

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-4-00169
Petitioner: Sophia Panagakis
Respondent: Department of Local Government Finance
Parcel #: 005302402190002
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 January 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$120,900 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 March 3, 2005.
4. A hearing was held on April 4, 2005, in Crown Point, Indiana before Special Master Ken Daly.

Facts

5. The subject property is located at 12722 Wicker Avenue, Cedar Lake, in Hanover Township.
6. The subject property is .897 acres of vacant usable undeveloped commercial land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$120,900.
9. The Petitioner requested an assessed value of \$70,000.
10. Sophia Panagakis, the Petitioner, and Philip Raskosky II, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioner contends that there is no consistency to the assessed values. The land is over assessed when compared to other properties that have sold within the last year. When the subject is compared to properties on Route 41 that are larger than the subject, some with buildings, and have the same zoning, the assessed values for those properties are less than the subject. *Panagakis testimony.*
 - b) The Petitioner submitted seven property record cards (PRCs) as comparables. In addition, three sales were submitted that occurred within the last two years across from the subject. *Panagakis testimony; Petitioner Exhibits 1 and 2.*
 - c) Finally, Petitioner alleges, there is a public road at the rear of the subject parcel that should not be valued. The subject parcel is 39,010 square feet (.897 acres) as assessed, and without the road it would be 34,528 square feet. *Panagakis testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a) In looking at the Petitioner's PRCs for surrounding commercial properties, the major difference in the assessments is the fact that those properties are receiving an adjustment (influence factor) for multiple parcel combinations and the subject is not. For example, Mr. Xerogiannis has multiple properties in the same general area and is receiving influence factors. *Raskosky testimony; Respondent Exhibit 1; Petitioner Exhibit 1.*
 - b) The base rate for usable undeveloped land in neighborhood 3093 is \$127,413. Further, the subject parcel is smaller than the standard neighborhood base size at .897 acres. Thus, an adjustment to the base rate of \$6,562 was used, making a final rate for the subject of \$120,851. *Raskosky testimony & Respondent Exhibits 4 and 5.* Based on this factor to the land in that neighborhood, along with the fact that the subject is not a multiple parcel property and thus no application of an influence factor, the applied assessed value is correct. *Raskosky testimony.*
 - c) Regarding the public road, the Petitioner did not submit a survey to support the Petitioner's calculated assessable square footage for the subject parcel. *Raskosky testimony.*
 - d) Finally, the Respondent noted that although the Petitioner alleged it would sell its property for the "appraised value" on Petitioner's Form 139L, no appraisal was submitted by the Petitioner. *Raskosky testimony; Board Exhibit A.*

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 BTR #1465.
- c) Exhibits:

Petitioner Exhibit 1: Seven PRCs of comparable properties
Petitioner Exhibit 2: Three print-outs of sold properties

Respondent Exhibit 1: Form 139L petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Map
Respondent Exhibit 4: Commercial and Industrial Neighborhood Valuation Form

Board Exhibit A: Form 139L petition
Board Exhibit B: Notice of Hearing on Petition
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 the DLGF 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 at 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 Petitioner’s evidence. *See American United Life Ins. 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 479.

15. The Petitioner did not provide sufficient evidence to support Petitioner’s contentions. This conclusion is arrived at because:

- b) The Petitioner contends that the subject property is over assessed, based on similar properties in the same neighborhood being valued less. *Panagakis testimony*. To support this, the Petitioner submitted seven PRCs and three sale listings for properties on the same street as the subject property. *Petitioner Exhibit 1 and 2*.
- c) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner can prove that the subject property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E. 2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.* To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024 (holding that taxpayer failed to make a prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. V. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make a prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- d) Here the Petitioner submitted seven PRCs, which the Petitioner claimed were comparable to the subject property. *Panagakis testimony; Petitioner Exhibit 1*. However, the Petitioner provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by Petitioner 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). Further, a review of the PRCs showed that the land classifications on the allegedly "comparable" lots varied from primary land to usable undeveloped land to unusable undeveloped land. *Petitioner Exhibit 1*. Thus, Petitioner has failed to meet her burden. While the Petitioner identifies neighboring properties that are assessed lower, the Petitioner did not make any attempt to explain why or how the properties are comparable to the subject property. This falls far short of the burden that the Petitioner faces. Petitioner has only made a "de minimis factual showing" and has failed to "sufficiently link

[her] evidence to the uniform and equal argument [she] raise[s].” See *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

- e) The Petitioner also submitted three print-outs of properties that sold across from the subject property. *Petitioner Exhibit 2*. The market value-in-use of a property may be calculated by utilizing several approaches, all of which have been used in the appraisal profession. 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (incorporated by reference at 50 IAC 2.3-1-2); *Long v. Wayne Township 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.* at 469-70.
- f) However, the 2002 Real Property Assessment Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL, at 4. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal should explain how the prices for sales of comparable properties occurring at time substantially removed from the relevant valuation date relate to the value of those properties as of January 1, 1999. See *Long*, 821 N.E.2d at 471-72 (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- g) A review of this information shows that the sales Petitioner submits as “comparable” sales occurred in 2004. Further, the allegedly “comparable” properties had residential structures and are, therefore, valued as residential properties. *Id.* Thus, even had Petitioner made the factual showing required to prove that these properties were “comparable” to the subject property, under *Long*, the sales are untimely. Because Petitioner failed to relate the sales dates to the January 1, 1999, valuation date, this evidence lacks probative value in Petitioner’s appeal. Petitioner failed to raise a prima facie case that her property is over-valued.
- h) Finally, the Petitioner contends that the subject property is 34,528 square feet instead of 39,010 square feet because of a road at the back of the property. *Panagakis testimony*. According to the Petitioner, the subject parcel is assessed as 39,010 square feet (.897 acres) and if the road were removed from the property’s area, it would only be 34,528 square feet. *Panagakis testimony*. However, the Petitioner did not submit a survey, a plat map, or any other documentation to show the existence of a public road or explain how the size of the public road was determined. Therefore, Petitioner’s assertions in that regard 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).
- i) Accordingly, the Petitioner failed to meet her burden of presenting a prima facie case. Thus, the Respondent’s duty to rebut the Petitioner’s evidence was not triggered. See

Clark v. State Bd. of Tax Comm'rs, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998)
(stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

Conclusions

15. The Petitioners 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 petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.