

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-028-02-1-4-00031 **Parcels #:** 008-08-15-0024-0140
45-028-02-1-4-00032 008-08-15-0023-0033
45-028-02-1-4-00033 008-08-15-0024-0141

Petitioner: Paul J. & Jane A. Sur
Respondent: Department of Local Government Finance
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matters, 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 December 4, 2003 in Crown Point, Indiana. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessments for the three subject properties were \$869,500 for Parcel #008-08-15-0023-0033 (Parcel 0033), \$489,300 for Parcel #008-08-15-0024-0140 (Parcel 0140), and \$332,300 for Parcel #008-08-15-0024-0141 (Parcel 0141). The DLGF notified the Petitioner on March 31, 2004.
2. The Petitioner filed three Forms 139L's on April 12, 2004.
3. The Board issued notices of hearing to the parties dated June 1, 2004.
4. A consolidated hearing on all three petitions was held on July 21, 2004, in Crown Point, Indiana before Special Master Patti Kindler.

Facts

5. The subject properties are located at 6300 Broadway, 6389 Broadway, and 6401 Broadway, Merrillville, Indiana.
6. The subject properties are three parcels of commercial land used in the operation of an automobile dealership.
7. The Special Master did not conduct an on-site inspection of the property.

8. Assessed Value of subject property as determined by the notices of assessment from the DLGF:

For Parcel 0033:	Land: \$503,200	Improvements: \$366,300
For Parcel 0140:	Land: \$454,600	Improvements: \$ 34,700
For Parcel 0141:	Land: \$314,000	Improvements: \$ 18,300

9. Assessed Value requested by Petitioner:

For Parcel 0033:	Land: \$150,000	Improvements: \$366,300
For Parcel 0140:	Land: \$142,000	Improvements: \$ 34,700
For Parcel 0141:	Land: \$ 71,000	Improvements: \$ 18,300

10. The following persons were present and sworn in at the hearing:

For Petitioner: Paul J. Sur, Property Owner.

For Respondent: David M. Depp, Senior Appraiser, Cole-Layer-Trumble Company.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in assessment:

- a) The Petitioners contend that the land assessment is excessive. *Sur Testimony*. According to the Petitioners, the value established by the DLGF is two-to-three times the fair market value of the subject land. *Id.*; *Petitioners' Exhibits 5 – 6*. The Petitioners contend that the subject land should be valued using a rate of \$20,000 to \$30,000 per acre. *Id.*
- b) The Petitioners rely on information regarding the sale of several parcels, which they contend are comparable to the subject land. *Id.* The Petitioners point to the sale of both vacant and improved parcels in the vicinity of the subject land. The first vacant parcel identified by the Petitioner is located at 6521 Broadway and consists of 17.21 acres. *Sur Testimony; Petitioners' Exhibits 5 – 6*. The parcel is adjacent to two of the subject parcels and is directly across the street from the third. *Id.* The Merrillville Conservancy District purchased that parcel in October 1997 for \$315,909 (\$18,356 per acre). *Id.*; *Petitioners' Exhibit 7*. The second vacant parcel is located at 6755 Broadway and consists of 12 acres of vacant commercial land. *Id.* The Merrillville School Corporation purchased that land, plus 5 residential lots on 68th street, on December 10, 1999 for \$274,250 (\$22,854.00 per acre)¹. *Sur Testimony; Petitioners' Exhibits 5 – 6, 9*.
- c) The Petitioners also point to the sale of three improved parcels ("Improved Properties") to establish the fair market value of the subject land. *Sur Testimony, Exhibits 6, 8, 10 – 12*. The first property is located at 6490 Broadway and consists of 9.26 acres of land with a 78,000 square foot retail building. *Sur Testimony, Petitioners' Exhibit 6*. Oscar Perratta purchased that property in October 1997 for

¹ The Petitioners do not indicate what portion of the sale price was attributable to the residential lots or provide any information concerning the size or other features of those lots.

- \$406,850.00. *Id.*; *Petitioners' Exhibit 8*.² The second improved parcel is located at 6501 Broadway and consists of 6.5 acres of land with a 21,654 square foot building. *Sur Testimony*; *Petitioners' Exhibit 6*. The Henrichs purchased this property on October 9, 2003 for \$500,000.00. *Id.*; *Petitioners' Exhibit 10*.
- d) The Petitioners contend that, attributing conservative values to the improvements, the sale prices for these respective properties reflect a land value \$20,000.00 to \$30,000.00 an acre. *Sur Testimony*; *Petitioners' Exhibit 5*.
 - e) The third parcel containing an improvement is located at 6499 Broadway and consists of 1.5 acres of land. *Sur Testimony, Exhibit 6*. At the time of the relevant sale, that property contained a mobile office building on a permanent foundation, lighting and asphalt paving. *Id.* Jerome Kundich purchased the property on August 26, 2003 for \$82,500.00. *Id.*; *Petitioners' Exhibit 11*. The Petitioners attribute \$67,000.00 of the sale price to the land (\$44,667.00 per acre). *Sur Testimony*; *Petitioners' Exhibit 6*. However, the Petitioners contend that the sale is not a true reflection of the fair market value of land, because Kundich bought the property in order to assure continued access to an existing business located behind the property. *Id.* The Petitioners believe that those circumstances led Kundich to pay an amount in excess of the fair market value of the property. *Id.*
12. Summary of the Respondent's contentions in support of assessment:
- a) The Respondent contends that it made adjustments to the assessments of the subject parcels as a result of the informal hearing process. *Depp Testimony*.
 - b) The Respondent further contends that the land values used in assessing the subject parcels were derived from a "land order," which itself was based upon an analysis of market activity. *Id.*
 - c) The Respondent also contends that assessed land value of the subject parcels has been adjusted to account for lot size, shape, topography, and use. The subject parcels also received a downward adjustment to account for that fact that they are part of a multi-parcel property. *Id.*
 - d) The Respondent contends that if the assessment of the subject parcels were excessive, the assessments for the entire area would also be excessive, because all of the land values were derived from the land order. *Depp Testimony*.
 - e) The Respondent contends that its representative could not submit a copy of the applicable section of the land order at the hearing in this matter, because the land order is located in Indianapolis. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing and requested post-hearing submissions by either party.
 - b) Exhibits³:

² It appears that this property was purchased at auction. *Petitioners' Exhibit 8* is a notice advertising the sale of the property at public auction, and contains a handwritten notation reading "sold at auction 10-25-97."

³ Following the hearing, the Respondent submitted copies of the Form 139L petitions, property record cards for the subject properties and a statement of testimony concerning each of the parcels at issue. The administrative law

- Petitioners' Exhibit 1: Copies of the Form 139L Petition for the subject parcels.
- Petitioners' Exhibit 2: Copies of the Notice of Assessment for the subject parcels.
- Petitioners' Exhibit 3: Copies of the property record cards for the subject parcels.
- Petitioners' Exhibit 4: List of related parcels under appeal.
- Petitioners' Exhibit 5: Written outline of Petitioners' argument.
- Petitioners' Exhibit 6: Summary of Petitioners' arguments and land valuations.
- Petitioners' Exhibit 7: Sales information for the sale of comparable vacant commercial land.
- Petitioners' Exhibit 8: Sales listing for the sale of property located at 6490 Broadway.
- Petitioners' Exhibit 9: Purchase agreement for vacant commercial land located at 6755 Broadway.
- Petitioners' Exhibit 10: Sales report for the sale of property located at 6501 Broadway.
- Petitioners' Exhibit 11: Loan settlement and legal description for the sale of property located at 6493 and 6499 Broadway.
- Petitioners' Exhibit 12: Certified appraisal report for property located at 6499 Broadway, showing an improved value of \$155,000.
- Petitioners' Exhibit 13: Summary page of historical property tax data for the subject parcels.

c) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations 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.

judge labeled those exhibits for the record. However, pursuant to 52 IAC 2-8-8 , Board will not accept post-hearing evidence unless the Board or its administrative law judge and served on the opposing party. Consequently, the Board did not consider the exhibits submitted by the Respondents in reaching its decision.

15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. The Petitioners sought to establish that the land valuation is excessive with regard to all three subject parcels. In support of their position, the Petitioners presented evidence concerning the sale of five different purportedly comparable properties between October of 1997 and August of 2003. *Sur Testimony; Petitioners' Exhibit 6 - 12.*
 - b. Two of the sales relied upon by the Petitioners involved vacant land – the parcel purchased by the Merrillville Conservancy District (“Conservancy District Parcel”) and the parcel purchased by the Merrillville School Corporation (“School Corporation Parcel”). *Id.*
 - c. In order to show that two parcels of land are comparable, one must compare the characteristics of each parcel that are most likely to affect value. Those characteristics include things such as location, topography, geographical features, accessibility and use. *See, Blackbird Farms Apartments, LP v. Department of Local Government Finance, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).*
 - d. The Petitioners assert that the Merrillville Conservancy Parcel and the School Corporation Parcel are comparable to the subject parcels due to their close proximity to the subject parcels. *Sur Testimony.* However, the Petitioners have not addressed key characteristics of the respective parcels that are relevant to determining value. For example, the Petitioners did not explain whether the land comprising either of the purportedly comparable parcels was developed for improvements. This type of development includes things such as the installation of sanitary sewers, potable water lines and gas lines. *See, Real Property Assessment Guidelines for 2002 – Version A, Ch. 2, p. 85.* It also includes grading and landscaping of the site. *Id.* The degree that land has been developed in this manner clearly affects its market value. Thus, in order to establish comparability, the sale price of vacant land must be adjusted to account for the absence of development.
 - e. The significance of making such adjustments becomes clearer when viewed in light of a petitioner’s prima facie case. The petitioner must establish not only that the current assessment is incorrect, but also what the correct assessment would be. *Meridian Towers, 805 N.E.2d at 479.* If there is a vast disparity between the assessment of one vacant lot that has been developed for improvements and the sale price of an adjacent undeveloped lot, one may be able to assume from the disparity that the assessment of the first lot is excessive regardless of the amount it would cost to develop the second lot. The relevant inference is that the cost of development cannot possibly be high enough to account for the disparity. However, the existence of the disparity does nothing to show what the fair market value of the first lot actually is – just that it is something less than its assessed value.
 - f. Such is the case here. The Petitioners have arguably demonstrated a vast disparity between the per-acre value used to assess the subject parcels and the per-acre sale price of vacant land in close proximity to the subject parcels. However, the Petitioners have not identified whether the purportedly comparable parcels were

- developed for improvement, much less presented evidence of appropriate adjustments to the sale price in order to account for the lack of development.
- g. Moreover, the purportedly comparable parcels were purchased in October 1997 and December 1999, respectively. The Petitioners have not presented any evidence to demonstrate the appreciation or depreciation of land between the time of the sales and January 1, 1999 - the relevant valuation date for the 2002 reassessment.
 - h. Thus, even if the sale of the vacant parcels were sufficient to establish that the land portion of the subject properties' assessment is incorrect, those sales do not constitute probative evidence what the correct assessment would be.
 - i. The Petitioners' reliance on information from the three Improved Properties is similarly misplaced.
 - j. The primary deficiency from which the Petitioners' evidence suffers relates to the manner in which they seek to quantify the portion of the sale price attributable to land for each of the comparable properties.
 - k. The Petitioners simply estimate the value of improvements without providing any explanation of the methodology behind their estimates. For example, with regard to the Perratta sale, the Petitioners state that they were "[u]nable to extract land or building value but [a] reasonable estimate of land would be in [the] area of \$20,000.00 per acre." *Petitioners' Exhibit 6*. The Petitioners made similarly unsupported estimates in analyzing the sale of the other two Improved Properties. *Id.* Such unsupported allegations do not constitute probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998)(mere allegations, unsupported by factual evidence, are insufficient to establish error).
 - l. Moreover, as with the purportedly comparable vacant parcels, the Petitioners failed to provide any evidence concerning the appreciation or depreciation of land value between the time of the respective sales of the Improved Properties and January 1, 1999 – the relevant valuation date for the 2002 general reassessment.
 - m. Thus, the Petitioners' evidence concerning the sale of the Improved Properties is insufficient to establish either that the assessment of the subject properties was incorrect or what the correct assessment would be. *See Meridian Towers*, 805 N.E.2d at 479.
 - n. Based on the foregoing, the Petitioners failed to establish a prima facie case.

Conclusion

16. The Petitioner failed to make a prima facie case. 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 assessments 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.