

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00437
45-001-02-1-5-00438
45-001-02-1-5-00439

Petitioner: Booker Blumenberg Jr.

Respondent: The Department of Local Government Finance

Parcel #s: 001-25-43-0304-0017
001-25-43-0304-0015
001-25-43-0051-0005

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 assessments for the subject properties are \$11,000, \$141,400 and \$13,300 respectively. It notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L for each parcel on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated March 24, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on April 27, 2005.

Facts

5. The subject properties are located at 6748-54, 6750, and 6806 Hickory Avenue, Gary. The location is in Calumet Township.
6. The subject properties consist of a residential lot measuring 50' by 107', a brick and frame, tri-level, single-family dwelling on a 70' by 119' lot and a residential lot measuring 60' by 107'.
7. The Special Master did not conduct an on-site visit of the properties.

8. Assessed values of subject properties as determined by the DLGF:
 Land \$11,000,
 Land \$20,500 Improvements \$120,900 Total \$141,400,
 Land \$13,300.

9. Assessed values requested by Petitioner are:
 Land \$6,500,
 Land \$10,500 Improvements \$80,000 Total \$90,500,
 Land \$6,700.

10. Persons sworn as witnesses at the hearing:
 Booker Blumenberg Jr., owner,
 Terry Knee, assessor/auditor.

Issues

11. Summary of Petitioner’s contentions in support of errors in the assessments:
 - a. The land values are too high because the subject properties would not sell for as much as their assessments. *Blumenberg testimony.*
 - b. A comparison of vacant lot sales in the neighborhood shows that the assessed values are predominately much higher than the sales prices. *Petitioner Exhibit 3; Blumenberg testimony.*
 - c. Similarly, improved properties in the subject’s neighborhood that are comparable to the subject in design and features are also assessed higher than what they are selling for in the market. *Petitioner Exhibit 4; Blumenberg testimony.*
 - d. One dwelling, located at 7333 Forrest Avenue, is similar in design and features to the subject. That dwelling received a 30% obsolescence factor. The subject has not received such a factor. *Petitioner Exhibit 4(f); Blumenberg testimony.*

12. Summary of Respondent’s contentions:
 - a. The sales presented in Petitioner Exhibit 3 are all vacant land sales and demonstrate that vacant land sells for less than improved land. *Id; Knee testimony.*
 - b. The Respondent cannot determine if the sales presented by the Petitioner are valid arms-length transactions and the Petitioner has testified that he also did not confirm the validity of the sales. *Petitioner Exhibits 3, 4; Knee testimony; Blumenberg testimony.*
 - c. There are major square foot differences between the subject dwelling and some of the properties offered by the Petitioner. *Id; Knee testimony.*

- d. The Respondent is unaware of the reason the dwelling at 7333 Forrest Place received a 30% obsolescence factor. *Petitioner Exhibit 4(f); Knee testimony.*
- e. The Petitioner confirmed that the subject dwelling sits on two of the parcels under appeal. Because of this, the Respondent recommends to the Board that each of those (#0015, #0017) should receive a land discount of 18% for excess frontage. Because the dwelling actually sits on both of these parcels, they would have to be sold together and they should be assessed as one economic unit. The 20% deduction for vacancy should be removed from parcel #0017. *Respondent Exhibit 1; Knee testimony.*
- f. A sales' analysis shows that three properties in the subject neighborhood sold for between \$55.18 and \$69.56 per square foot. The subject's per square foot value is \$51.68. While these three properties are smaller than the subject, they support the current assessed value. *Respondent Exhibits 3, 4; Knee testimony.*

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petitions,
 - b. The tape recording of the hearing labeled Lake County 1543,
 - c. Petitioner Exhibit 1: 2002 property record card (PRC) for each parcel with photograph of dwelling,
 Petitioner Exhibit 2: Form 139L petitions for each parcel,
 Petitioner Exhibit 3: Six land comparables,
 Petitioner Exhibit 4: Six residential comparables,
 Respondent Exhibit 1: Subject property record cards,
 Respondent Exhibit 2: Subject photograph,
 Respondent Exhibit 3: Top 20 comparable properties analysis sheet,
 Respondent Exhibit 4: Property record cards and photographs of comparables,
 Respondent Exhibit 5: Plat maps,
 Board Exhibit A: Form 139L petitions for each parcel,
 Board Exhibit B: Notices of Hearing,
 - d. These Findings and Conclusions.

Analysis

- 14. The most applicable governing cases 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 Commiss'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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner presented six sales of vacant lots in the Miller Beach area. Three of the sales were for properties in the subject neighborhood “02514”. All the sales occurred between December 2000 and May 2004.
 - b. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this date is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL, at 12 (incorporated by reference at 50 IAC 2.3-1-2.) Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. When documentation is submitted that establishes values for a date other than the statutory valuation date, there must be an explanation as to how those values demonstrate, or are relevant to, the subject value as of January 1, 1999. Otherwise, those documents have no probative value. *Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner failed to establish how this difference would affect the value of the subject properties as of January 1, 1999. *Id.*
 - c. Of the six vacant land sales presented, four have substantially higher assessments than the sale prices.¹ The Petitioner's parcels are assessed from the same base rate as some of his comparables; however, higher base rates were used for several of his comparables. Some of the properties are in the same neighborhood and some are not. The Petitioner failed to establish comparability of those vacant parcels with his improved parcels. Consequently, the vacant land comparables have no probative value for this case. *Id.* The taxpayer must explain the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the market value-in-use of the properties.

¹ The property at 7730 Maple was assessed at the same amount as the sale price. The lot dimensions on the property record card and the sales summary for the property at 7616 Maple are considerably different. The property record card shows 25' by 125, but the sales summary shows 100' by 125”.

- Id.* In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. Petitioner did not make a prima facie case based on this evidence.
- d. The Respondent testified that because the subject dwelling sits on two of the lots under appeal, those two parcels should receive a total land deduction of 18% for having excess frontage. This admission provides an adjustment for these two parcels because they would have to be sold as one economic unit and therefore should be assessed as one.
- e. The Petitioner presented five sales of improved properties. The sales occurred between 1999 and 2004. The Petitioner testified that those properties had similar characteristics, but were different in size. In several cases, the sale prices were more than \$40,000 less than the subject's assessed value. This evidence lacks probative value because the Petitioner failed to establish a basis of comparability. *Long*, 821 N.E.2d at 471. The Petitioner failed to explain the characteristics of the properties and explain how differences affect their market values in relation to the subject property. *Id.* The statements that the properties are similar or comparable are conclusory. That kind of evidence lacks probative value. *Id.*; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Specific reasons must be provided as to why a property is comparable. *Long*, 821 N.E.2d at 470; *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
- f. The subject property has 2,736 square feet of living area plus a basement with a recreation room. It also has a 1,008 square foot garage. While it is true that the Petitioner's comparables are similar in that they are all tri-level dwellings, there the similarity ends. Not one of the five sales shows the same amount of living area, a basement, or an attached garage of the subject's proportions. The Petitioner failed to establish the comparability or account for the differences between the subject and the other properties. *Long*, 821 N.E.2d at 471. Consequently, the purported comparables lack relevance or probative value.
- g. The property at 7333 Forrest received obsolescence of 30%. The Petitioner stated he received no such adjustment. The record does not establish the reason for this adjustment. Similarly, the record does not establish the relevance of this point. Again, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. Petitioner did not make a prima facie case based on this evidence.
- h. The Petitioner failed to establish a prima facie case. 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*, 799 N.E.2d at 1221-1222.

Conclusion

16. The Petitioner did not provide sufficient evidence to establish a prima facie case. Nevertheless, Respondent admitted that there should be a change on the land value for two of the parcels. Parcel #001-25-43-0304-0015 should receive an 18% deduction on the land value for excess frontage and parcel #001-25-43-0304-0017 should have the current 20% deduction for vacancy replaced by an 18% deduction for excess frontage.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed as noted above.

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>.