

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition #: 45-032-02-1-4-00489
Petitioners: Roger A. & Carole Ladd
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0128-0005
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 January 6, 2004, in Lake County. The Department of Local Government Finance (the DLGF) determined that Petitioners' property tax assessment for the subject property is \$144,800 and notified Petitioners on March 26, 2004.
2. Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. Special Master Joseph Stanford held a hearing April 11, 2005, in Crown Point.

Facts

5. The subject property is located at 6616 W. Lincoln Highway, Crown Point, in St. John Township.
6. The subject property is a seven-acre parcel of undeveloped, commercial/industrial land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$144,800 for the land. There are no improvements on the property.
9. The Petitioners requested an assessed value of \$70,000 for the land.
10. Roger A. Ladd, one of the property owners, and Tommy Bennington, representing the DLGF appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The Petitioners allege that the assessed value of the property is too high. *Ladd argument*. In support of this argument, the Petitioners submitted a realtor's listing of nine parcels located in Merrillville, Lowell and Crown Point that ranged in size from 10 to 25 acres. *Ladd testimony*.
 - b) According to the Petitioners, the nine parcels had a price per acre of \$6,873.51 to \$12,490.00. Whereas, they argue, the subject property is assessed at \$20,000 per acre. *Ladd testimony; Petitioner Exhibit 1*.

12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent testified that it is impossible to tell if the listings submitted by the Petitioners are actually comparable to the subject property. *Bennington argument*.
 - b) Further, according to the Respondent, a neighborhood land value summary sheet shows that the subject property is correctly assessed. *Bennington testimony; Respondent Exhibit 2*.

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 1509,
 - c) Exhibits:

Petitioner Exhibit 1 - CMA listings of nine (9) parcels,

Respondent Exhibit 1 - Subject property record card,
Respondent Exhibit 2 - Neighborhood land value summary sheet,

Board Exhibit A - Form 139 L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign in sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking a review of a determination of the Department of Local Government Finance 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 Board of Tax Commissioners*, 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 Insurance Company 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 failed to provide sufficient evidence to support Petitioners’ contentions. This conclusion was arrived at because:
- a) Petitioners argue that, based on a vacant land listing prepared by Century 21, the subject property is over-valued. *Petitioner Exhibit 1*. According to the Petitioners, the nine parcels in the listing report had a price per acre ranging from \$6,873.51 to \$12,490.00. Whereas, they argue, the subject property is assessed higher at \$20,000 per acre. *Ladd testimony; Petitioner Exhibit 1*.
 - b) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter “Manual”).
 - c) The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
 - d) However, 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. *Long*, 821 N.E.2d 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. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.

- e) Here the Petitioners failed to show comparability between the subject property and the properties shown on the listing report. Petitioners provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by Petitioners were “comparable” properties. *See Blackbird Farms Apartments, LP v. Dep’t of Local Gov’t Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). All of the properties on the listing report have more acreage than the subject; some have three times more. Further, the Petitioners did not show comparability in location or neighborhood. In addition, the CMA Report submitted by Petitioners provides information on asking prices, not sales, for the various properties. The sales comparison approach, however, “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Long*, 821 N.E.2d at 470. This evidence, therefore, is not probative of the subject property’s value.
- f) Petitioners failed to raise a prima facie case that the assessed value of the subject property is incorrect. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. 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 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 petitioner'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 the 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> .