

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00343
Petitioner: Grace Evangelical Lutheran Church
Respondent: Department of Local Government Finance
Parcel #: 008-43-53-0002-0005
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held on November 17, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$1,683,600 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated August 9, 2004.
4. A hearing was held on September 21, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at: 6240 Grand Blvd., Hobart, Ross Township.
6. The subject property is a church on 14.104 acres of land. The Petitioner has applied for an exemption.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$1,127,400 Improvements \$556,200 Total \$1,683,600
9. Assessed Value requested by Petitioner:
Land \$81,300 Improvements \$556,200 Total \$637,500

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

For Petitioner: Earl Benzer, Trustee
David Albrecht, Trustee

For Respondent: David Depp, Representing the DLGF
Mark Link, Representing the DLGF

Issues

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that the subject parcel size should be valued as 14.104 acres, rather than the 15 acres for which it currently is assessed. *Albrecht argument*. In support, the Petitioner pointed to the legal description on the Form 11 Notice of Assessment, which indicates that the subject parcel consists of 14.104 acres. *Albrecht testimony; Petitioner Exhibit 4*. The Petitioner explained that .9 acres of the original 15 acres that the Petitioner purchased in 1996 are separately assessed under parcel number 008-43-53-0002-0033. *Albrecht testimony; Petitioner Exhibit 9*.
 - b. The Petitioner submitted assessments for adjacent parcels to illustrate the inequality in assessments. *Albrecht testimony; Petitioner Exhibits 9-15*. Those neighboring parcels consist of two 7.5 acre parcels assessed for \$41,600 and \$64,300 respectively, and three 5 acre parcels assessed for \$35,300 each. *Id*. The Petitioner contends that when added together, the assessments of these parcels show that a 15 acre tract should be valued at \$105,900. *Id*. Subtracting out \$24,600, representing the assessed value of the .9 acre tract improperly included in the current assessment, the subject parcel should be valued at \$81,300. *Albrecht argument*.
 - c. Approximately five acres of the subject parcel are located in a flood plain and, as such, are unusable. *Albrecht testimony; Petitioner Exhibit 7*.
 - d. The Petitioner bought the subject parcel on April 19, 1996, for \$34,700. *Albrecht testimony; Petitioner Exhibit 6*.
 - e. The property is in a residential neighborhood and is zoned residential. It is not commercial property, as is reflected in its assessment. The nearest commercial property is approximately ¼ mile to the north. *Albrecht testimony*. The neighborhood designation on the property record card references an area "Behind Rt. 30 W EA;" however, the subject property is not located near Rt. 30. *Albrecht testimony; Petitioner Exhibit 8*.
13. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the assessments submitted by the Petitioner are for properties that either are unimproved or are used for residential purposes. *Depp argument. Consequently, those properties are not comparable to the subject property. Depp testimony.*
- b. The subject property may be zoned residential, but property is assessed based upon value-in-use and the use is commercial. *Depp testimony.*
- c. The five acres of wetlands has been classified as unusable/undeveloped. *Depp testimony; Respondent Exhibit 2.* In addition, an eight-acre portion of the subject property has been given a negative influence factor of 29% due to its shape and size. *Id.*
- d. The Respondent contends that the property is fairly assessed based on uniform appraisal methodology, and that no change is warranted. *Depp testimony.*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #133.
 - c. Exhibits:
 - Petitioner Exhibit 1: Summary Sheet
 - Petitioner Exhibit 2: Copy of Plat
 - Petitioner Exhibit 3: Form 139L
 - Petitioner Exhibit 4: Form 11
 - Petitioner Exhibit 5: Notice of Final Assessment
 - Petitioner Exhibit 6: Closing Statement dated 4/19/1996
 - Petitioner Exhibit 7: Topography Map
 - Petitioner Exhibit 8: Subject property record card (PRC)
 - Petitioner Exhibit 9: PRC for 6208 Grand Blvd
 - Petitioner Exhibit 10: PRC for 6316 Grand Blvd
 - Petitioner Exhibit 11: PRC for 6262 Grand Blvd
 - Petitioner Exhibit 12: PRC for 6160 Grand Blvd
 - Petitioner Exhibit 13: PRC for 6142 Grand Blvd
 - Petitioner Exhibit 14: PRC for 6106 Grand Blvd
 - Petitioner Exhibit 15: PRC for 6340 Grand Blvd
 - Petitioner Exhibit 16: Copy of Minutes from 12-5-03
 - Petitioner Exhibit 17: Copy of Ballot
 - Petitioner Exhibit 18: Trustee Minutes 2/26/2004

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: Subject PRC

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

15. 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 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.
16. The Petitioner provided sufficient evidence to support its contentions. The Respondent did not substantially rebut the Petitioner’s testimony and evidence. This conclusion was arrived at because:
- a. David Albrecht, Trustee for the Petitioner, testified that .9 acres were partitioned from the 15 acres originally purchased, and that the .9 acre parcel is separately assessed under key number 008-43-53-0002-0033. *Albrecht testimony*. Thus, the subject parcel consists of only 14.104 acres. *Id.* Albrecht’s testimony is supported by the legal description contained in the Form 11 Notice of Assessment for the subject property. *Petitioner Exhibit 8*. Albrecht’s testimony is further supported by a plat map showing the separation of the parcels and by a printout showing assessment information for the .9 acre parcel. *Petitioner Exhibits 2, 9*.
 - b. The Petitioner therefore established a prima facie case that the assessment is in error and that the subject property should be assessed as containing 14.104 acres.

- c. The Respondent did not rebut the Petitioner's evidence regarding the size of the subject parcel.
- d. The Petitioner also contends that the subject property is grossly overvalued in comparison to neighboring parcels and to the \$34,700 price for which the Petitioner bought the vacant parcel in 1996. *Albrecht testimony; Petitioner Exhibits 6, 10-15.*
- e. The 2002 Real Property Assessment Manual provides that, for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). This provision has significant consequences for evidence reflecting the market value of a property as of a date substantially removed from January 1, 1999. In order for such evidence to be probative of that property's true tax value, there must be some explanation as to how it relates to the property's market value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- f. Here, the Petitioner provided at least some evidence relating the 1996 purchase amount to the subject parcel's value as of January 1, 1999. That evidence consists of the assessments of neighboring parcels, which were valued as of January 1, 1999, and which therefore supply some indication of the extent to which the subject parcel appreciated between the date of purchase and the relevant valuation date.
- g. Normally, a petitioner must establish that a given property is comparable to the subject property in order for the sale price or assessed value of that property to be probative of the subject property's market value. *See, e.g., Long*, 821 N.E.2d at 471-72; *Blackbird Farms Apartments, LP v. Dep't of Local Gov't Fin.*, 756 N.E.2d 711, 714-15 (Ind. Tax Ct. 2002). Given that that the properties to which the Petitioner seeks to compare the subject property are adjacent to the subject property, one may infer comparability with regard to significant characteristics such as topography, geographical features, and access. *See Blackbird Farms*, 756 N.E.2d at 715 ("properties within each geographic area, subdivision, or neighborhood in a land order are presumed to be comparable, both in distinguishing characteristics and market value."). Moreover, the plat map submitted by the Petitioner demonstrates that all of the lots are the same shape (rectangular) – another characteristic important to establishing comparability. *See Id.*
- h. The subject parcel, however, is significantly larger than the neighboring parcels. Nonetheless, the property record cards for those neighboring parcels provide information allowing for a reasonable adjustment to account for the differences in size. Each parcel is separated into a home site, which is valued at the rate of \$25,200/acre, and excess acreage, which is valued at the rate of \$2,520/acre. *Petitioner Exhibits 10-15.* Thus, the effect of the size difference can be accounted for by applying an excess acreage rate to the portion of the subject property that exceeds the size of the neighboring parcels.

- i. The Petitioner requested a total value of \$81,300. *Albrecht testimony*. The Petitioner reached this conclusion by taking \$105,900 –the aggregate assessment for the neighboring properties when combined into groups totaling 15 acres - and subtracting \$24,600 (the amount for which the .9 acre parcel is separately assessed). *Id.* This is close to the rounded total of \$80,900 yielded if one computes the value of two acres of the subject property at the home site base rate and the remainder of the property at the excess acreage rate. The evidence supports such a division of the subject property, given Albrecht’s testimony that the church building and parking lot cover approximately 2 acres and the Respondent’s assessment of the subject parcel as containing 2 acres of primary commercial land, with the remainder classified as secondary and undeveloped/unusable land. *Albrecht testimony; Petitioner Exhibit 8.*
- j. When viewed together, the 1996 purchase price and the assessments of neighboring properties establish a prima facie case that the market value of the subject land does not exceed the \$81,300 requested by the Petitioner.
- k. The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s evidence. *See Meridian Towers*, 805 N.E.2d at 479. The Respondent essentially argues that neither the purchase price of the subject property nor the assessments of neighboring properties reflect the market value-in-use of the subject property. *Depp argument*. The Respondent bases its argument on the fact that the subject property is now being used as a church, which the Respondent characterizes as a commercial use. *Id.* This contrasts with the residential uses of the neighboring properties and of the subject parcel at the time of purchase. *Depp testimony*.
- l. The Respondent’s argument fails for at least two reasons. First, the Petitioner bought the land with the intention of building a church, as demonstrated by the fact that the Petitioner built and occupied the church building by early 2000. *Albrecht testimony*. Thus, the purchase price is a good indication of the utility the Petitioner expected to receive from the land for the operation of a church, at least as of April 19, 1996. Second, the subject property is zoned for residential use. Thus, the assessments of properties with similar zoning restrictions should be more indicative of the subject property’s value than the assessments of properties with more permissive commercial zoning restrictions. It is the latter properties to which the Respondent seeks to compare the subject property.
- m. The Board recognizes the possibility that the costs associated with developing land for use as a church may differ from those associated with the costs of developing land for use as a home site. The record is silent as to whether that is the case. To the extent those costs differ, it was Respondent’s burden to quantify the difference. Whatever the difference, it certainly does not account for the disparity between the current assessment of \$1,127,400 and the \$81,300 requested by the Petitioner.

- n. The Respondent therefore failed to rebut the Petitioner's evidence. The preponderance of the evidence supports the conclusion that the land portion of the assessment should be reduced to \$81,300.

Conclusion

- 17. The Petitioner established, by a preponderance of the evidence, that the subject property was incorrectly assessed as containing 15 acres rather than 14.104 acres, and that the land portion of the assessment should be reduced to \$81,300. The Board finds for the Petitioner.

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>>.