

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petitions: 45-028-02-1-4-00091
45-028-02-1-4-00092
Petitioner: 55 E. 86th Avenue, LLC
Respondent: The Department of Local Government Finance
Parcels: 008-08-15-0523-0005
008-08-15-0523-0002
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. An administrative change was made following the original 2002 Form 11 assessment notice. The Department of Local Government Finance (the DLGF) determined that the tax assessments for subject properties and notified Petitioner on March 31, 2004.
2. Petitioner filed Form 139L petitions on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated May 16, 2005.
4. Special Master Ellen Yuhan held the hearing in Crown Point on June 20, 2005.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner - James D. Combs, President, 55 E. 86th Avenue, LLC,
For Respondent - James S. Hemming, Assessor/Auditor.

Facts

6. Subject properties are located at 79 E. 86th Avenue and 55 E. 86th Avenue, Merrillville. The location for both is in Ross Township.
7. Subject properties consist of .543-acre of commercial land with 8,000 square feet of paving and 1.043 acres of commercial land with a general office building.
8. The Special Master did not conduct an on-site inspection of the property.
9. Assessed value as determined by the DLGF:

Land \$181,500	Improvements \$ 3,100	Total \$184,600
Land \$242,300	Improvements \$715,800	Total \$958,100

10. Assessed value requested by Petitioner:
- | | | |
|---------------|------------------------|-----------------|
| Land \$48,960 | Improvements \$3,100 | Total \$52,060 |
| Land \$94,050 | Improvements \$604,980 | Total \$699,030 |

Issues

11. Summary of Petitioner’s contentions in support of error in the assessments:

- a) Petitioner contends the land value is excessive when compared to other similar parcels in the area. Actual rates for primary land were calculated from \$27,900 to \$366,777. Subjects’ rates are \$336,074 for Lot 5 and \$232,981 for Lot 2. *Petitioner Exhibits 3, 4; Combs testimony.*
- b) Land value is affected by C-5 zoning requirements. C-5 zoning requires 70% lot area coverage, meaning more land is required for each use by a factor of 42.85%. Other similar zoning, C-2, C-2E, C-3 and C-4 allow for 100% lot coverage. *Petitioner Exhibits 5, 8; Combs testimony.*
- c) C-5 zoning also requires a floor area ratio (FAR) of .8, while other similar zoning allows for a FAR of less than 1.3, meaning that more land area is required for less density of use. *Id.*
- d) Lot 5 is a very irregularly shaped lot. The only thing on it is a sign. It cannot be built on because of the required 30% landscape requirement. *Respondent Exhibit 3; Combs testimony.*
- e) The building is wood joist and should be valued from the GCR model. Someone called to negotiate a settlement and she acknowledged that a mistake was made in the model used. *Combs testimony.*
- f) Building grade should be C-1, not C+2. Other well-finished masonry buildings in the area are graded lower than the subject. *Petitioner Exhibits 3, 7A-7G; Combs testimony.*

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

- a) Respondent testified the land should have been valued as a multi-parcel, recognizing that one parcel is dependent on the other, and submitted a revised land value calculation. A new land value was calculated using this concept together with a negative 22% influence factor for both parcels. *Respondent Exhibits 5, 6; Hemming testimony.*
- b) The neighborhood valuation form does not show any boundaries for the subject neighborhood, “20893”, and there is no neighborhood map available for commercial and industrial property. *Respondent Exhibit 4; Hemming testimony.*

- c) Respondent testified the neighborhood numbers starting with “20” and “30” are probably neighborhoods that received an administrative correction when the DLGF discovered an adjustment was needed. *Hemming testimony.*
- d) The building should be priced from the GCR schedule. Respondent submitted a revised property record card showing that correction. *Respondent Exhibit 6; Hemming testimony.*
- e) The grade of C+2 was established for the subject. Respondent lacks information regarding other properties that Petitioner claims are graded lower. *Hemming testimony.*

Record

- 13. The official record consists of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 1572,
 - c) Exhibits:
 - Petitioner Exhibit 1 - Form 139L petitions,
 - Petitioner Exhibit 2 - Development plan,
 - Petitioner Exhibit 3 - Summary of similar properties,
 - Petitioner Exhibit 4 - Property record cards by subdivision,
 - Petitioner Exhibit 5 - Summary of Petitioner’s arguments,
 - Petitioner Exhibit 6 - Notice of DLGF determination,
 - Petitioner Exhibit 7A - 7G -Photographs of the subject properties and buildings of varying grades,
 - Petitioner Exhibit 8 - Merrillville zoning ordinances,
 - Respondent Exhibit 1 - Subject property record card,
 - Respondent Exhibit 2 - Subject photograph,
 - Respondent Exhibit 3 - Plat map/location map,
 - Respondent Exhibit 4 - Land calculations/summary sheet,
 - Respondent Exhibit 5 - Revised land pricing,
 - Respondent Exhibit 6 - Revised property record cards,
 - Board Exhibit A - Form 139L petitions,
 - Board Exhibit B - Notices of Hearing,
 - Board Exhibit C - Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and other rules 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) Where Petitioner has not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
 - d) The procedure for valuing commercial and industrial acreage tracts is similar to the procedure for other types of land. However, sales information for existing business properties is less reliable and less available. The township assessor must draw on the expertise within the community to establish the basis of valuing these types of tracts. The township assessor must delineate general neighborhood areas on the basis of characteristics that distinguish them from other areas. This delineation is normally based on such characteristics as:
 - Zoning,
 - Major roads or streets,
 - Natural geographic features like waterways or lakes,
 - Availability of certain modes of transportation.

These neighborhoods are the basis for establishing land values, as well as for reporting the values to the County Property Tax Assessment Board of Appeals. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 84.

Land

15. Petitioner did not provide sufficient evidence to establish a prima facie case. Nevertheless, Respondent testified that there were errors in the valuation that should be corrected. This conclusion was arrived at because:
- a) Petitioner contends the land value is excessive when compared to other assessments in the area. On the Form 139L, Petitioner alleged the Bank One building located across the street is assessed at \$2.07 per square foot. *Petitioner Exhibits 1, 3, 4; Combs testimony*. Bank One has 15 acres of land, 13.5 acres primary land with a

- 43% influence factor and 1.5 acres undeveloped unusable with a 29% influence factor. This parcel is in the subject neighborhood; however, it has an oversize parcel adjustment. The subject parcels total only 1.586 acres and would not qualify for the same oversize adjustment. *Respondent Exhibit 4*. Petitioner failed to establish the comparability of the Bank One property to his property. Therefore, this evidence lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- b) At the hearing, Petitioner presented plat maps and property record cards for parcels in 7 commercial subdivisions, as well as a development plan showing the location of those subdivisions. Petitioner presented a spreadsheet of land values for 62 properties in 6 commercial subdivisions showing land values. Those parcels have primary, undeveloped useable and undeveloped unusable (P, UU, UN) land. Petitioner calculated the land values of those properties by dividing the assessed value by the acreage. *Petitioner Exhibits 2-4*.
- c) Petitioner first compared the subject to 8800 Virginia Place, which is 7.98 acres at a rate of \$11,563.45 per acre. The subject value is \$234,314 per acre. The property at 8800 Virginia Place is located in Broadfield, neighborhood “0897”, which is described as commercial and industrial property located in a residential/rural area. The portion of land Petitioner is using for a comparison is classified undeveloped useable, while the subject parcels are classified primary land. The comparable is not in the same neighborhood as the subject. Petitioner failed to establish the comparability of 8800 Virginia Place to his property. This evidence lacks probative value. *See Long*, 821 N.E.2d at 471.
- d) Petitioner also references properties at 320 E. 90th, 430 E. 90th, 9030 Connecticut, and 9020 Connecticut. Again, these parcels are in Broadfield, neighborhood “0897” and all are classified undeveloped useable. Petitioner failed to establish comparability to his property. This evidence lacks probative value. *Id.*
- e) Petitioner continued with a comparison to an allegedly occupied property, 100-124 E. 90th, parcel 08-15-0519-0004, which is assessed for \$1.00 per square foot. This property record card was not included in Petitioner Exhibit 4, but on the spreadsheet it is shown as undeveloped useable. Petitioner did include the property report for a related developed parcel, 08-15-0519-0003 (same address). This property is in neighborhood “0897”, not the subject neighborhood. Petitioner failed to establish comparability to his property. This evidence lacks probative value. *Id.*
- f) Petitioner also specifically mentioned Red Roof Inn at 8290 Georgia Street as having a base rate of \$99,970 and an actual rate of \$79,975. This property is in neighborhood “20894”, and, again, not in the subject neighborhood. Petitioner failed to establish comparability to his property. This evidence lacks probative value. *Id.*
- g) Petitioner’s spreadsheet does show a wide range of calculated actual rates. The properties shown represent eight different neighborhoods with varying base rates.

Those base rates for each neighborhood were then adjusted, based on an individual parcel's size as compared to the standard lot size for each commercial neighborhood, by using incremental/decremental percentages. (Incremental/decremental pricing addresses the fact that land usually is not bought at a flat rate, but on a sliding rate based on the size of the lot. The larger the lot, the greater the value, but the less the property is valued per unit.) Petitioner failed to establish comparability or how any of this evidence proves what his land value should be. Therefore, Petitioner's evidence lacks probative value. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022; *Long*, 821 N.E.2d at 471.-

- h) Petitioner failed to make a prima facie case for any change based on the purportedly comparable properties that he offered.
- i) The subject parcels are zoned C-5. Petitioner contends the C-5 zoning, which requires 30% of the parcel to be landscaping, means that more land is required for less density of use.
- j) Petitioner testified to the differences between various types of zoning as far as the percentage of allowable land use and the floor area ratio. Commercial neighborhoods are established as noted in ¶14 (d) above. Zoning is considered in establishing neighborhoods. Petitioner did not prove that C-5 zoning resulted in a reduced market value.
- k) Respondent testified the two parcels should have been assessed using multi-parcel land valuation. Multi-parcel land valuation treats all parcels as if they were one and then prorates the values back to the individual parcels. The parcels must be contiguous, under the same ownership, part of the same business entity, and unlikely to be sold separately.
- l) Respondent submitted revised property record cards for each parcel and a calculation of new land values. This method resulted in a 22% multi-parcel adjustment that is favorable to Petitioner. The land value for Lot 2 should be reduced to \$189,000 and the land value for Lot 5 should be reduced to \$141,600. *Respondent Exhibits 5, 6; Hemming testimony.*

GCR Schedule

- 16. The parties agreed that the building is a wood joist structure and should be valued from the GCR schedule. Respondent submitted a revised property record card showing the building priced as GCR general office with a value of \$612,900.

Grade

- 17. Petitioner did not make a prima facie case. This conclusion was arrived at because:

- a) Petitioner must submit ‘probative evidence’ that adequately demonstrates alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).
- b) Petitioner’s evidence was insufficient to demonstrate an error or what the correct grade should be. Petitioner testified the building is graded C+2, but should be graded C-1. Petitioner presented photographs of various buildings in the area with lower grades than the subject. Petitioner did not present any probative evidence regarding the grade and design specifications of the subject improvements.
- c) Petitioner's conclusory statements about the proper grade for his property and about the grades on other properties were not probative evidence. *Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d at 1119.
- d) Where Petitioner has not supported his claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Id.*

Conclusion

- 18. Petitioner did not provide sufficient evidence to establish a prima facie case regarding the land value. Nevertheless, Respondent testified that a multi-parcel adjustment should have been made and calculated the new values at \$141,600 for 008-08-115-0523-0005 and \$189,000 for 008-0815-0523-0002. The evidence requires a land value change.
- 19. The evidence also requires a change regarding the pricing schedule. Respondent agreed the building should be assessed using the GCR schedule. The new value of the building is \$612,900, making the total assessed value for improvements on 008-08-15-0523-0002 \$622,800.
- 20. Petitioner did not provide sufficient evidence to establish a prima facie case regarding grade. The Board finds for Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed as noted in the above conclusions.

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>.