

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

Petition #: 48-002-02-1-4-00745
Petitioner: Harold E. Rozelle Funeral Home
Respondent: Anderson Township Assessor (Madison County)
Parcel #: 43161A1Z
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 Madison County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA’s Notification of Final Assessment Determination was mailed to the Petitioner on April 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 21, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 24, 2004.
5. The Board held an administrative hearing on January 12, 2005, before the duly appointed Administrative Law Judge (ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Bill Beeler, Rozelle Funeral Home Representative
Adonis Thomas, Certified Public Account for Petitioner
M. Scott Sparks, Real Estate Appraiser
Stephen Hardacre, Attorney for Petitioner
 - b) For Respondent: Cheryl Heath, Madison County First Deputy Assessor
Dave Simmons, Madison County Representative

Facts

7. The subject property is classified as commercial, as is shown on the property record card (PRC) for parcel # 43161A1Z.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Madison County PTABOA:
Land \$ 157,500 Improvements \$ 0
10. Assessed Values requested by Petitioner per the Form 131 petition are:
Land \$ 49,000 Improvements \$ 0

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Subject property is a seven (7) acre tract of land adjacent to the Rozelle Funeral Home. *Sparks testimony*. The only access to the subject property is through the funeral home parking lot. *Petitioner Exhibit 1*.
 - b) The underground piping for the geothermal heating and cooling system of the funeral home is the only improvement to the subject property. *Petitioner Exhibits 2-3*.
 - c) The subject land is classified as primary commercial and valued at \$22,500 per acre, while the adjoining funeral home tract is also classified as primary commercial and valued at \$30,000 per acre. *Petitioner Exhibits 4-5*.
 - d) The zoning classification of the subject property and the adjoining funeral home tract is R-3, a residential classification that permits a limited number of other uses, such as funeral homes. *Petitioner Exhibit 6*.
 - e) The subject property acts as a buffer between the funeral home and the residential land to the west. *Sparks testimony*. The limitations on the use of the subject property led the owner to utilize the property for geothermal piping. *Id.*
 - f) The cost associated with converting the heating and cooling system of the funeral home, thereby negating the need for the adjoining land, is estimated at \$ 152,790. *Petitioner Exhibit 10*.
 - g) The Petitioner submitted two appraisals of the subject property. *Petitioner Exhibits 7-8*. The first appraisal was prepared by M. Scott Sparks ("Sparks

Appraisal”). *Petitioner Exhibit 7*. The Sparks appraisal estimated the market value of the subject property to be \$49,000 as of January 10, 2005. *Id.* The appraiser testified that he estimated that the value was the same on March 1, 2002. *Sparks testimony*.

- h) The second appraisal submitted by the Petitioner was prepared by Paul Alatza (“Alatza Appraisal”) on January 4, 2005. *Petitioner Exhibit 8*. The Alatza appraisal estimated the market value of the subject property to be \$3,000 per acre, or \$21,000. *Id.*
- i) The Brown & Butz Funeral Home is located in a commercial area of Madison County. *Hardacre testimony*. The “supplementary” land owned by Brown & Butz is priced at \$13,000 per acre, which is considerably less than the \$22,500 per acre price assigned to the subject property. *Id.*; *Petitioner Exhibit 11*.
- j) The Petitioner seeks a value of \$ 49,000 as indicated in the Sparks Appraisal. *Petitioner Exhibit 7*.

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

- a) If the subject property were severed from the funeral home and sold, the funeral home would be left without a heating and cooling system. *Simmons argument; Sparks testimony*. The diminished value of the funeral home would be transferred to the subject property. *Id.*
- b) The subject property therefore supports the funeral home and conversely, the funeral home supports the subject property. *Simmons argument; Sparks testimony*.
- c) The assessment of the subject property as primary commercial land is based on its use as support land. *Simmons testimony; Respondent Exhibit 1*.

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 # 5960.
- c) Exhibits:

Petitioner Exhibit 1: Aerial Photograph of the seven-acre subject property
Petitioner Exhibit 2: Site plan/funeral home improvements

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Petitioner Exhibit 3: Diagram/geothermal heat system
Petitioner Exhibit 4: PRC for subject property
Petitioner Exhibit 5: PRC for adjacent three (3) acres
Petitioner Exhibit 6: Affidavit of Tim Stires regarding zone classification
Petitioner Exhibit 7: Appraisal report of M. Scott Sparks (LR 69201427)
Petitioner Exhibit 8: Appraisal report of Paul Alatza (CREA)
Petitioner Exhibit 9: Form 131 (Request for State Board Review)
Petitioner Exhibit 10: Reeder estimate for heat conversion
Petitioner Exhibit 11: PRC for Brown Butz Diedring property

Respondent Exhibit 1: Copy of page 85, Chapter 2, Version A - Real
Property Assessment Guideline

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 cases/laws/regulations 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 did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) The Petitioner contends that assessment, which treats the subject property as primary commercial land with a value of \$22,500 per acre, is incorrect.
- b) The Petitioner essentially argues three points in support of its claim for a reduced assessment: (1) that the subject property was valued by two appraisers for amounts substantially less than its current assessed value; (2) that the subject property's current use, as dictated by several limiting factors, renders its market value-in-use substantially less than its current assessment; and (3) that the subject property's current assessment exceeds the assessment of a comparable property owned by Brown & Butz Funeral Home.

Appraisals

- c) The Petitioner submitted two appraisals reflecting a market value for the subject property that is significantly lower than its current assessed value.
- d) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). In prosecuting an appeal of its assessment, a taxpayer may use evidence consistent with the Manual's definition of true tax value, such as appraisals that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
- e) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal performed substantially after the relevant valuation date should explain how the value estimated by the appraisal relates to the property's market value-in-use as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, Cause No. 49T10-0404-TA-20 at 8-9 (Ind. Tax Ct. corrected original opinion dated January 28, 2005) (holding that an appraisal indicating a value as of December 10, 2003 lacked probative value).
- f) Both the Sparks Appraisal and the Alatza Appraisal estimate the market value of the subject property as of a date substantially removed from January 1, 1999. The Alatza Appraisal uses a valuation date of January 4. *Petitioner Exhibit 8*. The Sparks Appraisal uses a valuation date of January 10, 2005, although the appraiser testified that the value had not changed since March 1, 2002. *Sparks testimony; Petitioner Exhibit 7*.
- g) The Petitioner did not explain how the estimation of market value contained in either appraisal relates to the market value-in-use of the subject property as of January 1, 1999. Consequently, neither appraisal is probative of the true tax value of the subject property on the relevant valuation date. *See Long*, slip op. at 8-9.

Current use and limiting factors

- d) According to the Petitioner, it currently uses the subject property as a buffer for the funeral home and to house piping for the funeral home's geothermal heating and cooling system. *Sparks testimony.*
- e) The Petitioner asserts that its use of the subject property is dictated by a lack of street access, by zoning limitations and by its choice to place geothermal piping on the property. *Sparks testimony; Hardacre argument.*
- h) While the Petitioner presented evidence to demonstrate the existence of zoning limitations, diminished street access and other factors which reasonably may limit the subject property's market value-in-use, the Petitioner did not present any evidence to quantify the effect of those factors, other than through the Sparks and Alatza appraisals. However, as discussed above, the estimations of value contained in those appraisals lack probative value.

Assessment of purportedly comparable property

- i) The Petitioner also sought to support its claim for a reduced assessment by comparing the subject property to a portion of land owned by Brown & Butz Funeral Home. *Hardacre argument; Petitioner Exhibit 11.* The Petitioner argued that the Brown & Butz's land was assessed at a base rate of \$13,000 as compared to the base rate of \$22,500 applied to the subject property. *Id.*
- j) To successfully make a case based upon the sale price or assessed value of comparable properties, a Petitioner must first establish that the properties upon which he relies are truly comparable to the subject property. *See Blackbird Farms Apartments, LP v. Dep't of Local Gov't Fin., 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002).* The determination of whether properties are similar enough to be considered comparable depends upon numerous factors, including, among other things, size, shape, topography, accessibility, and use. *Id.*
- k) Here, Stephen Hardacre testified that eight acres of the land owned by Brown & Butz Funeral Home, Inc. ("Brown & Butz") is "supplementary" land like the subject property. *Hardacre testimony; Petitioner Exhibit 11.* However, the Petitioner did not present any evidence regarding Brown and Butz's specific use of that land. Hardacre also testified that the two properties experience similar limitations with regard to street access, given that Brown & Butz's "supplementary" land is located directly behind the funeral home. *Hardacre testimony.* The Petitioner also presented evidence concerning the relative sizes of the two properties. *Petitioner Exhibits 1, 4, 11.* However the Petitioner did not present any evidence concerning the shape or topography of the Brown & Butz land as compared to the subject property.

- l) While a relatively close call, the Board finds that the Petitioner did not present sufficient evidence to establish that the Brown & Butz land is comparable to the subject property.
- m) Even if the Petitioner had established that the two properties were comparable, the comparison at issue begs the question of which of the two assessments is correct. The Petitioner did not submit any market evidence to support the correctness of the Brown & Butz assessment as compared to that of the subject property.
- n) Based on the foregoing, the Petitioner failed to make a prima facie case for a change in assessment.

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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.