BEFORE THE IDAHO BOARD OF TAX APPEALS

GVD PARTNERS, LP,	)	
	)	
Appellant,	)	APPEAL NO. 22-A-1053
	)	
v.	)	FINAL DECISION AND ORDER
	)	
KOOTENAI COUNTY,	)	
	)	
Respondent.	)	
	)	
_____	)	

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 2022 tax year.

This matter came on for hearing October 31, 2022, in Post Falls, Idaho, before Board Member Kenneth Nuhn. Gerald Dicker appeared at hearing for Appellant. Kootenai County Appraisal Manager Troy Steiner represented Respondent.

Board Members Leland Heinrich, Kenneth Nuhn, and Doug Wallis join in issuing this decision.

The issue on appeal concerns the market value of a vacant commercial property.

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

FINDINGS OF FACT

The assessed land value is $1,368,041, and the improvements' value is $7,420, totaling $1,375,461. Appellant agrees with the value of the improvements but contends the correct land value is $450,000, for a total value of $457,420.

The subject property is a 1.87 acre commercial parcel located off Interstate 90 in Coeur d'Alene, Idaho. The property is unimproved except for approximately 4,500 square feet of paving. The parcel is situated adjacent to two (2) improved commercial parcels also owned by Appellant.

Appellant detailed several issues argued to negatively impact the marketability of the subject property which were not adequately considered in the current valuation. Appellant's primary concern centered on the ongoing investigation by the U.S. Environmental Protection Agency (EPA) and the Idaho Department of Environmental Quality (DEQ) related to the potential existence of toxic chemicals buried on the property. The subject parcel was once operated as part of a larger gravel mining pit that was later backfilled to some extent with municipal waste during the 1950s and 1960s when the local landfill was inaccessible due to flooding. The property is situated near the southern edge of the Spokane Valley-Rathdrum Prairie aquifer, noted to be the sole source of drinking water for more than 500,000 residents of Spokane County in neighboring Washington State.

While the subject property was known as the site of the former gravel pit and landfill when Appellant acquired the property many years ago, there was no indication harmful contaminants were possibly being released by airborne, surface water, or ground water pathways, until an environmental investigation report was completed in July 2018. According to Appellant, a preliminary agreement had been reached with an operator in the hospitality industry to purchase the subject lot and construct a hotel thereon. As part of the buyer's due diligence, an environmental investigation was conducted, which involved collecting soil gas samples from four (4) temporary boreholes approximately

eight (8) feet bgs (below ground surface). Volatile organic compounds (VOCs) were detected in all four (4) boreholes, though only two (2) were at levels in excess of EPA guidance. Methane was also detected in these same two (2) boreholes.

Groundwater sampling was conducted at the site in September 2018 at the request of DEQ due to the presence of the above-referenced VOCs. One (1) boring was advanced to a depth of 182 feet bgs, with groundwater encountered at 168 feet bgs. Soil samples were not taken from the boring, but photoionization detector field screening readings indicated the presence of VOCs from roughly seven (7) to fifteen (15) feet bgs. A temporary groundwater monitoring well was installed, and the two (2) groundwater samples collected revealed low levels of tetrachloroethylene, a synthetic chemical used widely in the dry cleaning industry. As a result of the site testing, the hotel operator abandoned its plans to purchase and develop the subject lot. The uncertain environmental status of the property has also prevented Appellant from pursuing alternative development options for the parcel, though in 2019 Appellant entered into a month-to-month lease agreement with a tenant who sells pre-fabricated sheds, barns, garages, and cabins on the site. No permanent structures or improvements have been constructed in connection with the tenant's business.

Appellant further explained that, as VOCs in excess of EPA guidelines were detected in the limited area that was tested, more testing over a larger area was recommended. This larger area included both adjacent improved commercial parcels. To this end, the EPA distributed a site investigation notice informing Appellant and the tenants operating out of the adjacent parcels environmental sampling would be conducted in the Summer/Fall of 2022. The EPA testing was reportedly done in August 2022, though

no results have yet been released. Appellant argued the cloud over the property due to the ongoing EPA and DEQ investigation of the area has effectively rendered the subject property unmarketable. Until the environmental status has been clarified, the subject property has little or no value in Appellant's view.

In addition to the general stigma stemming from the ongoing environmental investigation, Appellant contended the property's marketability was further diminished by the inability to obtain financing. Appellant furnished a letter from a national bank citing the environmental uncertainty of the site as the reason for declining to accept the subject property as collateral to secure a loan request. The letter stated, "[a]t a minimum the bank would require a new and complete phase I environmental report and based on the information contained in the Ecology and Environment memorandum you provided it is highly probably [sic] that a complete phase II report would be required." The letter continued to state if the environmental reports were to show "the presence of hazardous materials, hydrocarbons, or risks to the groundwater," such conditions would have to be remediated to the bank's satisfaction at the borrower's sole expense before a loan would be considered. The inability to secure financing was argued by Appellant to restrict the pool of potential buyers and further reduce subject's marketability and market value.

Appellant stressed it would develop the subject property if such were feasible, as evidenced by its development of the two (2) adjacent commercial parcels and its long record of active, ongoing development across the United States. However, the inability to obtain financing and the uncertainty surrounding potential cleanup costs, which Appellant pointed out could be zero or could be millions, has halted any development initiatives. Appellant further stressed even if it were able to somehow sell the property, Appellant

would still be on the hook if the EPA does find a problem because the potential issue became known during Appellant's ownership of the property. Appellant opined it was unlikely a potential purchaser would be willing to take such risks and inconceivable such purchaser would pay a price comparable to a commercial property with no environmental uncertainties.

In addition to the environmental concerns, Appellant highlighted other challenges associated with developing the subject parcel. One such obstacle is the stability of the soil, as the site once served as a gravel pit and municipal waste repository. Appellant provided a letter from the local contractor who developed one (1) of the adjacent commercial parcels which also suffered from "significant soil issues." The contractor reported construction costs for the adjacent parcel in excess of typical levels due to the "special construction assemblies needed to address the unacceptable soil conditions." According to the contractor's cost schedule from the adjacent project, there were nearly $200,000 in extra costs associated with the special construction assemblies. Appellant argued a reasonable buyer would undoubtedly factor the extra development costs into any purchase decision and would demand the price reflect such.

Appellant additionally pointed to the restrictive covenants tied to the subject property as another development challenge and detriment to the parcel's marketability. Article 6.2 of the recorded covenants and easements restricts the type of business permitted to operate on the subject lot. Specifically, 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 3,500 square feet . . . or for any casual theme dining restaurant with a building in excess of 3,500 square feet." Numerous examples of specific family

dining and casual theme restaurants were identified in the covenants. Further, while fast casual restaurants are allowed to operate on the subject property, the covenants identified a myriad of other prohibited business types such as a night club, automobile sales or repair, a skating rink, an auction house, and a beauty school. In Appellant's view, the restrictions on subject's potential commercial uses diminish the marketability of the property and the market value.

Respondent acknowledged the ongoing environmental testing of subject and the adjacent parcels but argued no adjustments were warranted because the property has not been confirmed to be contaminated. Respondent cited a November 2016 publication by the International Association of Assessing Officers (IAAO) regarding the valuation of properties affected by environmental contamination, which in basic terms stated, "[t]he assessor should not rely solely on statements of the property owner estimating the loss in value due to environmental contamination problems," but should instead require "clear documentation of the nature and extent of environmental contamination," as well as "proof of the contamination and associated [remediation] expenses." As the results from the EPA's testing in August 2022 have not been issued and there is no other "clear documentation" concerning the extent of environmental contamination, Respondent characterized Appellant's claims of diminished market value as more hypothetical in nature and maintained no special adjustments to subject's valuation were justified. Respondent further stressed the property has not been declared unbuildable by the city or the EPA so, in Respondent's opinion, Appellant's decision to not develop or sell the property is a personal choice, not the result of any diminished marketability.

Regarding the restrictive covenants on the property, Respondent contended they were not "true restrictions" because Appellant was the Declarant who granted the covenants, and therefore Appellant was free to amend or otherwise change the restrictions. Appellant stressed the covenants could not be changed without breaching the lease with the restaurant tenant operating on the adjacent parcel to subject's east. Appellant explained the covenants were drafted to entice the restaurant tenant who required the specific restrictions to operate at the site. As the lease agreement with the restaurant tenant includes these restrictive covenants, Appellant contended the covenants could not be amended without breaching the terms of the lease.

Moving to value evidence, Respondent reported only two (2) improved commercial sales in Coeur d'Alene during 2021 and one (1) vacant lot sale, though none were regarded as comparable to the subject property. No details concerning the sale properties were provided, not even the actual sale prices. Rather, Respondent shared only the sale dates, time-adjusted sale prices, and current assessed values.

Instead of using the dissimilar 2021 sales, Respondent developed a comparative sales analysis using three (3) older sales of more comparable properties from subject's neighborhood and one (1) 2021 sale from Hayden. Sale No. 1 was the May 2020 sale of a former steakhouse restaurant situated on a 1.25 acre parcel for $1,025,010. Sale No. 2 was another 1.19 acre restaurant property which sold for $1,250,000 in June 2016. Sale No. 3 was a 6.88 former waterpark property purchased for $3,250,000 in March 2019. Lastly was the sale in Hayden consisting of three (3) parcels totaling .895 acres in size which sold in November 2021 for $1,250,000. Respondent first adjusted each sale price for date of sale, though details concerning the time adjustment factor were not shared,

just the total adjustment amount applied to the respective sale prices. Respondent next made adjustments for differences in lot size, location, and access, resulting in adjusted prices from $1,086,511 to $4,842,500, or from $16.15 to $32.05 per square foot. Subject's land value is $1,368,041, or $16.80 per square foot, which Respondent noted was within the range indicated by the adjusted sale prices.

Respondent additionally provided a satellite image with the overlayed parcel boundaries for a handful of commercial properties in subject's immediate neighborhood. The current assessed land values were also indicated on the image. The two (2) parcels adjacent to subject, as well as a credit union property across the street to the east were each assessed at $19.60 per square foot. The remaining two (2) parcels in the satellite image, both assessed at the same $32 per square foot rate, were located across the street from subject on the north side of West Appleway Avenue, a busy four-lane commercial thoroughfare. These latter two (2) parcels were corner pad sites in a small multi-tenant shopping center anchored by WinCo. Respondent contended subject's lower land value of $16.80 per square foot sufficiently accounted for any diminished market value asserted by Appellant and maintained no further consideration should be given.

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, 2022, 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 estimating the market value of real property. *Merris v. Ada Cnty*., 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The income approach is typically the preferred method for valuing income-producing property, though the sales comparison approach is more commonly used for unimproved commercial parcels, or minimally improved lots like subject.

Appellant did not offer a formal valuation analysis, focusing instead on several detriments argued to significantly diminish subject's market value. Respondent, on the other hand, did develop a sales comparison model using four (4) commercial sales which transpired from 2016 to 2021. The sales information, albeit rather limited in terms of detail, was appreciated by the Board, but there were some concerns with aspects of the analysis. One such concern was with the size adjustment made to Sale No. 3, the 6.88 acre former waterpark that sold in March 2019 for $3,250,000. The sale lot is more than triple the size of the subject parcel, yet Respondent applied an upward land size adjustment of 30%, or $975,000. In the Board's experience, a sale property with more acreage than the subject parcel is typically adjusted downward in an effort to make the sale more

comparable to the subject by removing the value of the additional acreage from the sale price. In other words, the sale properties are adjusted to match the characteristics of the subject property. Respondent's land size adjustment, however, appears to have been applied inversely throughout its model, effectively adjusting the subject property to match the sales. If Sale No. 2 were to be adjusted downward for its superior land size instead of upward, the adjusted sale price calculates to $9.65 per square foot, a notable departure from the $16.15 per square foot figure reflected on the exhibit.

It was also curious why Respondent included Sale No. 4 in the analysis, other than perhaps it was the most recent of the group. The property is located in Hayden, a completely different market than Coeur d'Alene. Also, Respondent reported a size figure of .895 acres and noted three (3) parcels were included in the sale, so its comparability to the subject property, a single parcel roughly twice the size, was immediately questionable to the Board. Lastly, Sale No. 4, with a sale price of $32.05 per square foot appears to be an outlier compared to the remainder of the sales information, so its inclusion in the limited data set serves only to skew the indicated range of value and average price rate upward. Removing Sale No. 4 tightens the range from $9.65 to $24.02 per square foot, with an average price rate of $16.61 per square foot. And if Sale No. 2 is removed because it was a 2016 sale, which is rather stale data for evaluating subject's 2022 market value, the average price rate drops to $12.90 per square foot. Regardless of whether all sales are kept in the analysis, or some are removed, the fact remains none of the sale properties were under active EPA investigation at the time of sale, which sets the subject property apart from the others. In all, the Board was not convinced

Respondent's sales analysis produced the most reliable indicator of subject's current market value.

The Board was also not persuaded by the assessment information Respondent shared for several parcels in subject's immediate area. Respondent argued subject's lower land value rate of $16.80 per square foot demonstrated consideration was given for subject's various challenges. We disagree. Not only did all the referenced assessments involve improved commercial properties, two (2) of the parcels are essentially situated in WinCo's parking lot, so benefit tremendously from the traffic generated by the supermarket giant. It is not surprising, then, that the subject property, an unimproved commercial lot not associated with any anchor tenant, would have a lower land value. This does not demonstrate consideration for subject's detriments, but rather reflects the difference between an actively operating business on an improved commercial property and an unimproved lot for which sitework is necessary before it can be developed for commercial use. There was nothing in subject's property record indicating adjustments for any attribute, not even a negative influence factor for the EPA cloud hanging over the property. In short, the Board struggled to identify where or how subject's unfavorable characteristics were considered or otherwise reflected in the current valuation.

Respondent steadfastly insisted no adjustment for the potential presence of harmful toxins on the subject property was warranted because no governmental authority has officially declared the site unbuildable. Respondent maintained that without clear documentation concerning the nature and extent of any environmental contamination on the subject property, with precise detailed maps included, plus market data to prove diminution in value, an adjustment would be inappropriate. Though the Board agrees a

simple claim by a property owner of possible environmental contamination is insufficient to support an adjustment, such is not the case here with the subject property. Admittedly, the nature and extent of the potential contamination on the subject property has not yet been confirmed, but it is indisputable the site is actively being investigated by the EPA and DEQ for the possible existence of harmful substances on the premises. The subject property has been assigned an EPA identification number and a Superfund link number, both posted and accessible on the EPA's website. Further, the EPA distributed handouts notifying Appellant and the tenants on the two (2) adjacent commercial parcels of its intent to conduct testing in the Summer/Fall of 2022, which testing did in fact take place in August. It is inconceivable in the Board's view that a potential purchaser of the property would not at least take pause upon learning of the ongoing testing efforts by the EPA. And if the purchaser did not discover such information through the EPA or other public source directly, Appellant would be obligated by law to inform the purchaser of the issue. In other words, given the testing that has already occurred at the site and the ongoing investigation by the EPA, a prospective buyer would undoubtedly be aware of the potential environmental problems and the uncertain remediation costs if contamination is confirmed. There is little question, in the Board's opinion, the stigma attached to possible environmental contamination and an active EPA investigation negatively impacts subject's marketability.

The Board also disagreed with Respondent's insistence no adjustment was warranted because Appellant offered no market data to support a specific adjustment. While the Board agrees with the general principle that adjustments need to be supported by the marketplace, the potential environmental issue facing the subject property is

atypical, so an adjustment is not easily supported by traditional methodology. The Board would suspect very few, if any, sales exist involving properties under active EPA investigation. And because there are no sales of properties with issues similar to subject's, at least not in the record in this matter, the Board wonders how Appellant could possibly support an adjustment to the satisfaction of Respondent. It must not be forgotten appraisal involves a degree of subjectivity, and it cannot be reduced to a precise mathematical formula.

Though there were no sales to support Appellant's claim of subject's diminished marketability, there was other evidence demonstrating the difficulty associated with any future sale or development of the property. Most notable was the testing done in 2018 at the behest of a prospective purchaser of the subject property with aspirations to develop a hotel. Results from the limited testing revealed the presence of VOCs in excess of the EPA's acceptable thresholds. These test results not only caused the proposed hotel development project to be abandoned, but the results were also cited by one of the nation's largest banks as the reason the property could not currently be used as collateral for securing a loan. In other words, the marketplace has spoken loudly on two (2) separate occasions there are issues and concerns with the subject property. It is difficult for the Board to imagine what further evidence Appellant could offer to demonstrate the negative impact on subject's marketability.

In addition to the environmental concerns, there were a couple additional considerations seemingly absent in Respondent's valuation of the subject property. One being subject's soil stability issues and the additional development costs associated therewith. The contractor who developed one (1) of the adjacent commercial parcels

reported roughly $200,000 in additional costs to address “significant soil issues” on that lot, the same which are believed to exist on the subject property. To be clear, the stability of subject’s soil does not render the property unbuildable, but the higher development costs would certainly influence the purchase price. 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. Respondent’s failure to include a consideration for subject’s added development challenges was a significant oversight in the Board’s view.

Similarly, Respondent’s refusal to consider the binding covenants restricting the types of business enterprises permitted to operate on the subject property, as well as size restrictions on the building which can be constructed, was difficult for the Board to accept. The restrictions imposed by the covenants are real, as at least nineteen (19) different business types are expressly prohibited, and no less than twenty-five (25) individually named family dining and casual theme restaurants are specifically barred from operating on the subject property. Respondent characterized the covenants as non-binding because they were created by Appellant as the Declarant and therefore could be changed by Appellant. It is true Appellant did grant the covenants in an effort to entice a major restaurant operator to the commercial park, but contrary to Respondent’s assertion, Appellant cannot freely amend or alter the covenants, because they are also incorporated into the lease with the restaurant tenant. And, even if Appellant could change the covenants, as of January 1, 2022, 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 likewise be afforded here.

Idaho Code § 63-511 places the burden on Appellant to establish subject's valuation is erroneous by a preponderance of the evidence. Given the record in this matter, the Board finds subject's value was proven to be erroneous, but there was insufficient support for the value petitioned by Appellant. It is clear to the Board the subject property's marketability, and thus its market value, has been materially diminished by the environmental and developmental challenges detailed in the record. As such, the Board will reduce subject's land value to $600,000. The decision of the Kootenai County Board of Equalization is modified accordingly.

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 $600,000, with no change to the $7,420 value of the improvements, for a total assessed value of $607,420.

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 4th day of April, 2023.