

BEFORE THE IDAHO BOARD OF TAX APPEALS

GVD PARTNERS, LP,	)	
	)	
Appellant,	)	APPEAL NO. 20-A-1012
	)	
v.	)	FINAL DECISION
	)	AND ORDER
KOOTENAI COUNTY,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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**COMMERCIAL PROPERTY APPEAL**

This appeal is taken from a decision of the Kootenai County Board of Equalization denying an appeal of the valuation for taxing purposes on property described by Parcel No. C6180002004A. The appeal concerns the 2020 tax year.

This matter came on for hearing telephonic hearing October 7, 2020, before Board Member Leland Heinrich. President Jerry Dicker appeared at hearing for Appellant. Chief Deputy Assessor Joe Johns represented Respondent.

Board Members Leland Heinrich, David Kinghorn, and Kenneth Nuhn join in issuing this decision.

**The issue on appeal concerns the market value of an improved commercial property.**

**The decision of the Kootenai County Board of Equalization is modified.**

FINDINGS OF FACT

The assessed land value is \$892,962, and the improvements' value is \$7,040, totaling \$900,002. Appellant contends the total value is \$400,000.

The subject property is a 1.95 acre commercial parcel situated in the Moen subdivision in Coeur d'Alene, Idaho. The minimal improvements on the parcel were not described by the parties, nor in the exhibit materials.

The subject parcel sits in the southeastern corner of a four (4) parcel commercial

business park. Appellant owns three (3) of the four (4) parcels in the park, while the unimproved northwestern parcel is owned by a third party. One (1) of Appellant's parcels, to the east of the subject lot, is improved with a Cracker Barrel restaurant, and the other parcel, to the north of subject, is improved with a multi-tenant commercial building, currently occupied by a sandwich shop and a coffee shop. Though Appellant would like to develop the subject parcel, some potential obstacles were identified which would complicate development of the property. Appellant contended Respondent failed to consider the development challenges in assessing the subject property and the impact on market value caused by the restrictive covenants in place.

Regarding the restrictive covenants, Appellant provided a copy of recorded covenants and easements documents. Highlighting Article 6.2(c), referred to as the "Restaurant Restriction," Appellant noted there are some notable restrictions on the type of business allowed to occupy the subject lot. The covenants prohibit the sale, lease, or use of the subject parcel "for any family dining, sit down, free standing restaurant with a building in excess of 3,550 square feet . . . or for any casual theme dining restaurant with a building in excess of 3,500 square feet." The Restaurant Restriction further identified numerous specific examples of family dining and casual theme restaurants. Fast casual restaurants are permitted under the Restaurant Restriction. The restrictions further identify other business types prohibited on the subject parcel, such as a night club, automobile sales or repair, a skating rink, an auction house, a beauty school, and a myriad of other business types. In Appellant's view, the restrictions on subject's potential commercial uses diminish the marketability of the property and the market value.

Respondent argued the covenants referenced by Appellant were effectively not “true restrictions” because, as the Declarant of the covenants at issue, Appellant is free to amend or otherwise change them. In short, Respondent contended the covenants had no impact on subject’s market value. Appellant was indeed the Declarant of the covenants; however, Appellant explained it could not simply amend the covenants to overturn the restricted business uses because, in an effort to entice Cracker Barrel to occupy the adjacent east parcel, the lease with Cracker Barrel specifically includes the restrictive covenants as they are. In other words, Appellant would be unable to amend the covenants without breaching the lease with Cracker Barrel.

The second issue identified by Appellant concerned the stability of the soil on the subject parcel. The area previously served as the site of a municipal dump and quarry, which has caused some stability issues with subject's underlying soil. Appellant provided a letter from the local contractor who developed the adjacent north parcel, which also suffered from “significant soil issues.” The contractor stated construction costs on the north parcel exceeded typical costs due to the “special construction assemblies needed to address the unacceptable soil conditions.” The contractor also provided a schedule of costs from that project and identified nearly \$200,000 in extra costs associated with the special construction assemblies. Appellant contended a reasonable buyer would certainly consider the extra development costs in any purchase decision and would require the purchase price to reflect the additional development costs.

Respondent argued no adjustment was warranted for the soil conditions because, according to the city building department, the subject parcel is buildable. Appellant countered

that while the site may be technically buildable, the extraordinary development costs would negatively impact the market value of the property.

Lastly, Appellant explained the subject parcel may suffer from toxic soil resulting from the prior landfill use. Some limited toxicity testing of the broader area has taken place starting as far back as 1998, though it was not clear if any testing had occurred specifically on the subject parcel. A memorandum sent to the Environmental Protection Office in Portland, Oregon, dated June 9, 2020, outlined the extent of the testing efforts over the years, and proposed additional testing to either confirm or deny the existence of toxic materials under the subject lot. Appellant noted in the event toxic materials are discovered, some serious remediation work may be required. The uncertainty surrounding the potential environmental hazards has caused Appellant to not pursue development efforts until some finality about the soil toxicity can be reached. The uncertain environmental status was also cited by Wells Fargo Bank as the reason for being unable “to move forward using [the subject] property to secure a loan request . . . .” The denial letter stated a complete phase I environmental report would be required, and likely a complete phase II environmental report as well. In Appellant’s opinion, the uncertainty surrounding subject’s potential environmental issues would be viewed negatively in the market, thereby diminishing the market value.

Respondent argued no consideration should be given for subject’s potential environmental issues because it has not yet been proven subject suffers from toxic soil. In Respondent’s view, until the subject property is declared an environmental hazard, there is no support for an adjustment in the assessed value.

In terms of support for subject’s current valuation, Respondent pointed to the most

recent ratio study administered by the Idaho State Tax Commission (STC), which concluded the median ratio of four (4) vacant land sales from 2018 and 2019 was 95.95%. Respondent noted the ratio study results were within the guidelines required by the STC. Respondent additionally provided limited details concerning one (1) vacant commercial land sale located roughly one (1) mile east of the subject lot, which occurred in November 2019. The actual sale price was not shared, though Respondent reported a time-adjusted sale price of \$485,235, or \$10.28 per square foot. Subject's assessed land value is \$892,962, or \$10.50 per square foot, which Respondent commented was consistent with other values in the area.

#### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of market value in fee simple interest, or, as applicable, a property's exempt status. This Board, giving full opportunity for all arguments and having considered all the testimony and documentary evidence submitted by the parties, hereby enters the following.

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2020, in this case. Market value is always estimated as of a precise point in time. Idaho Code § 63-201 provides the following definition,

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

Market value is estimated according to recognized appraisal methods and techniques. The sales comparison approach, the cost approach, and the income approach comprise the three (3) primary methods for determining market value. *Merris v. Ada Cnty.*, 100 Idaho 59, 63,

593 P.2d 394, 398 (1979). Vacant land is typically valued using the sales comparison approach, which in basic terms relies on recent sales of similar property, with consideration given to adjustments for differences in property characteristics.

Neither party presented a traditional sales comparison approach. Instead, Appellant identified three (3) issues argued to negatively impact subject's current market value. One concern centered on the possibility of contaminated soil on the subject parcel. No evidence was provided to substantiate subject suffers any toxic soil issues; however, at least a couple of government environmental agencies have recommended further testing of the soil to determine if subject's soil poses any environmental risks. While subject's soil has not yet been found to be toxic, Appellant argued the parcel's uncertain environmental status was detrimental to the market value. In this regard, Appellant furnished a letter from a commercial banking agent specifically citing the unknown soil toxicity as the reason the subject property could not be used to secure a loan "without significant further due diligence." The Board does not dispute the potential negative impact of subject's uncertain environmental status on the property's market value; however, the impact is difficult to quantify in terms of market value.

Appellant also raised an issue concerning the stability of subject's soil and the extra development costs associated therewith. A letter from the contractor who developed the adjacent north parcel explained additional costs were incurred in that project to address "significant soil issues." These additional costs were identified on a cost schedule furnished by the contractor for the adjacent property, which costs approached \$200,000. Appellant contended these atypical development costs would result in a lower market value because a potential buyer would factor the costs into the purchase decision. Respondent argued no

adjustment was warranted because the subject parcel has not been declared unbuildable by the city building department. The Board disagrees.

The issue is not whether subject's unstable soil renders the parcel unbuildable, as it is undoubtedly buildable, but rather whether the additional costs required to develop the property impact the market value. In the Board's view, the extraneous costs associated with overcoming subject's unstable soil issues does negatively influence subject's market value. The contractor identified nearly \$200,000 in additional expenses to address the soil stability issues of the adjacent parcel, and Appellant testified it was likely similar costs would be incurred to develop the subject parcel. In the Board's experience, a knowledgeable, capable buyer would be unlikely to pay the same for a parcel in need of notable soil stabilization work as a parcel with no stability issues and no additional development costs.

The Board likewise found the covenants restricting the types of commercial businesses allowed to operate at the subject property as detriments to the property's market value. Indeed, at least nineteen (19) different business types are expressly prohibited by the covenants, and no less than twenty-five (25) individually-named family dining and casual theme restaurants are specifically prohibited to operate on the subject property. Respondent effectively characterized the covenants as non-binding because they were created by Appellant as the Declarant and therefore could be changed. Admittedly, Appellant did create the covenants in an effort to entice Cracker Barrel to the commercial park, but, contrary to Respondent's assertion, Appellant cannot freely amend or otherwise alter the covenants because they are also specifically included in the lease with Cracker Barrel. And, even if Appellant could easily change the covenants, as of January 1, 2020, the covenants were in full force and effect, and

did in fact restrict the potential commercial uses of the property. The diminished utility caused by the covenants is the type of property characteristic or condition that would normally be factored into an appraisal analysis, and the Board finds some consideration should be afforded here.

Respondent did not offer any analysis or any direct support for subject's current valuation. Reference was made to a recent ratio study performed by the Idaho State Tax Commission, and limited information concerning a November 2019 vacant land sale was provided. A ratio study, which is a broad statistical model aimed at measuring assessment levels and uniformity within a particular class of property, is generally not considered the best evidence of the market value for an individual property. As for the referenced sale, the actual sale price was not provided, nor were any details concerning the comparability of the location with respect to the subject lot. In short, it was not clear how the information offered by Respondent correlated to, or otherwise supported, subject's current valuation.

In accordance with Idaho Code § 63-511, the burden is with the Appellant to establish subject's valuation is erroneous by a preponderance of the evidence. Given the record in this matter, the Board finds the burden of proof satisfied. Appellant identified some notable issues concerning the development and marketability of the subject property, none of which were considered in Respondent's assessment of the parcel. Giving primary consideration to the extra development costs and the restrictive covenants limiting the commercial uses of the property, the Board will reduce the value of the subject lot to \$450,000.

The decision of the Kootenai County Board of Equalization is modified, as indicated above.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Kootenai County Board of Equalization concerning the subject parcel be, and the same hereby is, MODIFIED to reflect a decrease in subject's land value to \$450,000, with no change to the improvements' valuation of \$7,040, for a total assessed value of \$457,040.

IT IS FURTHER ORDERED, pursuant to Idaho Code § 63-1305, any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

Idaho Code § 63-3813 provides that under certain circumstances the above ordered value for the current tax year shall not be increased in the subsequent assessment year.

DATED this 11<sup>th</sup> day of January, 2021.