and Petitioner entered into stipulated agreements that lowered the assessed value of both parcels #0001 and #0002 and, as a result, the Form 139L appeals for these two parcels have been set aside. *Rucinski argument.*
- e. The stipulated value set for parcel #0002, the parcel located immediately adjacent to the subject and containing the exact same square footage as the subject, was \$62,900. The assessed land value of the subject parcel should be the same since the sale of a lot immediately adjacent to and the same size as the subject best represents the subject's market value. The fact that the subject lot has a building on it should not affect the assessed value of the land in any way; the building is being assessed separately. *Rucinski argument.*
- f. The Petitioner first offered parcels #0001 and #0002 for sale in June 2000 for \$143,000. *Petitioner Exhibit 3F.* At that time both parcels were zoned for commercial use. No offers were received within the year and a half they were offered for sale. In 2004, the Petitioner had parcels #0001 and #0002 rezoned to residential

- use, replatted into three separate lots, relocated the existing drainage/sewer system, installed water hook-ups and added curbs and curb cuts. *Petitioner Exhibit 3I*. These parcels then sold December 2004 for \$123,000. *Petitioner Exhibits 3G, 3H, 3I; Rucinski argument; Puntillo testimony*.
- g. A lot located at 3701 45th Street that is 60' wide by 125' deep was assessed for only \$22,300. An identical lot at 3705 45th Street also was assessed for only \$22,300. *Petitioner Exhibits 6A and 6B*.
 - h. There is no reason established by the market place that would account for commercial land being valued higher than residential land. *Rucinski argument*.
 - i. The subject parcel is located in a residential area. There is little or no demand for commercially zoned or commercially improved property as evidenced by the Petitioner's inability to sell parcels #0001 and #0002 when they were zoned commercial. The fact that the subject building has been vacant for over a year supports this contention. The market value for vacant residential building lots has been determined by the December 2004 sale of the adjacent properties to be \$41,000 for each of the three (resized) lots sold by the Petitioner. At a minimum the subject parcel should be assessed for \$41,000 and at a maximum it should be assessed as parcel #0002 was in the stipulated order for \$62,900. *Petitioner Exhibits 3B, 3I, and 3H; Rucinski argument*.
12. Summary of Respondent's contentions in support of the assessment:
- a. The Petitioner has confirmed that the subject property is currently being offered for sale for \$400,000. *Puntillo testimony; Harmon testimony*.
 - b. The subject parcel was originally assessed for \$71,500 for land and improvements. According to the Cole Layer Trumble notes from the informal hearing in December 2003, the Petitioner explained that the building had long-term vacancy issues and had been for sale for \$385,000 for over a year at that time and no offers to purchase had been received. The Petitioner submitted a couple of appraisals in support of his asking price at the informal hearing. *Id.*
 - c. The Respondent contends that Cole Layer Trumble, acting on behalf of the DLGF, recognized three things: 1) the long-term vacancy of the property; 2) an asking price is not necessarily what something ultimately sells for; and 3) some adjustment should be made to relate the Petitioner's \$385,000 asking price in 2003 to the valuation date of January 1, 1999, and lien date of March 1, 2002. While it may have been more representative in the eyes of the Petitioner to adjust both the land and the improvements, Cole Layer Trumble instead simply applied a 40% obsolescence factor to the building to bring the total assessed value down from the original \$471,500 to a more representative overall market value-in-use of \$332,800. The current total assessed value of \$332,800 addresses all of the Petitioner's concerns presented at the informal hearing. *Respondent Exhibit 1; Harmon testimony*.

- d. The Respondent contends that appealing only the land or only the building is inappropriate when dealing with an appraisal of an improved property. Indiana's reassessment goal was to fairly and equitably determine the market value in conjunction with that property's value-in-use with January 1, 1999, as a benchmark for value. *Harmon testimony.*
- e. The subject is a commercially zoned and improved property. It is not residential and therefore not comparable to residential properties. There are other commercial properties immediately adjacent to the subject to the east and south that the Petitioner has not addressed but instead focused on residential properties to the west and north. *Petitioner Exhibit 3I and 4B; Puntillo testimony; Harmon testimony.*
- f. While it may be possible that commercial land in one area may have a lower market value-in-use than residential land in a different area, it is inherent in appraisal theory that, generally, commercial land in a specific area has a higher value than residential land in that same area. Land is appraised based on its ability to generate income and commercial development consistently generates a higher return on investment than does residential development. *Harmon testimony.*
- g. Under Indiana's assessment rules, vacant unimproved land is not assessed for the same things as improved land; the cost of grading, curbs, curb cuts, utilities, landscaping and other items are considered part of the assessed value of improved land. *Harmon testimony.*

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 1598,
 - c. Exhibits:
 - Petitioner Exhibit 1: Summary,
 - Petitioner Exhibit 2: Recapitulation,
 - Petitioner Exhibit 3A: Commercial property record card,
 - Petitioner Exhibit 3B: Plat of Survey,
 - Petitioner Exhibit 3C: Initial assessed value of Cole, Layer Trumble,
 - Petitioner Exhibit 3D: Form 139L,
 - Petitioner Exhibit 3E: Notice of Final Assessment,
 - Petitioner Exhibit 3F: Listing Agreement,
 - Petitioner Exhibit 3G: Offer to Purchase,
 - Petitioner Exhibit 3H: Closing Statement,
 - Petitioner Exhibit 3I: Plat of parcel #1, parcel #2, and parcel #3 and portion which was sold,

Petitioner Exhibit 4A: Commercial property record card,
Petitioner Exhibit 4B: Plat of Survey,
Petitioner Exhibit 4C: Initial assessment,
Petitioner Exhibit 4D: Form 139L,
Petitioner Exhibit 4E: Listing Contract,
Petitioner Exhibit 4F: Purchase Agreement,
Petitioner Exhibit 4G: Closing Statement,
Petitioner Exhibit 4H: Plat of parcel #1, parcel #2, and parcel #3 which was sold,
Petitioner Exhibit 5A: Commercial property record card,
Petitioner Exhibit 5B: Initial assessment,
Petitioner Exhibit 5C: Form 139L,
Petitioner Exhibit 5D: Notice of Final Assessment,
Petitioner Exhibit 6A: Assessment information for 3705 45th Street,
Petitioner Exhibit 6B: Assessment information for 3701 45th Street,
Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photograph,
Respondent Exhibit 3: Plat map page,
Respondent Exhibit 4: Land calculations/Land Summary Sheet,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign-in Sheet,

d. These Findings and Conclusions.

Analysis

14. 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 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. Washington 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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. Mr. Rucinski stated that an agreement had been reached between the Petitioner and the contractor that would change parcel #0002's land value from \$182,600 to \$62,900 and, that even though no signed agreement had, as yet, been received by the Petitioner, the \$62,900 value determines the assessed value of the subject parcel which is immediately adjacent and the same size as parcel #0002. There are two problems with this argument:
 1. Unless a stipulated agreement has been signed by an official of the Department of Local Government Finance and a final determination has been issued by the Indiana Board of Tax Review, no agreement has been approved and any settlement negotiated between Petitioner and Respondent/contractor may be subject to change. Mr. Rucinski's attempt to use the purported stipulated value of another parcel is not supported by probative evidence and therefore of no use to the Board in making its determination. *See Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax Ct. 1998).
 2. It is clearly stated on the **Joint Motion to Stipulate Final Assessed Value** form that "findings made in this Agreement are made for settlement purposes only and shall not be used for any other purpose." It is the Board's determination that, because details of negotiations specific to one property are not made a part of a stipulated agreement, that agreement in no way supports an argument that an error exists on another property's assessment.
 - b. Mr. Rucinski's argument that residential land is more valuable than commercial land in the subject's neighborhood was unsupported by any probative evidence. No sales information was offered to support this conclusory statement other than the sale of other property by the Petitioner in December 2004. At the time of the assessment date of March 1, 2002, parcel #0001 contained 17,119 square feet of commercially zoned land and parcel #0002, which was also zoned for commercial use, contained 13,983 square feet of land, identical to the subject. Parcel #0002's land was assessed for the same amount that the subject parcel's land was assessed for, \$182,600. Parcel #0002 also included some type of improvement to the land according to Petitioner Exhibit 4A which notes that \$2,500 of improvement value is added to the land for a total assessment of \$185,100. *Petitioner Exhibits 4A and 5A*. The Petitioner then replatted parts of parcel #0001 and parcel #0002 into three 70' by 125' lots, had them rezoned from commercial to residential, realigned existing drainage and sewer systems, installed curbs and curb cuts, then sold all three newly created lots to a single buyer December 30, 2004 for the sum of \$123,000. *Petitioner Exhibits 3B, 3H, and 3I; Puntillo testimony*. The lots involved in the December 2004 sale are in no way comparable to the subject. Along with the fact that they were zoned residential at the time of sale, the three lots combined contain more square footage than the subject lot. *Respondent Exhibit 3; Petitioner Exhibit 3I*. The sale is of no

use to the Board in making its determination as to whether or not an error has been made in the subject's assessment for March 1, 2002.

- c. The Petitioner contends that the subject property should not be valued higher than the adjacent residential property because it is the same size. The Petitioner fails to address the fact that the subject is zoned commercial and is used for a commercial purpose. There are also commercial properties to the east and south of the subject. The subject is properly classified as a commercial office building pursuant to the 2002 REAL PROPERTY ASSESSMENT MANUAL, app. at 24 (incorporated by reference at 50 IAC 2.3-1-2).
- d. The Petitioner confirmed that he had offered the subject property for sale in 2003 for \$385,000. He also confirmed that the subject property was on the market as of the date of this hearing in 2005 for \$400,000. The Board finds that the subject's total assessed value of \$332,800 as of the lien date of March 1, 2002 is representative of the Petitioner's own sense of the property's annually increasing market value-in-use. *Puntillo testimony.*
- e. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to establish a prima facie case. The Board finds for 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,
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>.