

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-3-00414
Petitioner: Lake County Trust # 3556
Respondent: Department of Local Government Finance
Parcel #: 007263700470011
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 in January 13, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$335,400 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 on June 6, 2005.
4. Special Master Peter Salveson held the hearing on July 7, 2005, in Crown Point, Indiana.

Facts

5. The subject property is vacant commercial land located at 2502 177th Street, Hammond, in North Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The DLGF determined the assessed value of the subject property to be \$335,400 for the land. There are no improvements on the subject property.
8. The Petitioner requested an assessed value of \$69,676 on its Form 139L petition.
9. James Sohacki, a representative for the Petitioner, and Debbie Morris, an appraiser for the Petitioner, appeared on behalf of the Petitioner and were sworn as witnesses. The Petitioner was represented by attorney Richard E. Anderson. In addition, Lori Harmon, representing the DLGF, appeared at the hearing and was sworn as a witness.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner contends that the assessment does not represent the fair market value of the subject land. *Anderson argument*. According to the Petitioner, approximately 90% of the subject land is wetlands. According to the Petitioner's appraiser, the subject property includes three wetland classifications, PFO/SSIC, PSSI/EMC, and PUBHx. *Morris testimony; Petitioner Exhibit 4 at 2, 16*. Further, the subject property is located entirely in a flood plain. *Morris testimony; Petitioner Exhibit 6*. The Petitioner asserted that much of the subject property is under water. *Anderson argument*.
 - b) The Petitioner also contends the property is land locked and is inaccessible. The Petitioner testified that the subject land is a remnant of a larger piece of land where the useable parcel was sold off. *Sohacki testimony*. According to the Petitioner's witness, while the subject land has an address of 2502 177th Street, 177th Street is a dedicated but unimproved roadway. *Morris testimony*. Further, the Petitioner argues, there appears to be no recorded easement and no access to the subject land except via another commercial development. *Morris testimony; Petitioner Exhibit 4 at 14*. In support of this contention, the Petitioner presented a survey as part of its appraisal that states there is "no evidence of an easement for ingress to and egress from" the property. *Petitioner Exhibit 4 at 14*.
 - c) The appraiser further argues that the area is blighted. *Morris testimony*. According to the appraiser, much of the development to the west is a large vacant retail property in poor condition. *Id*.
 - d) In support of its contentions, the Petitioner submitted an appraisal showing the market value of the subject property to be \$70,000 as of May 16, 2002.¹ *Petitioner Exhibit 4*. Photographs included in the appraisal show shrub trees and cat tails on the subject land. *Id. at 11, 12, 13*. The appraiser used five comparable sales between 1997 and 2000 with wetland designations to arrive at a market value of \$2,100 per acre. *Id. at 10*. The Petitioner's appraiser testified that sales of land encumbered by wetland designations are rare. *Morris testimony*. Thus, the "comparable" properties are mainly residential. *Id*. However, the appraiser argued, zoning has little impact on the value of properties which are primarily wetlands. *Morris testimony; Petitioner Exhibit 4 at 10. Id*.
 - e) In response to questioning from the Respondent, the Petitioner's appraiser testified that comparable sales prices ranged from \$1,400 to \$3,000 per acre. *Morris testimony*. The appraiser argued that, in retrospect, the true value should have reflected the lower end of the range because the comparable sales do not have the

¹ The subject land is 33.179 acres at \$2,100 per acre results in a value of \$69,676 which the appraiser rounded to \$70,000. *Petitioner Exhibit 4 at 10*.

access problem that the subject land does. *Id.* Thus, because the comparable sales only take into consideration the wetlands, the appraiser concludes, the subject land should have been more like \$1,400 per acre. *Id.* Further, the Petitioner's appraiser argued that although the appraisal is a "restricted" appraisal for estate planning purposes, it still represents the market value of the subject property. *Morris testimony; Petitioner Exhibit 4.*

- f) Finally, the Petitioner contends that the subject property is unusable undeveloped and should have an influence factor applied for the flood plain. The Petitioner referred to the Guidelines at page 85 and 96. *Anderson argument.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent contends that the assessment of the subject property is correct. *Harmon testimony.* In support of the assessment, the Respondent presented the subject property record card and neighborhood land valuation worksheet. *Harmon testimony; Respondent Exhibits 1, 2.* The Respondent testified that the subject land is currently valued as undeveloped unusable. *Id.*
- b) In response to the Petitioner's contention, the Respondent argued that the location of the subject land in a 100 year flood plain does not mean the land can not be developed. *Harmon testimony.* Further, according to the Respondent, while the area is ripe for redevelopment, the Respondent does not agree the area is blighted. *Id.*
- c) Finally, in response to Petitioner's appraisal, the Respondent argued that the appraisal presented is a limited and restricted appraisal. *Harmon testimony.* Further, the Respondent noted that the sale price per acre ranges from \$1,400 to \$3,000. *Id.* Thus, the Respondent questioned whether it was appropriate for the appraiser to average the values. *Id.* Finally, the Respondent noted the appraiser used a sale from LaPorte County. *Id.*

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 - 1905²
- c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Form 11
Petitioner Exhibit 3: Notice of Final Assessment

² Due to an error, the second side of the tape is inaudible. Therefore, the record does not reflect the entirety of the hearing as it was held before the Special Master.

Petitioner Exhibit 4: Appraisal of Subject Property by Vale Appraisal
Petitioner Exhibit 5: Aerial Drawing from Soil & Water
Petitioner Exhibit 6: Floodway Map
Petitioner Exhibit 7: Soil & Water Conversation Map

Respondent Exhibit 1: Subject Property Record Card (PRC)
Respondent Exhibit 2: Commercial and Industrial Neighborhood Valuation
Respondent Exhibit 3: Plat Map

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

d) These Findings and Conclusions.

Analysis

13. 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 Township 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 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 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.

14. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends the current assessment does not represent the fair market value of the subject land. *Morris testimony*. In support of this contention, the Petitioner presented an appraisal which valued the subject property for \$70,000. *Petitioner Exhibit 4*. Further, the Petitioner alleges that the property is mostly wetlands and is undevelopable. *Anderson argument*. Thus, the Petitioner argues, the subject property is entitled to an influence factor to account for the conditions on the property. *Id.*

Market Value

- b) The 2002 Real Property Assessment 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). 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. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. See *Meridian Towers*, 805 N.E.2d at 479.
- c) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property’s value as of January 1, 1999. See *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d) Here, the Petitioner submitted an appraisal prepared by a Certified General Appraiser valuing the subject land as of May 16, 2002. The appraisal analyzed five comparable land sales between 1997 and 2000 that were encumbered with wetland designations to arrive at an estimated fair market value of the subject land of \$70,000. *Petitioner Exhibit 4*. To determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of a property value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chap.2, pg. 7 (the GUIDELINES). According to the GUIDELINES, “representative disclosure statements ... refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999.” Accordingly, an appraisal comparing sales that occurred within eighteen months of the January 1, 1999 assessment valuation date must, therefore, have some evidentiary value. Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.
- e) Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s evidence. See *American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent argued that the appraisal was a “restricted” appraisal and questioned the appraiser’s decision to “average” the sales price per acre of the comparable properties. *Harmon testimony*. However, the Respondent did not go forward to explain why or how these “flaws” invalidate the Petitioner’s evidence. “Open-ended questions” and “conclusory statements” are not sufficient to rebut the Petitioners case here. See *Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) (“In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr.

Rassel's calculations. Rather, he merely asked open-ended questions or made conclusory statements.”).

- f) Further, the Respondent presented the subject property record card and neighborhood valuation showing that the subject land classified as undeveloped and unusable. *Respondent Exhibits 1, 2*. The property record card merely shows the mechanics used to value the subject property. This information does not explain why the value determined by the Respondent is correct. The Respondent must bring forth evidence justifying its decision and make an authoritative explanation of its determination. *See Meridian Towers*, 805 N.E.2d at 479; *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 948 (Ind. Tax 2001). Thus, the Respondent fell short of this burden and failed to rebut the Petitioner's prima facie case.

Influence Factor

- g) The Petitioner further contends that the subject property is entitled to have an influence factor applied for the conditions on the subject property. *Anderson argument*.
- h) Generally, land values in a given neighborhood are determined through the application of a Land Order that was 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.” REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). A 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).
- i) While the property's location in a flood zone and the existence of wetlands may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property. *See Talesnick*, 756 N.E.2d at 1108. A Petitioner must not only show the conditions supporting an influence factor, he must produce “a quantification of that influence factor.” *Talesnick*, 756 N.E.2d at 1108. The Petitioner simply concludes that because the subject land is located in a flood plain it should be entitled to an influence factor. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, the Petitioner has failed to raise a prima facie case that the subject property is entitled to an influence factor for the wetlands conditions on the property.

Conclusion

15. The Petitioner raised a prima facie case that the subject property is over-valued based on an appraisal. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of Petitioner and holds that the subject property's value is \$70,000. The Petitioner failed to raise a prima facie case on all other matters.

Final Determination

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