

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-5-00049
Petitioner: Joseph Paul Algozzini et al
Respondent: Department of Local Government Finance
Parcel #: 005050602160012
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 January 20, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$24,300 and notified the Petitioner on March 25, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated September 30, 2004.
4. A hearing was held on November 29, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is vacant residential land located at 10709-11 State Line Road in Dyer, Indiana.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:
Land \$24,300
8. Assessed Value requested by Petitioner on the Form 139L petition:
Land \$9,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Joseph Paul Algozzini, co-owner
Joseph Algozzini, witness

For Respondent: Joseph Lukomski, Jr., DLGF

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The assessment of the subject property is too high. *J. P. Algozzini testimony.*
- b) The subject property is wetland in the back and can only be built on in the front. It is wet all year round and cannot be farmed. The assessor will verify that it is wetland. The Petitioner presented a property record card with a hand written note stating "wetland, can't be farmed or built on." The Petitioner stated the note was written by Dave Brown, a deputy assessor. *J. Algozzini testimony; Pet'r Ex. 10.*
- c) The Petitioner presented a video showing the subject property and also a neighbor's property. There was a house on the subject property, but it is now gone. The neighbor has more acreage and can use the entire property. The neighbor is assessed at \$42,400. *J. P. Algozzini testimony; Pet'r Ex. 5.*
- d) The Petitioner presented an appraisal from 1997 valuing the subject property at \$9,500. The appraisal was done by Jodi Kobak of T. J. Boyle Real Estate. *J. P. Algozzini testimony; Pet'r Ex. 7.*
- e) The Petitioner presented an appraisal from 1998 for inheritance tax purposes. The subject property value of \$9,000 was accepted by the State of Indiana. *J. P. Algozzini testimony; Pet'r Ex. 8.*
- f) A neighbor to the south offered \$7,500 for the subject property. The offer was not put in writing. *J. P. Algozzini testimony; Pet'r Ex. 9.*
- g) The Petitioner has given appraisals and an offer to purchase; all are evidence of market value. The Petitioner does not understand why the values were not used. *J. P. Algozzini testimony*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the property record card for the subject property. The Petitioner is being assessed with a base rate of \$5,000. *Lukomski testimony; Resp't Ex. 2.*

- b) The property record card shows the Petitioner is receiving a negative 25% influence factor for flooding and wetlands. *Lukomski testimony; Resp't Ex. 2.*
- c) The assessment is based on 1999 values. *Lukomski testimony.*

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 County #837.
- c) Exhibits:
 - Petitioner Exhibit 1: December 10, 2003 worksheet [Petitioner's notes from informal hearing]
 - Petitioner Exhibit 2: Indiana Board of Tax Review OK for Video use
 - Petitioner Exhibit 3: Video Presentation [shown at the hearing – not submitted]
 - Petitioner Exhibit 4: Notice of Assessment of Land and Structures
 - Petitioner Exhibit 5: Reassessment of Property – directly south of said property
 - Petitioner Exhibit 6: Indiana Reassessment Brochure & Ex. 04 above
 - Petitioner Exhibit 7: September 3, 1997 appraisal
 - Petitioner Exhibit 8: May 26, 1998 appraisal
 - Petitioner Exhibit 9: Offer to purchase said property
 - Petitioner Exhibit 10: Dave Brown – Deputy Assessor of Lake County, Indiana
 - Petitioner Exhibit 11: Notice of Final Assessment
 - Petitioner Exhibit 12: Expense Reimbursement Procedures

 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject Property Record Card (PRC)

 - Board Exhibit A: Form 139L
 - 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 Township 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 Township 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 his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the assessment is too high based on the evidence presented. The Petitioner presented two exhibits which he referred to appraisals to support his contention. *Pet’r Exs. 7, 8*.
 - 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). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479.
 - c) The Manual further 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 at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - d) While the Petitioner referred to Exhibits 7 and 8 as appraisals, the exhibits are not actual appraisals. Petitioner’s Exhibit 7 is a single page letter estimating the value of the subject property and another property. There is nothing in the letter to imply that an appraisal has been done or that the letter writer is an appraiser. The letter simply states the writer places the value of the subject property around \$9,500. The letter is dated September 3, 1997 and on the letterhead of T. J. Boyle Real Estate. *Pet’r Ex. 7*.

- e) The Petitioner stated that Petitioner's Exhibit 8 is an appraisal for inheritance tax. Petitioner's Exhibit 8 is a single page with the heading "Schedule A – Real Estate." It lists the name of decedent, description, and fair market value. It does appear to be part of an inheritance tax filing. It describes the subject property and another property. The subject property is given a fair market value of \$9,000. There is nothing to explain how the fair market value of \$9,000 was arrived at. The date of May 26, 1998, is handwritten at the top of the page. *Pet'r Ex. 8.*
- f) Petitioner's Exhibits 7 and 8 are not actual appraisals. Neither of the exhibits explains how the values were arrived at. These exhibits are not probative evidence of the value of the subject property as of the January 1, 1999, valuation date.
- g) The Petitioner contends a neighbor to the south offered to purchase the subject property for \$7,500. The Petitioner stated there was nothing in writing. Petitioner's Exhibit 9 is a piece of notebook paper with "Offer to purchase said property 7,500.00" handwritten on it. The Petitioner did not give the date or any details of the purchase offer. A verbal offer to purchase is not probative evidence of the value of the subject property.
- h) The Petitioner contends the subject property is wetlands. The Petitioner presented a video of the subject property. The Petitioner also presented a property record card with a handwritten note stating it was wetland and can't be farmed or built on. The handwriting is attributed to a deputy assessor. The Respondent stated the Petitioner is receiving a negative 25% influence factor for flooding and wetlands. The property record card supports the Respondent's statement. The Petitioner has not shown that the subject property is entitled to an influence factor greater than he is currently receiving.
- i) The Petitioner contends the neighbor's property is assessed for less than the subject property.
- j) In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See Manual at 2* (stating that 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.”); *See also, Long 821 N.E.2d at 469.* The primary difference between the Petitioner’s methodology and the sales comparison approach is that the Petitioner seeks to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioner in this case
- k) In order to effectively use the sales or assessment comparison approach as evidence in a property assessment appeal, 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 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- l) The Petitioner did not explain how the neighboring property was comparable to the subject property as required by the court in *Long*. The Petitioner stated the neighbor's property has more acreage and the entire property can be used. The property record card shows the neighboring property has an improvement, the subject property is vacant. The neighbor's land is valued at \$42,400 and the subject land is valued at \$24,300. The Petitioner has not shown the neighboring property is comparable to the subject property. The Petitioner's evidence concerning the assessment of the neighboring property lacks probative value.
- m) The Petitioner's contentions that the land is valued too high amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- n) The Petitioner has failed to meet his burden of proving the current assessment is incorrect and showing what the current assessment should be.

Conclusion

- 16. The Petitioner failed to make 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>>