

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-3-00083
Petitioner: Midwest Resource, LLC
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0071-0013
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 \$400,300 and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. Special Master Ken Daly held the hearing on April 5, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 10100 W. 181st Avenue, Schererville, in West Creek Township.
6. The subject property consists of several structures located on 38.877 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$291,100 for the land and \$109,200 for the improvements, for a total assessed value of \$400,300.
9. The Petitioner requested an assessment of \$10,000 for the land and \$30,000 for the improvements, for a total assessed value of \$40,000.
10. Dennis Hunter, the owner of the subject property, and Everett Davis, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioner contends that the assessed values of the land and improvements are excessive. *Hunter testimony*. According to the Petitioner, the subject property was a landfill that was not properly closed and the County is now working with IDEM on a solution on what to do with the previous owner. *Id.* The Petitioner testified that toxic waste (pesticide) was recently discovered on the subject property that has been leaking into the ground water system thus making the property worthless. *Id.*; *Petitioner Exhibit 3*. The Petitioner argued that the property will remain contaminated for years to come. *Hunter testimony*. Further, the Petitioner testified there are hills of concrete and road materials on the property which the County said should have been covered with dirt, clay and grass seed. *Id.*; *Petitioner Exhibit 5*.
 - b) The Petitioner asserted that in talking to the West Creek Township Assessor, the assessor agreed with the Petitioner that the subject property was over-assessed and should be valued in similar fashion as the property across the street – Allied (C & D Development). *Id.*; *Petitioner Exhibit 6*. The Petitioner also claimed that the assessor stated that the back area of the subject property should be assessed as farmland because it cannot be used as anything else. *Hunter testimony*.
 - c) The Petitioner testified that the property across the street is an ongoing business making millions of dollars per year yet it is assessed lower than the subject. *Hunter testimony*; *Petitioner Exhibit 6*. In addition, another business to the west of the subject property, Bales Farm Equipment Company, has more structures but it is also assessed for less. *Hunter testimony*.
 - d) The Petitioner further contends that the assessed values attributed to the mobile home, pole barn and utility shed are excessive. *Id.* According to the Petitioner, the mobile home is over thirty years old and in need of repairs. *Id.* It is used for security to prevent dumping on the property. *Id.* Further, the pole barn has no water or heat and is used for only storage. *Id.* Finally, the Petitioner argues, the utility shed should be valued at \$1,000. *Id.* All other structures on the subject property were either removed or burnt down. *Id.*
 - e) The Petitioner testified that he purchased the subject property at a tax sale for \$37,224.24. *Id.*; *Petitioner Exhibit 2*. According to the Petitioner, the price on the subject property was so low because there were no other bidders on the property due to what was left there by the previous owner. *Hunter testimony*.
12. Summary of Respondent's contentions in support of assessment:
- a) The Respondent contends that the land has been correctly assessed. *Davis testimony*. In support of the assessment, the Respondent submitted the Form 139L petition; the subject property's property record card (PRC); a photograph of the subject property;

and the Commercial and Industrial Neighborhood Valuation Form for the subject property. *Respondent Exhibits 1-4.*

- b) The Respondent argued that the Petitioner's evidence of its purchase of the subject property is not evidence of the property's value because a tax sale is a forced sale that does not represent fair market value. *Id.*; *Petitioner Exhibit 2.*
- c) Finally, the Respondent testified that one reason for the difference between the assessment of the land on the subject parcel and that of the property across the street (Petitioner Exhibit 6), is that the property across the street is assessed as farmland. *Davis testimony.* The subject property's current PRC shows the land correctly valued as primary and unusable undeveloped commercial lands. *See Respondent Exhibit 2.*

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 BTR #1467.
- c) Exhibits:

- Petitioner Exhibit 1: Form 139L Petition (not submitted by Petitioner)
- Petitioner Exhibit 2: Tax Sale Certificate and Tax Deed
- Petitioner Exhibit 3: Newspaper articles
- Petitioner Exhibit 4: Notice of Final Assessment
- Petitioner Exhibit 5: Photographs of subject property
- Petitioner Exhibit 6: PRC and exterior photographs of C & D Development
- Petitioner Exhibit 7: Exterior photographs of Bales Farm Equipment

- Respondent Exhibit 1: Copy of the Form 139L Petition
- Respondent Exhibit 2: Copy of subject's PRC
- Respondent Exhibit 3: Subject photograph
- Respondent Exhibit 4: Commercial and Industrial Neighborhood Land Valuation Form

- Board Exhibit A: Form 139L Petition
- Board Exhibit B: Notice of Hearing on Petition
- 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 276 (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 failed to provide sufficient evidence to establish a prima facie case for a reduction in the value of the subject property. The Board reached this decision for the following reasons:
- a) The Petitioner contends that the assessed values for the land and improvements are excessive. *Hunter testimony*. In support of this claim, the Petitioner alleged that the property is a landfill and contamination has rendered the property virtually valueless; comparable properties are assessed for less; and the property was purchased at tax sale in 2002 for far less than its 2002 assessed value. *Id.*

Environmental Contamination

- b) The Petitioner contends that the subject property was a landfill that was not properly closed. *Hunter testimony*. The Petitioner testified that toxic waste was recently discovered on the subject property that has been leaking into the ground water system thus making the property worthless based on market value. *Id.* In support of this contention, the Petitioner submitted newspaper articles from 2004 indicating that the subject property operated as a landfill prior to governmental regulation of such facilities. *Petitioner Exhibit 3, Article 2*. In addition, in the 1950’s or 1960’s barrels of hazardous waste may have been dumped at the site. *Id, Article 3*. Due to the property’s contamination, the Petitioner alleges that assessment of the subject property is over-valued.
- c) The Petitioner has not sufficiently shown that contamination exists on the subject property. Petitioner’s articles conflict on the matter. *Petitioner Exhibit 3*. For example, the articles state that previous monitoring of the leachate¹ had not revealed

¹ Webster’s Dictionary and Thesaurus defines “leachate” as, “Water that carries salts dissolved out of materials through which it has percolated.”

- contamination. *Id.*, Article 1. In addition, the articles state that IDEM had not identified the spot as a health concern. *Id.* Further, according to the articles, the last time water was tested in 2001 there was no sign of contamination of the aquifer. *Id.* To the contrary, however, the article dated April 29, 2004, stated that 500 barrels of hazardous waste was discovered on the property. *Petitioner Exhibit 3, Article 3.* Further the Petitioner testified that pesticide contamination had recently been identified on the property.
- d) Even had Petitioner's evidence unequivocally shown the existence and extent of the contamination on the property, newspaper articles are hearsay evidence. *See Feliciano v. State*, 467 N.E.2d 748, 749 (Ind. 1984). The Petitioner presented no further evidence to support these allegations. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
- e) Regardless of the Petitioner's evidence of contamination, however, the Petitioner failed to quantify its effect on the property. The Petitioner merely alleged that the contamination rendered his property valueless.² 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 FOR 2002 – VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). 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). While environmental contamination 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-in-use of the subject property, or show what the actual market value of the property is. *See Talesnick*, 756 N.E.2d at 1108.
- 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-122 (Ind. Tax Ct. 2003).³

² Again - statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc.*, 704 N.E.2d 1113.

³ The Petitioner also contends that the assessed values attributed to the mobile home, pole barn and utility shed are excessive. *Hunter testimony*. In support of this contention the Petitioner testified that the mobile home is over thirty

Purchase Price

- g) The Petitioner further contends that the value of the subject property should be no more than what the Petitioner paid for the property plus attorney fees. *Hunter testimony*. In support of this contention the Petitioner submitted a Tax Sale Certificate and Tax Deed. *See Petitioner Exhibits 2 and 3*. According to the Tax Sale Certificate, the Petitioner obtained the subject property for \$37,224.24. *Petitioner Exhibit 2*. In addition, the Petitioner testified that he incurred approximately \$5,000 in attorney's fees in the transaction.
- h) The 2002 Real Property Assessment Manual (the 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. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an "arm's-length transaction." In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. "Fair market value" is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a tax sale is not, by itself, probative evidence of market value of a property.
- i) 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-122 (Ind. Tax Ct. 2003).

years old and in need of repairs; that the pole barn has no water or heat and is used for only storage; and the utility shed should be valued at \$1,000. *Id.* However, the Petitioner failed to submit any evidence to show that the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES) were improperly applied to any or all of the structures or that the concerns expressed by the Petitioner regarding the structures, were not taken into account in the structures assessments. Petitioner's contentions regarding the improvement values are conclusory statements and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).

Comparable Properties

- j) Finally, the Petitioner contends that the subject property's assessment is excessive when compared to other nearby properties. *Hunter testimony*. In support of this contention the Petitioner submitted photographs and a PRC for the property across the street from the subject property (C & D Development) and photographs of a property to the west of the subject property (Bales Farm Equipment). *See Petitioner Exhibits 6 and 7*. The Petitioner claims these properties are comparable to the subject property.
- k) The Petitioner argued that the property across the street from the subject is an ongoing business "making millions of dollars" but valued less than the subject property. *Hunter testimony*.⁴ However, other than implying that the properties are comparable, the Petitioner makes no analysis of the properties to show that they are comparable or to show that the subject property has been treated unfairly. In addition, the Petitioner claimed that the second "comparable" property west of the subject had more structures than the subject but it was also valued less. *Hunter testimony*. The only evidence submitted by the Petitioner for review of this purportedly comparable were exterior photographs of the buildings and equipment. *Petitioner Exhibit 7*.
- l) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner can prove that his property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should 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.*
- m) 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

⁴ To the extent that the Petitioner alleges that his property should be assessed as agricultural land similar to the adjacent property, Indiana Code § 6-1.1-4-13(a) states that "[i]n assessing or reassessing land, the land shall be assessed as agricultural land *only when it is devoted to agricultural use.*" (emphasis added). The Petitioner has not shown that the subject land is in any way devoted to agricultural use.

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).

- n) In the case at bar, the Petitioner has not met this burden. While the Petitioner identified that neighboring properties are assessed lower, the 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 that the Petitioner faces. The Petitioner has only made a “de minimis factual showing” and has failed to “sufficiently link the evidence to the uniform and equal argument he raises.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- o) Because the Petitioner did not meet his burden of presenting a prima facie case, the Assessor's duty to rebut the Petitioner's evidence was 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 raise a prima facie case on all issues. 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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>.