

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00933
Petitioner: Barbara Meneakis
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0267-0017
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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$21,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. Special Master Peter Salveson held a hearing on November 16, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 1119 Pike Street, Gary, in Calumet Township.
6. The subject property is a vacant residential lot consisting of 0.096 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$21,000 for the land. There are no improvements on the subject property.
9. The Petitioner requested a value of \$5,000 for the property.
10. Barbara Meneakis, property owner, and Diane Spenos, representing the DLGF appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner testified that the subject property does not meet Gary building code because it is only 30 feet wide, and the building code requires a minimum of 50 feet. The Petitioner contends that the assessment is incorrect because the subject property is currently shown on the property record card to have 40 front feet and that the correct front footage is 30 feet. *Meneakis testimony.*
 - b. The Petitioner contends that the subject property is assessed higher than comparable vacant lots. *Meneakis testimony; Petitioner Exhibits 3-6.*
 - c. The Petitioner testified that the subject property does not have any improvements, including sewer and water. In addition, a septic system would not be allowed due to the topography of the property. *Meneakis testimony.*
 - d. The Petitioner contends that the cost to install a retaining wall to allow the site to be level would be cost prohibitive. *Meneakis testimony; Petitioner Exhibit 1.*
 - e. The Petitioner contends that due to the physical characteristics of the subject property, it is not buildable. The subject property has a steep incline and there is a telephone pole that is in front of the subject property. *Meneakis testimony; Petitioner Exhibits 7-12.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the subject property has an influence factor applied for being a vacant lot and for having excess frontage in conjunction with the adjacent lot owned by the Petitioner. *Spenos testimony; Respondent Exhibit 2.*
 - b. The Respondent contends that the adjacent property owned by the Petitioner does have all utilities available. *Spenos testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 708,
 - c. Exhibits:

Petitioner Exhibit 1: Original Notice of Assessment,
Petitioner Exhibit 2: New Assessment Determination,
Petitioner Exhibit 3: Residential Property Record Card, 1119 Pike St.,
Petitioner Exhibit 4: Residential Property Record Card, 7928 Maple Ave.,
Petitioner Exhibit 5: Residential Property Record Card, 7944 Maple Ave.,
Petitioner Exhibit 6: Residential Property Record Card, 7629 Oak Ave.,
Petitioner Exhibit 7: Picture 1119 Pike St., looking East,
Petitioner Exhibit 8: Picture 1119 Pike St., looking South,
Petitioner Exhibit 9: Picture 1119 Pike St., looking West,
Petitioner Exhibit 10: Picture 1119 Pike St., looking South,
Petitioner Exhibit 11: Picture, front retaining wall at 1125 Pike St.,
Petitioner Exhibit 12: Picture, back retaining wall at 1125 Pike St.,
Petitioner Exhibit 13: Masonry bill dated August 23, 1995,

Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Memo regarding zoning regulations,

Board Exhibit A: Form 139 L Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-in Sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of the DLGF 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 the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is over assessed. To support this contention the Petitioner submitted three PRC of "comparable" properties, which the Petitioner claims are similar to the subject property and valued substantial less than the subject property. *Meneakis testimony; Petitioner's Exhibit 3-6.*
 - b) Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. Thus, to the extent that Petitioner proves her property is not assessed uniformly or equally to comparable properties, Petitioner's assessment must 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.* 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 prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, 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).
 - c) In the case at bar, Petitioner has not met her burden. While Petitioner identifies lots that are assessed lower, Petitioner did not make any attempt to explain why or how the properties are comparable to the subject property. This falls far short of the burden Petitioners face. Petitioner has only made a "de minimis factual showing" and has failed to "sufficiently link [her] evidence to the uniform and equal argument [she] raise[s]." See *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
 - d) In addition, the Petitioner contends that the land should have an additional negative influence factor because of the topography of the subject property and the lack of utilities. The Petitioner testifies that the subject property has a steep incline that makes the property unable to be developed or support a septic system. *Meneakis*

- testimony*. To support this, the Petitioner submitted into evidence pictures of the subject property that showed the steep slant of the property. *Petitioner's Exhibits 7-12*. Also, the Petitioner contends that zoning ordinances in Gary restrict development on the subject property, by requiring a lot to be a minimum of 50 feet in width to be developed, whereas the Petitioner's lot is only 30 feet in width. *Meneakis testimony; Respondent's Exhibit 3*.
- e) Generally, land values in a given neighborhood are determined through the application of a Land Order developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The DLGF testified that the subject property has a 40% negative influence factor already applied to the parcel for the unimproved nature of the lot and for having excess frontage in conjunction with the adjacent lot owned by the Petitioner. *Spenos testimony; Respondent's Exhibit 2*. While the topography and any restriction on development of the subject may be relevant to whether a different negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject properties, or show what the actual market value of the properties are. *See Talesnick*, 756 N.E.2d at 1108. Furthermore, the Petitioner failed to show that a different influence factor or that a larger negative influence factor should be applied to the subject property.
- f) Because the Petitioner did not meet her burden of presenting a prima facie case, the Respondent's duty to rebut the Petitioner's evidence is not triggered. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

Conclusions

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 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. 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/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.