

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

Petition #: 66-010-02-1-4-00006
Petitioner: Kova Ag Products, Inc.
Respondent: Monroe Township Assessor (Pulaski County)
Parcel #: 0100154800
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 Pulaski County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 9, 2003.
2. The PTABOA issued the notice of the decision (Form 115) on November 7, 2003.
3. The Petitioner filed an appeal to the Indiana Board of Tax Review by filing a Form 131 with the Pulaski County Assessor on December 4, 2003. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing on the petition to the parties dated May 12, 2004.
5. The Board conducted an administrative hearing on July 28, 2004, before duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present at the hearing:

For Petitioner: Milo Smith, Taxpayer Representative

For Respondent: Lorena H. VanDerAa, Pulaski County Assessor
Martha Krohn, Pulaski County Deputy Assessor
Edward J. Bisch, Jr., County Representative
Barbara J. Clark, Pulaski County Deputy Assessor
Jennifer L. Becker, Monroe Township Representative

7. The following persons were sworn and testified at the hearing:

For Petitioner: Milo Smith

For Respondent: Jennifer Becker

Facts

8. The property is classified as industrial office, warehouse and small shop (399), as shown on the property record card for parcel #0100154800.

9. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

10. Assessed value of the subject property as determined by the Pulaski County PTABOA:

Land: \$133,200	Improvements: \$582,800	Total: \$716,000
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11. Assessed value requested by Petitioner:

Land: \$35,000	Improvements: \$450,000	Total: \$485,000
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Issues

12. Summary of Petitioner's contentions in support of alleged errors in the assessment:

Land Value

- a. The Petitioner contends the subject land should be priced at \$5,000 per acre for primary land. The Petitioner further contends that the office building (3840 sq. ft.) should be assessed at \$131,887 and the dry blend plant (5180 sq. ft.) at \$131,927 for March 1, 2002. *Smith testimony.*
- b. In support of this contention, the Petitioner testified the subject property containing 15.15 acres was purchased in December 1992 for \$32,069. *Petitioner's Ex. 2; Smith testimony.*
- c. The Petitioner submitted one comparable located in the Winamac Industrial Park that contains 46.79 acres currently listed for sale at \$8,000 per acre. The price per acre includes the water and sewer. *Smith testimony; Petitioner's Ex. 8.*
- d. In addition the Petitioner submitted eighteen comparables from Realtor.com with a range in acreage from 5 acres to 142.6 acres with the land price per

acre ranging from \$2,250 per acre to \$5,000 per acre. *Petitioner's Ex. 9 & Smith testimony.* Further, the Petitioner submitted the "Census of Agriculture – Indiana Agricultural Statistics" for Pulaski County to demonstrate that agricultural land was valued at approximately \$1,245 per acre in 1992, \$1,627 per acre in 1997, and \$2,321 per acre in 2002. *Petitioner's Ex. 10.*

Improvement Values

- e. The Petitioner presented a calculation using *Marshall Valuation Service* "comparative cost multipliers," whereby the Petitioner applied the known multiplier (for the known date) times the known building cost equals present building cost. The Petitioner testified that the office building (3840 sq. ft.) cost \$120,776 to construct in December 1995 times the January 1996 multiplier of 1.092 equals a cost to construct of \$131,887 for January 1999, the established date for the March 1, 2002 assessment. *Petitioner's Ex. 2, 4, 5, 6; Smith testimony.*
 - f. The dry blend plant would be calculated as follows; cost to construct in January 1995 was \$119,283 times the January 1995 multiplier of 1.106 equals a cost to construct for January 1999 of \$131,927. *Petitioner's Ex. 2, 4, 5, & 6; Smith testimony.*
 - g. Finally, the Petitioner submitted an affidavit from Dale Tyler of FBI Buildings, Inc. that states the subject structures were constructed with 6" wood post, metal roofs and 29 gauge light steel exterior siding with the interior components of each building varying due to the different uses. *Petitioner's Ex. 7.*
13. Summary of Respondent's contentions in support of the assessment:

Land Value

- a. The Respondent testified the subject land was assessed in accordance with the instructions contained within chapter 2 (land), Version A-Real Property Assessment Guideline. *Respondent's Ex. 4 & 7 and Becker testimony.*
- b. The Respondent submitted two pages from the Version A Guideline that demonstrates the steps to be followed when establishing land base rates for all classes of land, residential, commercial, industrial and agricultural. The established value is to represent the January 1, 1999, market value in use of improved land. *Respondent's Ex. 4 and Becker testimony.*
- c. The Respondent testified when the Petitioner purchased the subject property in 1992 it was used as agricultural land and that as of January 1, 1999, the land's market value in use is industrial. Further that the Land Valuation Form for the March 1, 2002, assessment has established the base rates for commercial and industrial land in the subject area as follows; primary land, low: \$13,164, high: \$23,156; secondary land, low: \$7952, high: \$14,949; usable undeveloped, low: \$4750, high: \$4750; and unusable undeveloped,

low: \$2065, high: \$2065. The subject property was valued at 4.75 acres primary land at \$18,160 per acre, 9.67 acres usable undeveloped at \$4750 per acre, .50 acre unusable undeveloped at \$2065 per acre, and .23 acre road right of way. *Respondent's Ex. 3, 5, & 7.*

Improvement Value

- d. The Respondent challenged the “cost basis” asset list showing the total value of each improvement submitted by the Petitioner, stating the Petitioner did not submit any documentation to show if the total value on the asset list included the interior components or site preparation, etc., for the building; therefore the Township could not verify if these were the actual cost to construct each of these buildings. *Respondent's Ex. 7 and Becker testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submission by either party.
- b) The tape recording of the hearing labeled BTR #5751.
- c) Exhibits:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of Kova Ag Products' 2002 property record card.

Petitioner's Exhibit 2 – “Cost Basis” sheets on Kova Ag Products (two pages).

Petitioner's Exhibit 3 – A hand drawn sketch of the buildings on the subject property.

Petitioner's Exhibit 4 – Section 98 page 1 of Marshall Valuation Service “Comparative Cost Indexes”.

Petitioner's Exhibit 5 – Section 98, page 23 of Marshall Valuation Service “Comparative Cost Multipliers”.

Petitioner's Exhibit 6 – A calculation to establish the building costs as of January 1, 1999 on the subject buildings prepared by Milo Smith.

Petitioner's Exhibit 7 – An affidavit from Dale Tyler of FBi Buildings, Inc., dated February 23, 2000.

Petitioner's Exhibit 8 – A specification sheet on land for sale by the Winamac Industrial Park.

Petitioner's Exhibit 9 – Eighteen listing sheets from Realtor.com of land for sale in Winamac (four pages).

Petitioner's Exhibit 10 – A copy of the Census of Agriculture – Indiana Agricultural Statistics (four pages).

Petitioner's Exhibit 11 – A copy of the County Land Valuation Form page 20 of 21 for Township #0010 for “Commercial and Industrial Neighborhood Valuation Form.”

For the Respondent:

Respondent's Exhibit 1 – A copy of the Authorization for Representation form from Alexsondra Haschel, Monroe Township Assessor to Indiana Assessment Service.

Respondent's Exhibit 2 – A copy of the Form 115, dated November 7, 2003.

Respondent's Exhibit 3 – A copy of Kova Ag Products' 2002 property record card.

Respondent's Exhibit 4 – A copy of chapter 2 (land) – Version A – Real Property Assessment Guideline (two pages).

Respondent's Exhibit 5 – A copy of the County Land Order page 20 of 21 for Township #0010 for “Commercial and Industrial Neighborhood Valuation Form”.

Respondent's Exhibit 6 – A copy of the Statement For Deduction of Assessed Valuation, letter from the Indiana State Chemist and Seed Commissioner, dated May 18, 1995, Certification of Qualification For Property Tax Deduction, dated May 18, 1995 and a copy of Kova Ag Products 2002 property record card.

Respondent's Exhibit 7 – Monroe Township Assessor's Response to the Form 131 Petition Issues (five pages).

d) These Findings and Conclusions.

Analysis

15. The most applicable statute, rules and governing cases are:
- a. It is the taxpayer's duty to walk the Indiana Board ...through every element of the analysis; arguments that (1) generically claim without explanation that the taxpayer made a prima facie case and (2) cite to large portions of the record as though the evidence speaks for itself do not constitute probative evidence. *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (citing *Clark v. State Board of Tax Commissioners*, 779 N.E. 2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)).
 - b. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. Conclusory statements are of not value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).

- c. The Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Blackbird Farms Apartments v. Department of Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax Ct. 2002).
- d. The township assessor shall establish a base rate for pricing each neighborhood. Base rates should include a specifically stated value for water supply, sewage disposal, and all other on-site development costs. The township shall also establish a base lot to represent the typical and average characteristics of lots in the neighborhood for the purpose of making pricing adjustments. *Version A - Real Property Assessment Guideline*, Chapter 2, page 9.
- e. 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 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
 - natural geographic features like waterways or lakes
 - availability of certain modes of transportation.
- Version A – Real Property Assessment Guideline*, Chapter 2, page 84.
- f. There are four categories of commercial and industrial land. In pertinent part; for primary land, the base rates represents the estimated January 1, 1999, value of the vacant land and various costs associated with the development of the land. The following developmental costs may be included in the base rate for primary acreage:
- Sanitary sewers
 - Storm sewers
 - Potable water lines
 - Fire prevention lines
 - Gas lines
 - Septic systems
 - Water wells
 - Grading for general improvement of the site
 - Landscaping

Version A – Real Property Assessment Guideline, Chapter 2, page 85.

Issue 1 – Land Value

16. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a. Petitioner argues the subject land consisting of 15.15 acres was purchased in December 1992 for \$32,069 therefore the subject land should be valued at \$5000 per acre for primary land. *Smith testimony*. While the Petitioner was able to establish the assessed value is greater than the purchase price, it is the Board's responsibility to evaluate the information to determine if the property is assessed correctly.
 - b. The Petitioner did not explain how the purchase price of subject property affects the market value-in-use of the property. The Respondent correctly pointed out that at the time the subject land was purchased it was zoned agricultural acreage; its current market value-in-use is industrial acreage. Further, the purchase price does not include the developmental cost for water, septic, gas, grading for general improvement of the site or landscaping. (*Petitioner's Ex. 2*). Petitioner has not sufficiently explained the connection between the evidence and his assertions in order for the evidence to be considered probative.
 - c. The Petitioner submitted eighteen (18) comparables from realtor.com. Although the presentation of sales data is a valid method of challenging an assessment, the Petitioner did not establish the properties as comparable to the property under appeal. For example, the listings range in size from 5 acres to 142.6 acres, no specifics are given on the property such as zoning, location, or developmental costs and the sales values range from \$25,000 to \$320,850. (*Petitioner's Ex. 9*).
 - d. Petitioner testified that the Winamac Industrial Park is selling zoned light and heavy industrial land for \$8,000 per acre that is comparable to the subject property. (*Petitioner's Ex. 8*). Mr. Smith's conclusory statement concerning comparable property does not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119. *See Blackbird Farms Apartments v. Dep't of Local Gov't Fin.*, 765 N.E. 2d 711, 715 (Ind. Tax Ct. 2002) (finding that where "there is no comparison of lot sizes or shapes, no comparison of topography or geographic features, no comparison of lot accessibility and uses," taxpayer had failed to present probative evidence that properties were comparable).
 - e. In this case, the Assessor used a base rate within the range established in conformance with Ind. Code § 6-1.1-4-13.6. Based on the evidence presented, the Board cannot find fault with the Assessor's selection of the base rate. *Respondent's Ex. 4, 5 & 7; Becker testimony*.

- f. The Petitioner did not present evidence to demonstrate that the land was assessed incorrectly. The Board finds in favor of the Respondent on this issue.

Issue 2 – Improvement Values

- 17. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
 - a. The Petitioner testified the subject buildings are FBi Buildings constructed of 6" wood post, metal roofs and 29 gauge light steel exterior siding with the interior components of each building varying due to different uses. (*Petitioner's Ex. 7*)
 - b. The Petitioner submitted a calculation using *Marshal Valuation Services*, whereby the Petitioner applied the known multiplier (for the known date) times the known building cost equals present building cost. (*Petitioner's Ex. 4*)
 - c. The Petitioner applied the above calculation outlined in (b) to the subject structures as follows: office building (3840 sq. ft.) cost to construct in December 1995 times the January 1996 multiplier of 1.092 equals a cost to construct of \$131,887 for January 1999 the established date for the March 1, 2002 assessment. The dry blend plant (5180 sq. ft.) cost to construct in January 1995 was \$119,283 times the January 1995 multiplier of 1.106 equals a cost to construct for January 1999 of \$131,927. (*Petitioner's Ex. 2, 5 & 6 and Smith testimony*). The Petitioner's building cost calculation was the sole argument presented in an attempt to reduce the assessed value.
 - d. The Board finds Petitioner's argument to be unpersuasive. In *Marshall Valuation Service* it states the following items are included in the actual building costs:
 - (1) Average architects & engineer fees. Building permits and surveying to establish building lines and grades.
 - (2) Normal interest on only the actual building funds during period of construction and processing fee or service charge.
 - (3) All material and labor costs include all appropriate local, state, and federal sales taxes.
 - (4) Normal site preparation including finish, grading, and excavation for foundation and backfill for the structure only.
 - (5) Utilities from structure to lot line.
 - (6) Contractor's overhead and profit including job supervisor, workmen's compensation, fire and liability insurance, unemployment insurance, equipment, temporary facilities and security.

- e. It is unclear what cost components are included in the building cost information submitted as evidence by the petitioners.
- f. A review of the Petitioner's evidence shows it to be inconclusive. While the Petitioner's estimated building cost for January 1999 of \$131,887 (office) and \$131,927 dry blend plant appears to be an indicator of the values for the structures, the Petitioner failed to provide enough probative evidence to support its requested values. When a taxpayer fails to submit evidence that is probative evidence of the error alleged, the Board can properly refuse to consider the evidence. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

Conclusion

- 18. The Petitioner failed to make a prima facie case. There is no change to the assessment as a result of this determination.

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.