

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00082
Petitioner: Remerill Corp.
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0321-0036
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 (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$65,300, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated June 24, 2005.
4. A hearing was held on September 8, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 40 Approx W. 67th Avenue, Merrillville, Ross Township, in Lake County.
6. The subject property is 0.185 acres of vacant land.
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 \$65,300 for the vacant land.
9. The Petitioner requests a value of \$4,200.

10. Thomas Dogan, attorney for Petitioner, and Jim Hemming, representing the DLGF, appeared at the hearing. Mr. Hemming was sworn as a witness.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) An appraisal places the value of the property at \$4,181. *Pet'r Ex. 4*. The value computed is based on the sale of one purportedly comparable property, which is a 12-acre parcel. *Id.* The sale price per square foot for the comparable property was then applied to the subject property. *Id.*
 - b) The Respondent has no basis for its calculation of the subject property's value. *Dogan argument*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The document submitted by the Petitioner is not an appraisal. *Hemming argument*. It does not state whether the appraiser is licensed, and utilizes only one comparable property in determining the value of the subject. *Id.*
 - b) The Petitioner's computation of value makes no recognition for economies of scale. *Id.* A 12-acre parcel would be cost much less per acre than an 8,040 square foot parcel, so the two properties are not truly comparable. *Id.*
 - c) The current assessment reflects a 54% negative influence factor for being contiguous to other parcels owned by the Petitioner. *Hemming testimony*. The Respondent recommended that another 10% negative influence factor be applied, for a total of 64%, to account for the fact that the subject property is undeveloped and unusable. *Id; Resp't Ex. 1*.

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 Co-1636.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Summary of the Petitioner's Arguments
 - Petitioner Exhibit 3: Written Outline of Evidence
 - Petitioner Exhibit 5: Appraisal of Subject Property

 - Respondent Exhibit 1: Subject Property Record Card

Respondent Exhibit 2:	Incremental/Decremental Land Summary
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

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 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.

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 overvalued in its assessment.
- 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) In support of its requested assessment of \$4,200, the Petitioner submitted what it refers to as an appraisal. *Pet’r Ex. 4*. The Respondent, however, argues that the document is not an appraisal because it does not disclose whether the appraiser is

- licensed, and the appraiser based his valuation on the sale of only one property, which is not comparable to the subject. The Respondent is correct.
- d) The Petitioner's written evidence states that the appraisal was completed by George Wilkes, a licensed residential appraiser. However, neither Wilkes' name nor his license number appears on the actual one-page document.
 - e) The method used to value the subject property is seriously flawed. First, the appraiser relies on only one purportedly comparable sale to value the property. Second, the sale he relied on is for a property clearly not comparable to the subject. While the comparable measures 12 acres, the subject measures 0.185 acres. The comparable is 65 times larger than the subject. Due to economies of scale, the price per acre of a 12-acre parcel is irrelevant when valuing a 0.185 acre parcel. Therefore, Petitioner's Exhibit 4 has no probative value in determining the value of the subject property.
 - f) Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement).
 - g) While not required to defend the assessment, the Respondent recommended that the negative influence factor applied to the property be changed from 54% to 64%. The Board, however, finds no market evidence on the record to support a change in the current assessment.
 - h) For the reasons set forth, no change in the assessment is warranted.

Conclusion

16. The Petitioner failed to make a prima facie case. The Respondent was not required to rebut the Petitioner's evidence. The Board finds in favor of 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 Trail 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>.