

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-041-02-1-5-00310
Petitioners: Raymond D. & Sherry L. Trapp
Respondent: Department of Local Government Finance
Parcel: 003-31-25-0247-0005
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 in November 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the property is \$8,500 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on March 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point, Indiana, on November 9, 2004.

Facts

5. The subject property is located at 7207 W. 128th Court, Cedar Lake, in Center Township.
6. The subject property is a 25 by 102 foot parcel improved with a garage.¹
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$8,000 Improvements \$500 Total \$8,500.
9. Assessed value requested by Petitioners:
Land \$2,200 Improvements \$500 Total \$2,700.

¹ Three contiguous vacant parcels are being appealed separately as petitions 45-041-02-1-5-00311, 45-041-02-1-5-00312, and 45-041-02-1-5-00313.

10. Persons sworn as witnesses at the hearing:
Raymond D. and Sherry L. Trapp, Owners,
Terry Knee, Assessor/Auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The land is currently valued at \$8,000. *Respondent Exhibit 2*. It should be valued at \$2,200. *Board Exhibit A*.
 - b. Petitioners own four contiguous parcels, three of which are vacant. Each parcel was assessed at the same adjusted rate of \$318 per front foot. The three vacant parcels received a 20% negative influential factor as a result of being unimproved, reducing the value to \$6,400. The fourth parcel, containing the garage, did not receive a negative influence factor and is the subject of this appeal. *S. Trapp testimony*.
 - c. The four lots are identical. Each parcel measures 25 feet by 100 feet and is assessed individually. Separately, each lot is unbuildable. The four lots are currently assessed at a total of \$28,500. Petitioners were offered \$6,000 for all four of the lots. *S. Trapp testimony*.
 - d. Petitioners presented two photographs of a home across the street from the property under appeal. *Petitioners Exhibits 1, 2*.
 - e. Petitioners also presented evidence of six listings and sales as comparables. Petitioners contend these transactions, which occurred during the period 2001 through 2003, are for similarly sized parcels. Based on this market data, the parcel should be valued between \$2,500 and \$3,000. *Petitioners Exhibits 3 - 12; S. Trapp testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a. Respondent agreed that the subject parcel is not improved because it does not have water and sewer/septic systems on it. All four of the lots should be assessed at the same value as unimproved land with a negative 20% influence factor. *Knee testimony*.
 - b. Petitioners did not provide sufficient information regarding location to establish the properties identified in the sales and listing data are comparable to Petitioners' property. *Knee testimony*.
 - c. If the four parcels were viewed as one entity, an additional adjustment might be required for excessive frontage. *Knee 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 Co. 549,
 - c. Exhibits:
 - Petitioners Exhibit 1: Picture of house across the street from the subject,
 - Petitioners Exhibit 2: Picture of house across the street from the subject,
 - Petitioners Exhibit 3: Listings of vacant land for sale in Cedar Lake,
 - Petitioners Exhibit 4: Agent Detail Report for 7418-7422 128th Ave.,
 - Petitioners Exhibit 5: Agent Detail Report for 7025 W. 134th Ave.,
 - Petitioners Exhibit 6: Agent Detail Report for Lots 4, 5 and 6 Edison,
 - Petitioners Exhibit 7: Listing of sale of 127-1 Wrightwood,
 - Petitioners Exhibit 8: Listing of sale of 6822 128th Lane,
 - Petitioners Exhibit 9: Listing of sale of 6602 Wheeler,
 - Petitioners Exhibit 10: Agent Detail Report for 127-A Wrightwood,
 - Petitioners Exhibit 11: Agent Detail Report for 6822 128th Lane,
 - Petitioners Exhibit 12: Agent Detail Report for 6602 Wheeler,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Board Exhibit A: Form 139L Petition,
 - 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 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.

15. Petitioners did not provide sufficient evidence to support their contentions that the base rate of the land is excessive. This conclusion was arrived at because:
 - a. 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.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In order to effectively use the sales 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. *Id.* at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *Id.* at 471.
 - b. Petitioners presented listings and Vacant Land Agent Detail Reports of six other properties. Petitioners provided only minimal explanation of the characteristics of these properties, referring merely to the size of the parcels. While one comparable sale was in the same subdivision, it is not possible to draw any valid conclusion about value from such limited evidence. No comparison of topography, geographical features, lot accessibility or uses was presented. Conclusory statements concerning the comparability of properties do not constitute probative evidence. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
 - c. Further, the listings and sales identified by Petitioners occurred during the period 2001 through 2003. Indiana's assessment regulations provide 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).
 - d. Petitioners did not explain how sales data from 2001 through 2003 demonstrate the value of the subject property on January 1, 1999. Accordingly, the evidence of sales and listing presented by Petitioners is not probative of error. *Long*, 821 N.E.2d at 471.
 - e. Petitioners also presented two photographs of the home across the street from the property under appeal. Petitioners made no link between these photographs and the value of the property. Without explanation, the photographs are not probative evidence of error in the assessment. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).

16. Petitioners provided sufficient evidence to support their contention that the parcel should receive a 20% negative influence factor. This conclusion was arrived at because:
- a. Petitioners own four contiguous parcels. Three of them are vacant. Each parcel was assessed at the same adjusted rate of \$318 per front foot. The three vacant parcels received a 20% negative influential factor as a result of being unimproved. The fourth parcel, containing the garage, did not receive a negative influence factor.
 - b. An influence factor is “[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. The factor may be positive or negative and is expressed as a percentage.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2).
 - c. Improved land is defined as “[l]and developed with a water well/septic system or water hook-up/sewage disposal hook-up, and landscaping, walkways and residential driveway.” *Id.*
 - d. Improved land value is “[t]he 1999 cost of vacant land plus the depreciated cost of installing water and sewage disposal systems[,] landscaping, walkways and residential driveway.” *Id.*
 - e. The subject parcel has been assessed as an improved lot. Respondent agreed that the subject parcel is not improved because it does not have water and sewer/septic systems on it. Accordingly, Respondent concurred that this parcel should receive the same 20% negative influence factor as the other three adjoining parcels.²

Conclusions

17. Petitioners did not provide sufficient evidence to support their contentions that the base rate of the land is excessive. The parties agreed that the land should receive a 20% negative influence factor as a result of the parcel being unimproved.

² Respondent additionally contended that, if the four parcels were viewed as one entity, an additional adjustment might be required for excessive frontage. There are, however, four parcels, not just one. Further, the Petitioners do not argue for the application of a negative influence factor for hypothetical excessive frontage. Instead, they make the contradictory contention that the parcels are “too small to build” on. *Board Exhibit A at 2*. Respondent’s unsupported contention is not probative of error. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Final Determination

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

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.