

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00665
Petitioner: Andy's Truck & Equipment Company
Respondent: Department of Local Government Finance
Parcel #: 001-25-40-0093-0008
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 February 25, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$202,300. The DLGF sent its Notice of Final Assessment to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated March 7, 2005.
4. Special Master, Ken Daly, held the hearing on April 7, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 800 Clark Road, Gary, in Calumet Township, Lake County, Indiana.
6. The subject property is a commercial business consisting of a 5,850 square foot building on 6.82 acres of 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 \$172,900 for the land and \$29,400 for the improvements for a total assessed value of \$202,300.

9. The Petitioner requested an assessed value of \$85,000 for the land and \$29,400 for the improvements for a total value of \$114,400.
10. Andy Young, President of the Petitioner, and Everett Davis, representing the DLGF, appeared at the hearing and were sworn as witnesses.
11. At the hearing, the Special Master requested additional evidence from the Petitioner as it pertained to a wetlands issue. This request for additional evidence is entered into the record and labeled as Board Exhibit D. The Petitioner was given until April 21, 2005, to submit such evidence. The Petitioner failed to respond to this request.

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the \$27,000 per acre assessed to the subject property's land is too high. *Young testimony*. According to the Petitioner, 4.82 acres of land currently valued as usable undeveloped land should be valued as unusable undeveloped. *Id.*
 - b) The Petitioner also alleges that the property is classified as wetlands. According to the Petitioner, there is standing water, cattails, and you cannot walk on it. *Young testimony & Petitioner Exhibits 10 – 24.*
 - c) Finally, the Petitioner contends that the subject property is over-assessed compared to adjacent properties. In support of this contention, the Petitioner testified that a narrow strip of land (1.12 acres) owned by the Petitioner adjacent to the subject parcel that lies between the railroad tracks and the subject property is assessed as unusable undeveloped with an assessment of \$980. *Young testimony & Petitioner Exhibits 4 and 8.* Also, the Petitioner testified that the adjacent property located at 801 – 827 Burr Street consisting of 13.26 acres is assessed as residential excess acreage at \$4,480. According to the Petitioner, it has no wetlands. *Young testimony & Petitioner Exhibit 5.*
13. Summary of Respondent's contentions in support of assessment:
 - a) The Respondent testified that an error was made on Petitioner's assessment and submitted a corrected property record card (PRC) showing a change in the standard lot size in neighborhood #2596 from 1.00 acres to 1.72 acres. *Davis testimony & Respondent Exhibits 1, 3, and 4.*
 - b) The Respondent testified that the 4.82 acres that the Petitioner seeks to be valued as wetlands is currently receiving a negative 28% influence factor. *Davis testimony & Respondent Exhibits 1 and 4.*

- c) Finally, the Respondent asked if the Petitioner had anything from the Department of Agriculture or anyone that designated this area (4.82 acres) as wetlands. *Davis testimony.*

14. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1505.
- c) Exhibits:

Petitioner Exhibit 1: Form 11

Petitioner Exhibit 2: Notice of Final Assessment

Petitioner Exhibit 3: Copy of property report from Lake County Assessor's web page for subject property

Petitioner Exhibit 4: Copy of property report from Lake County Assessor's web page for 1.12 acres owned by the Petitioner adjoining the subject parcel

Petitioner Exhibit 5: Copy of property report from Lake County Assessor's web page for property located at 801 – 827 Burr Street

Petitioner Exhibit 6: Subject property's PRC

Petitioner Exhibit 7: Commissioners Quit Claim Deed

Petitioner Exhibit 8: Sidwell map

Petitioner Exhibit 9: The Petitioner did not submit an Exhibit 9

Petitioner Exhibits 10 – 24: Photographs of subject property

Respondent Exhibit 1: Subject property record card

Respondent Exhibit 2: Subject property photograph

Respondent Exhibit 3: Commercial/Industrial land valuation support schedules

Respondent Exhibit 4: Corrected PRC

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign-in Sheet

Board Exhibit D: Request for Additional Evidence

- d) These Findings and Conclusions.

Analysis

15. 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 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 276 (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.
16. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the land assessment on the subject property is excessive. In support of this claim, the Petitioner raised essentially three arguments that the subject was improperly valued: (1) the land should be valued as unusable undeveloped, (2) the area in question is wetlands, and (3) properties adjacent to the subject property are valued lower.

Land Classification

- b) The Petitioner contends that 4.82 acres of the subject parcel should be classified as unusable undeveloped as opposed to its current classification as usable undeveloped.¹ According to the Petitioner, this is due in part to the property being wetlands. *Young testimony & Petitioner Exhibit 6*. In support of this contention, the Petitioner submitted photographs of the subject property. *Petitioner Exhibits 10 – 24*.
- c) According to the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (the GUIDELINES), “Usable Undeveloped” land is “The amount of acreage that is vacant and held for future development. The base rate represents the January 1, 1999, value of vacant or raw land that is zoned for commercial or industrial purposes. This type of land has incurred no on-site development cost. This category does not include land utilized for agricultural purposes, as stated in IC 6-1.1-4-13.” GUIDELINES, ch. 2 at 85 and 86. Further, “Unusable Undeveloped” land is “The amount of vacant land that is unusable for commercial or industrial purposes, and not used for agricultural purposes. The base rate represents the January 1, 1999, value of undeveloped land that is zoned for commercial or industrial purposes. This land type has incurred no on-site development costs and normally represents an area of vacant land with restrictions. There may be restrictions against building because there are environmental hazards

¹ The Petitioner confirmed that he was not contending the value attributed to the 2.00 acres of land classified as primary land was in error.

on the property or because the area has been designated as a wetland area by the federal government. This category does not include land utilized for agricultural purposes, as stated in IC 6-1.1-4-13.” *Id.*²

- d) Here, the Petitioner presented no evidence that the property has been designated as a wetland by the federal government. Nor has the Petitioner offered any evidence of environmental hazards or building restrictions. Further, while the Petitioner’s photographs showed an area that was unused, that had some standing water, rubbish, trees and sparsely covered areas, the photographs are insufficient to support a finding that the property is entitled to a wetlands designation. Mere references to photographs, without explanation, do not qualify as probative evidence. *See Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329,333 (Ind. Tax Ct. 1999).
- e) The Petitioner failed to show that the subject property is undevelopable or unusable and, thus, the Petitioner failed to raise a prima facie case that the subject property’s classification as “usable undeveloped” property is in error.

Negative Influence Factor

- f) Petitioner also argues that the subject property is overvalued because the subject property is wetlands. *Young testimony & Petitioner Exhibit 6*. In support of this argument, the Petitioner submitted photographs showing standing water and damp areas on the subject property. *Petitioner Exhibits 10 – 24*.
- g) Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm’rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to 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.” PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm’rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The DLGF testified that a 28% negative adjustment factor was applied to the property. While the property’s low-lying, damp conditions may be relevant to the issue of whether a different negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value-in-use of the subject

² Wetlands designations are also found under Agricultural Land Use Types. GUIDELINES, ch. 2 at 103 – 105. However, the Petitioner presented no evidence that any agricultural activity is occurring on the subject property. Further, the Petitioner did not submit any letter from the U.S. Department of Agriculture, Farm Service Agency that designated the Petitioner’s property is classified as a wetlands.

property, or show what the actual market value of the property is. *See Talesnick*, 756 N.E.2d at 1108.

- h) Thus, the Petitioner has failed to raise a prima facie case that the subject property is over-valued because of the existence of low-lying, damp areas.

Adjacent Properties

- i) The Petitioner further alleges that two properties adjacent to the subject property have assessed values lower than the subject property. The first parcel is an additional commercial parcel owned by the Petitioner. This parcel measures approximately 50 feet by 983 feet and was given a commercial land classification of unusable undeveloped and assessed at \$980 with a negative influence factor of 90% applied. *Petitioner Exhibit 4*. The second parcel is an adjoining property to the subject property and, according to the Petitioner, has no wetlands. It is valued as residential excess acreage at a base rate of \$337.50 per acre. This parcel consists of 13.26 acres with a total assessment of \$4,480. *Id.*
- j) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its 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.*
- k) 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*, 715 N.E.2d at 1024 (holding that taxpayer failed to make 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 prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- l) In the case at bar, the Petitioner has not met its burden. While the Petitioner identifies two adjacent properties that are assessed lower, the Petitioner made little, if any, attempt to explain why or how the properties are comparable to the subject property. The Petitioner merely alleges the properties are adjacent to the subject property. This falls far short of the burden the Petitioner faces. The Petitioner has only made a “de minimis factual showing” and has failed to “sufficiently link its evidence to the uniform and equal argument it raises.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- m) Because the Petitioner did not meet its burden of presenting a prima facie case, the Respondent’s duty to rebut 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). Notwithstanding this finding, however, the Respondent testified that an error in the assessment had been made. Specifically, the Respondent alleged that the standard lot size used to determine the primary land value was incorrect. At the hearing, the Respondent submitted a PRC correcting the error and changing the primary land value from \$76,590 to \$55,450 and the total land assessment from \$172,900 to \$151,700. *See Respondent Exhibit 4*.

Conclusion

17. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. However, the Board accepts the Respondents “correction” changing the primary land value from \$76,590 to \$55,450 and the total land assessment from \$172,900 to \$151,700.

Final Determination

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