

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00123
Petitioners: Theodore & Mari Hunter
Respondent: Department of Local Government Finance
Parcel #: 007-26-37-0154-0021
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 Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$15,200. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated January 27, 2005
4. A hearing was held on March 4, 2005, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 7029 Wicker Avenue, Hammond, North Township, Lake County, Indiana.
6. The subject property is vacant land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Values of subject property as determined by the DLGF:
Land: \$15,200 Improvement: -0-
 - b) Assessed Values requested by Petitioners per the Form 139L Petition:
Land: \$1,500 - \$6,000 Improvement: -0-

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioners: Mari & Theodore Hunter, Petitioners

For Respondent: Steve Yohler, representing the DLGF

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The assessment of the subject property is excessive in comparison to the sale prices of comparable properties. *M. Hunter testimony*. Some of the comparable properties are the same size as the subject property, some are half the width of the subject, and some are double the size of the subject. All of those properties, however, sold for amounts less than the amount for which the subject property is assessed. The sale prices for the comparable properties ranged from \$1,500 to \$9,000. *M. Hunter testimony; T Hunter testimony; Petitioners Exhibit 4*.
 - b) The subject property is a vacant side yard for Parcel # 007-26-37-0154-0022,¹ but it is identified under a separate parcel number. A local ordinance prohibits building upon lots platted after 1931 if those lots do not exceed 60 feet in width or 7,500 total square feet. The subject lot was platted in the 1950's, and it is only 50 feet wide. Consequently, the Petitioners cannot construct improvements on the subject property. *M. Hunter testimony; Petitioners Exhibit 5*.
 - c) The Petitioners originally bought the subject property for use as extra yard space with the idea that they subsequently could sell the property, if necessary. They cannot do so, however, because of the building restrictions. *M. Hunter testimony*.
11. Summary of Respondent's contentions in support of the assessment:
 - a) The Neighborhood Valuation Form for the subject property's neighborhood values residential land at \$375 per front foot. The front foot value was determined based upon sales information. The Neighborhood Valuation Form was properly applied to the subject property. *Yohler testimony; Respondent Exhibit 3*.
 - b) A negative influence factor of twenty percent (20%) was applied to the subject property to account for the fact that it is an unimproved lot. *Yohler testimony; Respondent Exhibit 2*.

¹ The Petitioners appealed the assessment of that parcel under Petition No. 45-026-02-1-5-00122. The Board addresses that petition in a separate determination.

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 County #1213.
- c) Exhibits:

- Petitioners Exhibit 1: Form 139L Petition
- Petitioners Exhibit 2: Summary of Petitioners' Arguments
- Petitioners Exhibit 3: Outline of Evidence and its Relevance
- Petitioners Exhibit 4: Multiple Services Listing (MLS) Printouts of Comparables
- Petitioners Exhibit 5: Letter from Mr. Don Novak, Zoning & Real Estate Manager and Transfer Record
- Petitioners Exhibit 6: Notice of Final Assessment
- Petitioners Exhibit 7: Subject's Property Record Card (PRC)

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject's PRC
- Respondent Exhibit 3: Residential Land Valuation Form
- Respondent Exhibit 4: Minimum Lot Sizes for Building – North Township

- Board Exhibit A: Form 139 L Petition
- Board Exhibit B: Notice of Hearing on Petition
- 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 Twp. Assessor*, 805 N.E.2d at 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.
14. The Petitioners failed to provide sufficient evidence to support their claim for a change in assessment. This conclusion was arrived at because:
- a) The Petitioners claim that the subject lot is over-assessed when compared to other vacant lots. *M. Hunter testimony; Petitioners Exhibit 4*. The Petitioners submitted MLS printouts of properties that sold for less than the amount for which the subject property is assessed. *Petitioners Exhibit 4*.
- b) The properties identified by the Petitioners sold from 1999 to 2003 (some of the dates listed on the printouts were undecipherable) with sale prices ranging from \$1,500 to \$9,000. *Petitioners Exhibit 4*. The Petitioners contend that this is proof that the subject is over-assessed. *M. Hunter testimony*.
- c) Real property in Indiana is assessed on the basis of its "true tax value." *See* I.C. § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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 2 (incorporated by reference at 50 IAC 2.3-1-2)(hereinafter "Manual").
- d) The market value-in-use of a property may be calculated through several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469(Ind. Tax Ct. 2005). One such approach used in the appraisal profession is the "sales comparison approach." *Id.* The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." *Id.*
- e) In order to use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *See Id.* at 470-71. When seeking to establish comparability of land, the relevant characteristics to compare include things such as location, accessibility, topography. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The proponent of the sales

comparison evidence also must explain how any significant differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.

- f) The Petitioners presented the beginnings of a sales comparison analysis by explaining how the properties in question compare to the subject property in terms of size. *M. Hunter testimony; Petitioners Exhibit 4*. The Petitioners, however, did not explain how the properties compare to the subject property with regard to other significant characteristics such as topography and accessibility. Moreover, the Petitioners did not explain how the properties compare to the subject property in terms of location. While all of the properties appear to be located in the city of Hammond, many of the properties are listed as being in a different township than the subject property. *Petitioners Exhibit 4*. At one point, Mari Hunter testified that the purportedly comparable properties were all within the Petitioners' neighborhood, but she also referred to several of the properties as being located in other neighborhoods. *Id.* Given those contradictions, the Petitioners failed to present sufficient evidence to establish the location(s) of the purportedly comparable properties. This is significant, because differences in location can have a profound effect on market value.
- g) The Petitioners also failed to explain how any differences between the purportedly comparable properties and the subject property affect their relative market values-in-use. This is true with regard to the differing locations of the properties as well as with regard to the fact that the subject property is listed as having access to water, sewer, gas and electricity, while many of the other properties lack such utilities. *Petitioners Exhibits 4, 7*.
- h) The Petitioners also claim that the assessment is excessive given the fact that improvements cannot be constructed upon the subject property. In support of their position, the Petitioners submitted a letter from Don Novak, Zoning & Real Estate Manager for the City of Hammond, Department of Planning and Development. *Mari Hunter testimony; Petitioners Exhibit 5*. In that letter, Mr. Novak states that zoning requirement for the subject lot requires the lot to "have a minimum of 60 feet of frontage and 7,500 square feet in area." *Petitioners Exhibit 5*. Mr. Novak further states that the lot "is not buildable" under the applicable zoning ordinance.
- i) While the Petitioners may have established that the building restrictions tied to the size of the subject property negatively impact its market value-in-use, the Petitioners did not present any probative evidence from which to quantify that impact. Moreover, the Petitioners' argument ignores the fact that they use the subject property as a single economic unit in conjunction with an adjacent property upon which a dwelling is situated. The inability to construct improvements on the subject parcel likely does not impact its market value-in-use in the same manner as would the inability to construct improvements on a freestanding parcel. In fact, the subject property already receives a negative influence factor of twenty percent (20%) to account for its lack of improvements.

- j) Based on the foregoing, the Petitioners failed to establish a prima facie case for a reduction in assessment.

Conclusion

15. The Petitioners failed to establish 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 now 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>>.