

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00568; 45-001-02-1-5-00569
Petitioner: Shirley Heinze Environmental Fund (Shirley Heinze)
Respondent: Department of Local Government Finance
Parcel #: 001-25-42-0271-0001; 001-25-42-0271-0010
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 informal hearings as described in Ind. Code § 6-1.1-4-33 were held February 27, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined the Petitioner's property tax assessments for the subject properties are \$2,700 and \$8,000, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions on April 16, 2004.
3. The Board issued notices of hearing to the parties dated August 24, 2005.
4. A hearing was held on October 5, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject properties are located on 804 and 840 Hamlin, Gary, Calumet Township, in Lake County.
6. The subject properties are vacant land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property:
 - a) As determined by the DLGF:

45-001-02-1-5-00568

Land: \$2,700 Improvements: -0-

45-001-02-1-5-00569

Land: \$8,000 Improvements: -0-

b) As requested by the Petitioner:

The Petitioner requested that the parcels under appeal be valued at \$100 each.

9. The following persons were present and sworn in at the hearing:¹

For Petitioner: Kristopher Krouse, Executive Director, Shirley Heinze
Warren Buckler, Board President, Shirley Heinze
Margaret (Peg) Mohar, Property Assistant, Shirley Heinze
Myrna J. Newgent, Director Board, Shirley Heinze

For Respondent: Sharon S. Elliott, Assessor/Auditor, DLGF
Amber Merlau St. Amour, Staff Attorney, DLGF

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The subject parcels are part of a mission to manage and improve high quality natural areas in what is known as the Southern Lake Michigan Watershed. *Buckler testimony*. The parcels are underdeveloped dune and swale areas, and wetlands. *Krouse testimony*. Roads do not exist, as Hamlin Street was never developed to the lots under appeal. *Id.* There is no water and sewer access. *Id.*
- b. Cole, Layer & Trumble (CLT) reassessed many of the Petitioner's parcels at the informal hearing, as they were classified as a Wildlife Habitat, but failed to address the subject parcels. *Id.*
- c. The subject properties are part of the Group 4 Ivanhoe South area. *Mohar testimony; Pet'r Ex. 1*. Four comparable lots were offered for sale through a closed bid Commissioner's sale in 2004 for \$10 each, or \$40 for four lots. *Pet'r Ex. 2, 3; Mohar testimony*. The properties did not sell. *Mohar testimony*. These four lots are currently being assessed at \$100, \$300 (2), and \$2700. *Id.* The four lots are located between the two properties under appeal. *Id; Pet'r Ex. 2, 3*.

¹ Ms. St. Amour was present during the administrative proceedings on behalf of the Respondent, but she was not sworn in to present testimony.

- d. The dunes and swales provide homes to many endangered plant and animal species. *Id.* There are restrictions in place as to who the land can be transferred to. *Id.*
11. Summary of Respondent's contentions in support of assessment:
- a. A tax sale or Commissioner's sale would not represent the fair market value that the property would be sold for on the open market. *Elliott argument.* There is no evidence that the subject properties should be classified as a Wildlife Habitat, and CLT changed assessments in error. *Id.*
 - b. The current property record card shows the lot size of parcel 001-25-42-0271-0001 (petition #45-001-02-1-5-00568) as 25 feet by 125 feet. *Resp't Ex. 2; Elliott testimony.* The 25-foot frontage is a data entry error. *Elliott testimony.* As shown on the aerial map, this parcel contains four lots (Lots 1-4) which have a total frontage of 108 feet. *Id; Resp't Ex. 1.* Therefore, the lot size is 108 feet by 125 feet. *Id.*
 - c. Since Hamlin Street was never developed to the subject properties, the subject properties should receive a 50% negative influence factor for an undeveloped street. This change would result in a land value of \$7,300 for parcel 001-25-42-0271-0001 (petition #45-001-02-1-5-00568), and \$6,700 and for parcel 001-25-42-0271-0010 (petition #45-001-02-1-5-00569). *Resp't Ex. 2A, 4; Elliott testimony.* The Petitioner is in agreement with the change. *Mohar testimony.*

Record

12. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The tape recording of the hearing labeled Lake Co. 1674, 1675, 1676,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Summary of Group 4 properties appealed,
 - Petitioner Exhibit 2 – A Sidwell aerial map,
 - Petitioner Exhibit 3 – Summary of Petitioner's argument, memo from the Lake County Board of Commissioners, dated May 25, 2004, and the Assessor Office property information for parcels #25-42-0271-0006, #25-42-0271-0007, #25-42-0271-0008 and #25-42-0271-0009,
 - Respondent Exhibit 1 – Aerial map for plat 42-271,

Respondent Exhibit 2 – Property record cards for parcel #001-25-42-0271-0001 and #001-25-42-0271-0010,

Respondent Exhibit 3 – Residential Neighborhood Valuation Form for neighborhood #02550,

Respondent Exhibit 4 – Proposed property record card for parcel #001-25-42-0271-0001,

Board Exhibit A – Form 139L petitions,

Board Exhibit B – Notices of Hearing on Petition,

Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

13. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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.

14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. However, Respondent’s evidence however supported a change in assessments. This conclusion was arrived at because:

- a. The Petitioner contends that the subject parcels are overvalued in their assessments.

- b. 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). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject property to rebut their assessment and to establish the actual true tax value of the property. MANUAL at 5. The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
- d. The Petitioner did not submit any of the above described types of market evidence to support its contention.
- e. The Respondent, meanwhile, argues that property assessments changed to \$100 by CLT are in error. CLT changed the classifications of the neighboring properties to Wildlife Habitat. The DLGF has found no documentation to indicate that the property under appeal has been approved by the Department of Natural Resources as a Wildlife Habitat.
- f. Indiana Code § 6-1.1-6.5-2 in pertinent part; requires that land classified as wildlife habitat must contain at least fifteen (15) acres and the landowner must enter into an agreement with the Department of Natural Resources establishing standards of wildlife management for the parcel of land as that concept is understood by competent wildlife biologists.
- g. The Petitioner failed to submit evidence to show the parcels under appeal meet the qualification as set forth in Indiana Code § 6-1.1-6.5-2 as Wildlife Habitat. There is no evidence to show that the parcels in question have been classified as Wildlife Habitat by the Department of Natural Resources. Therefore, the Board will not compound an error made by the DLGF by classifying the land as Wildlife Habitat, and thereby decreasing the subject properties’ land value.
- h. The Petitioner contends that the assessments of the properties under appeal are higher than comparable properties. The Petitioner’s submitted print-outs of property information for four neighboring properties. Petitioner’s evidence showed the address, parcel numbers, and the assessed value of each property.
- i. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus, to the extent that the Petitioner can prove that their properties are not assessed uniformly

or equal to comparable properties, Petitioner's assessments should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*

- j. To introduce evidence of comparable properties, a taxpayer must explain how the properties are comparable. See *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain how the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in- use. *Id.* See also, *Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make a prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified, Ltd. V. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- k. In the case at bar, the Petitioner has not met his burden. While the Petitioner identified neighboring properties that are assessed lower, the Petitioner did not make any attempt to explain why or how the properties are comparable to the subject properties. The Petitioner merely provided information on the address, parcel number, and assessed values of the properties. This falls far short of the burden that the Petitioner faces. The Petitioner has only made a "de minimis factual showing" and has failed to sufficiently link the evidence to the uniform and equal argument" that they raise. See *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- l. The Petitioner further argued that the comparable properties were offered for sale through a Commissioner's sale in 2004 for \$10 each, and the parcels failed to sell.
- m. The Petitioner did not establish that the Commissioner's sale prices were representative of the market. The Petitioner merely offered the selling prices and concluded that the assessments of the properties under appeal should be no more than the Commissioner's sale prices. Tax sales are not reliable indicators of true market value. See *2002 REAL PROPERTY ASSESSMENT MANUAL* at 10

(defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus).

Respondent's Evidence

- n. While the Petitioner's evidence regarding comparable properties was insufficient to raise a prima facie case, the Respondent, through its evidence, has effectively admitted that the Petitioner's properties are incorrectly valued.
- o. The Respondent has shown that the property record card for parcel 001-25-42-0271-0001 (petition #45-001-02-1-5-00568), showing the lot size as 25 feet by 125 feet, is erroneous. As shown through the Petitioner's evidence and the aerial map, this parcel contains four lots that have a total land frontage of 108 feet. Therefore, the lot size is actually 108 feet by 125 feet.
- p. Additionally, evidence shows that the properties under appeal have no street access, as Hamlin Street was never developed and extended to the subject properties. Therefore, based on the evidence, the subject properties would receive a negative 50% influence factor for an undeveloped street.
- q. Based on the foregoing, the Board finds the land value of the subject properties are: \$7,300 for parcel 001-25-42-0271-0001 (petition #45-001-02-1-5-00568), and \$6,700 for parcel 001-25-42-0271-0010 (petition #45-001-02-1-5-00569).

Conclusion

- 15. The Petitioner failed to make a prima facie case that the subject properties are over-valued. The Respondent, in essence, admitted the subject properties are valued in error. Therefore, based on the evidence, the Board finds that, for parcel 001-25-42-0271-0001 (petition #45-001-02-1-5-00568), the lot size should be changed to 108 feet by 125 feet, and a 50% negative influence factor should be applied to the assessment. The value of this parcel should be changed to \$7,300. For parcel 001-25-42-0271-0010 (petition #45-001-02-1-5-00569), the property should receive a 50% negative influence factor, and the value should be changed to \$6,700.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should 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. 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.