

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-4-00209
Petitioner: Robert Luckiewicz
Respondent: Department of Local Government Finance
Parcel #: 006-27-18-0380-0001
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 hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the “DLGF”) determined the tax assessment for the subject property and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L on April 26, 2004.
3. The Board issued the notice of hearing to the parties dated March 7, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 7, 2005.

Facts

5. The subject property is located at 790 Wisconsin Street in Hobart.
6. The subject property is a 2,568 square foot commercial retail building.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$104,000 Improvements \$80,500 Total \$184,500.
9. The assessed value requested by Petitioner:
Land \$26,000 Improvements \$60,000 Total \$86,000.
10. Persons present and sworn as witnesses at the hearing:
For Petitioner – Robert Luckiewicz, owner, and R. G. White, tax consultant,
For Respondent – Stephen Yohler, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The land value currently is based on 1.050 acres. *White testimony; Petitioner Exhibit 1, 2.* The actual land size is 0.899 acres. *White testimony; Petitioner Exhibit 4.*
 - b) The current land classification incorrectly values that land as all primary commercial land. *White testimony; Petitioner Exhibit 2.* A portion of the subject parcel, 0.496 acres, is undeveloped and unusable. *White testimony; Petitioner Exhibit 1.* This portion of the subject parcel is a heavily wooded area with a ravine, a drainage ditch, and electrical utility lines. *White testimony; Petitioner Exhibit 3, 4.* Therefore, this area can never be developed or used. *White testimony.* The land should be valued with 0.496 acres classified as unusable and the remaining land as primary. *White testimony.*
 - c) The subject property was appraised in August 2004 for \$125,000. *White testimony; Petitioner Exhibit 5.* Using a 5 percent appreciation factor for each year, the 1999 value of the subject property would be \$96,724. *White testimony; Petitioner Exhibit 6.* The 5 percent appreciation factor is assumed applicable for Lake County by local appraisers. *White testimony.*
 - d) The 1,200 square foot section of the building is a metal framed, metal sided structure used as utility storage. *White testimony; Petitioner Exhibit 3.* This section of the building should be priced using the GCK schedule rather than the GCM schedule. *White testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The land is valued on an acreage basis. *Yohler testimony; Respondent Exhibit 3.* The DLGF cannot determine where or how the Petitioner came up with 0.899 acres of land rather than the 1.050 acres listed on the property record card. *Yohler testimony.*
 - b) The Respondent did not offer any testimony regarding the classification or allocation of land. Rather, the Respondent submitted a proposed land valuation change based on a base rate of \$108,980 per acre rather than the current base rate of \$123,800 per acre¹. *Yohler testimony; Respondent Exhibit 5.*
 - c) The land value change would be a result of using a different base rate rather than altering the land classification or allocation. *Yohler testimony.*

¹ The Petitioner rejected the Respondent's offered land value change because the change does not address the incorrect land classification and allocation.

- d) The subject property is assessed properly. There should not be any changes to the assessment of the building. *Yohler 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 1385,
- c) Exhibits:
 - Petitioner Exhibit 1 – A summary of the issues,
 - Petitioner Exhibit 2 – A copy of the subject property record card,
 - Petitioner Exhibit 3 – Nine photographs depicting the exterior of the subject property and the surrounding properties,
 - Petitioner Exhibit 4 – Plat map showing the layout of the subject property,
 - Petitioner Exhibit 5 – Appraisal,
 - Petitioner Exhibit 6 – Appreciation worksheet adjusting appraised value to 1999,
 - Petitioner Exhibit 7 – A sketch of the building,
 - Petitioner Exhibit 8 – A copy of the Form 139L,
 - Petitioner Exhibit 9 – Power of Attorney,
 - Respondent Exhibit 1 – The subject property record card,
 - Respondent Exhibit 2 – A photograph of the subject property,
 - Respondent Exhibit 3 – A copy of the plat map for the subject property’s area,
 - Respondent Exhibit 4 – Land value calculation and neighborhood summary sheet,
 - Respondent Exhibit 5 – A proposed land value change,
 - Board Exhibit A – The Form 139L,
 - Board Exhibit B – The Notice of Hearing,
 - Board Exhibit C – The Sign in Sheet,
- d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 his contention regarding the overall value of the subject property or use of the GCK schedule, but he did provide sufficient evidence to support his contentions regarding land size, classification, and allocation. This conclusion was arrived at because:

Should the land acreage be 0.899 acres rather than 1.050 acres?

- a) The Petitioner introduced substantial, probative evidence that the actual size of the subject property is 0.899 acres. The Petitioner made a prima facie case that the acreage is incorrect and should be the amount. The burden shifted to the Respondent to rebut the Petitioner’s evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- b) The Respondent testified that determining the correct acreage is difficult, but the Respondent’s own evidence shows that the parcel acreage is 0.81 acres. Rather than rebutting the Petitioner’s evidence, the Respondent supported the claim that the correct parcel acreage is less than the 1.050 acres currently assessed.

Is the land classification and allocation correct?

- c) Primary commercial or industrial land is a primary building or plant site. Examples include land located under buildings, regularly used parking areas, roadways, regularly used storage, and necessary support land. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A, ch. 2 at 85 (incorporated by reference at 50 IAC 2.3-1-2).
- d) Usable undeveloped land is vacant, but held for future commercial or industrial development. *Id.*
- e) Unusable undeveloped land is vacant and unusable for commercial or industrial development. *Id.*
- f) The evidence shows that a portion of the subject property is a heavily wooded ravine area with utility easements and a drainage ditch. With the topography and easements, this portion of the subject property is not useable land and should not be valued as primary land. The photographs and testimony presented by the

Petitioner are sufficient to make a prima facie case that part of the property should be valued as unusable undeveloped land.

- g) The plat map provided by the Petitioner provides the most detailed and persuasive evidence to establish the total amount of land in this parcel, as well as the distribution between the primary land and the unusable undeveloped land. This evidence is sufficient to establish that 0.496 acres of the subject property should be classified as unusable undeveloped commercial land and the remaining .403 acres should be classified as primary commercial land. *Id.* The burden shifted to the Respondent to rebut that evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479
- h) The Respondent did not offer probative evidence to rebut the land classification/allocation amounts established by the Petitioner. Thus, the assessment of the land must be changed to 0.496 acres of unusable undeveloped commercial land and 0.403 acres of primary commercial land.

Should the assessed value be based on the 2004 appraisal value adjusted back to 1999?

- i) 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). 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.
- j) Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through the cost and income capitalization approaches). There are instances, however, where an appraisal may not qualify as probative of the market value of a subject property. For example, there may be a lack of evidence regarding the appraiser’s qualifications, or the appraisal may lack explanation regarding the basis for the appraiser’s opinion. *See Inland Steel Co. v. State Bd. of Tax Comm’rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- k) The appraisal does not contain any explanation regarding the basis underlying the appraiser's opinion of value. The appraisal indicates that he used comparable

sales and income capitalization in reaching his opinion of value, but it does not provide any of the facts that he used. Therefore, the Board does not find the appraisal to be probative of the market value of the subject property.

- l) The appraisal of the subject property shows that the 2004 value is \$125,000. The Petitioner must relate the 2004 appraisal value to a value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- m) The Petitioner offered a calculation that depreciated the subject property 5 percent each year starting with 2004 back to 1999. The Petitioner did not explain how the 5 percent factor was derived other than to say that it is the standard factor assumed applicable and used by appraisers in Lake County. The Petitioner did not offer probative evidence that the market values for the subject area have appreciated 5 percent each year. Without any explanation to substantiate the 5 percent appreciation factor, this evidence is simply conclusory testimony that has no weight. Conclusory statements do not constitute probative evidence. *Id.* at 470; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- n) The appraisal does not establish a basis for changing the assessment.

Should the 1,200 square foot area of the building be valued using the GCK schedule rather than the GCM schedule?

- o) A 1,200 square foot area of the subject building is used for utility storage and constructed with metal framing and metal siding. Based on this evidence, the Petitioner seeks to use the GCK schedule to value that area.
- p) Buildings valued using the GCK schedule are described as having pole or steel framing and foundation with metal siding. GUIDELINES, app. D at 40-41. The evidence presented by the Petitioner starts to establish that the 1,200 square foot area of the subject building might fall into this category. There are, however, other requirements to consider when choosing between the GCK schedule and the GCM schedule, such as the weight or thickness of the exterior siding and roofing and the quantity of exterior openings (doors and windows). *Id.*
- q) Although the evidence tends to show that the 1,200 square foot area may meet some initial requirements to be a GCK structure, the evidence does not speak to these other factors. For example, the structure is metal framed and sided, but the framing, siding and roofing may be heavier than that specified under the GCK model description, which would disqualify the structure for pricing under the GCK schedule. The Petitioner fell short of presenting evidence sufficient to show that the assessment of the 1,200 square foot area should be changed to the GCK schedule.

Conclusions

16. The Petitioner made a prima facie case regarding land size and that a part should be assessed as unusable undeveloped. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner on those claims.
17. The Petitioner did not make a prima facie case based on the 2004 appraisal. The Board finds in favor of the Respondent on that claim.
18. The Petitioner did not make a prima facie case for using the GCK schedule to assess part of the building. The Board finds in favor of the Respondent on that claim.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to assess the land as 0.403 acres of primary commercial land and 0.496 acres of unusable undeveloped commercial land. The assessment should not be changed in any other respect.

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 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>.