

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-01110, 45-028-02-1-4-01111, 45-028-02-1-4-01112,
45-028-02-1-4-01113, 45-028-02-1-4-01114
Petitioner: Lake County Trust #4588
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0532-0001, 008-08-15-0474-0040; 008-08-15-0474-0034,
008-08-15-0474-0033, 008-08-15-0474-0026
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 December 22, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for each subject property was \$129,700 for parcel 008-08-15-0532-0001; \$151,400 for parcel 008-08-15-0474-0040; \$136,600 for parcel 008-08-15-0474-0034; \$136,700 for parcel 008-08-15-0474-0033, and \$125,800 for parcel 008-08-15-0474-0026 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L for each parcel on April 30, 2004
3. The Board issued a notice of hearing to the parties for each parcel on June 6, 2005.
4. Special Master Peter Salvesson held a hearing on July 7, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located in Southlake Industrial Park in Ross Township.
6. The subject properties are unimproved industrial land consisting of 5 contiguous parcels having a total of 12.021 acres of land.

7. The Special Master did not conduct an on-site visit of the property
8. Assessed value as determined by the DLGF:
 - Parcel 008-08-15-0532-0001:
Land \$129,700

 - Parcel 008-08-15-0474-0040:
Land \$149,900 Improvements \$1,500 Total \$151,400

 - Parcel 008-08-15-0474-0034:
Land \$136,600

 - Parcel 008-08-15-0474-0033:
Land \$136,700

 - Parcel 008-08-15-0474-0026:
Land \$125,800

 - Total assessed value for all parcels: \$680,200.

9. Assessed value requested by Petitioner for all parcels:
Total \$300,000.

10. Persons sworn in as witnesses at the hearing:
Sharyn Rankin, Beneficiary of Trust,
Lori Harmon, Assistant Director Assessment Division, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that the assessment is incorrect because the subject properties are assessed higher than the total amount paid for the properties. The Petitioner presented purchase documents for all five (5) lots. The Petitioner paid \$350,000 for lots 8, 9, 10 and 11 in August 1999. The Petitioner paid \$45,000 for lot 12 in October 1994. *Rankin testimony; Petitioner Exhibits 3 and 4.*
 - b. The Petitioner contends that the subject properties are assessed higher than the appraised value of the subject properties. The Petitioner presented two appraisals. The appraisal from 1994 valued lots 8, 9, 10 and 11 for \$289,800. The appraisal from 2002 valued lots 8, 9, 10, 11 and 12 at \$510,000. *Rankin testimony; Petitioner Exhibits 4 and 6.*
 - c. The Petitioner contends that the physical characteristics of the subject properties, the easements and the zoning limitations imposed by the city, have a negative impact on

the potential use and value of the subject properties. *Rankin testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the Petitioner did not present executed documents to support the sales price of the subject properties. *Harmon testimony.*
 - b. The Respondent argued that the appraisal would not represent a true market value because it was prepared for estate purposes and that the current assessment is correct. *Id.*
 - c. The Respondent testified that a similarly situated parcel sold for \$120,000 an acre. *Id.*

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 County 1904,
 - c. Exhibits:

[For all Petitions]

Petitioner Exhibit 1: Summary Argument,
Petitioner Exhibit 2: Key # Comparisons,
Petitioner Exhibit 3: Purchase of Lot #12; 008-08-15-0532-0001,
Petitioner Exhibit 4: 1999 Purchase of Lots 8, 9, 10, and 11,
Petitioner Exhibit 5: 1994 Appraisal of 8, 9, 10, and 11,
Petitioner Exhibit 6: 2002 Appraisal of 8, 9, 10, 11 and 12,
Petitioner Exhibit 7: Map of Lots 8, 9, 10, 11 and 12,
Petitioner Exhibit 8: Form 139L Petitions (by Jacket),

For Petition # 45-028-02-1-4-01110

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photograph,
Respondent Exhibit 3: Incremental/Decremental Land Summary,

For Petition # 45-028-02-1-4-01111

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photograph,
Respondent Exhibit 3: Incremental/Decremental Land Summary,

For Petitions # 45-028-02-1-4-01112 & 45-028-02-1-4-01113

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2: Incremental/Decremental Land Summary,

For Petition # 45-028-02-1-4-01114

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2: Incremental/Decremental Land Summary,

Respondent Exhibit 3: Plat map,

[For each Petition]

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 governing cases 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. The Petitioner did provide sufficient evidence to support the Petitioner’s contentions. The Respondent did not rebut the Petitioner’s contentions with substantial evidence. This conclusion was arrived at because:
- a. The Petitioner provided a preponderance of evidence that the subject properties were assessed higher than market value. The Petitioner provided evidence showing purchase prices and two complete appraisals. *Petitioner Exhibits 3, 4, 5 and 6.*
 - b. The Petitioner submitted an appraisal for four (4) of the five (5) parcels, lots 8-11. The estimated value as of April 3, 1994 was \$289,800. *Petitioner Exhibit 5.* The Petitioner also submitted a Notice of Termination and/or Modification of Agreement

- to Purchase of October 17, 1994. *Petitioner Exhibit 3*. This placed the value of lot 12 at \$45,000 and the total 1994 value of the five (5) parcels at \$334,800.
- c. The 2002 Real Property Assessment Manual (MANUAL) provides 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). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
 - d. The Petitioner failed to relate the 1994 value of the subject properties to the valuation date. Therefore, this evidence alone is not probative of the value of the subject properties.
 - e. The Petitioner submitted an Offer to Purchase and the Sales Disclosure for lots 8-11 for \$350,000; the Sales Disclosure is dated August 1999. *Petitioner Exhibit 4*.
 - f. The Petitioner submitted an appraisal for all the lots as of April 25, 2002 for \$510,000. *Petitioner Exhibit 6*. While, again, this date is not the statutory valuation date, the Petitioner has shown that the value of the properties from 1994 to 2002 is lower than the total current assessed value of \$680,200.
 - g. The Respondent attempted to impugn the validity of the purchases as well as the appraisals. The Petitioner testified that every step of the 1999 purchase was examined by the courts. The appraisals were prepared by licensed appraisers and are considered sufficient evidence to support the Petitioner's contention that the current assessment is incorrect.
 - h. The Respondent testified that a sale of a similar property in the same area supported a value of \$120,000 per acre. The Respondent did not support this contention with probative evidence. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
 - i. The purchase of the four lots in 1999 establishes a value close to the valuation date and is the best indicator of value. The purchase price of \$350,000 was for 9.66 acres, or \$36,232 per acre or \$.83 per square foot.
 - j. The Petitioner also provided additional testimony as to the characteristics of the subject properties that negatively impacted the value; however, the Petitioner did not quantify the amount of the impact or show that the current assessments did not

properly consider these characteristics. *Rankin testimony*.

Conclusion

16. The Petitioner made a prima facie case. The Respondent did not sufficiently rebut the Petitioner's evidence. The Board finds in favor of Petitioner and determines that the properties be valued as noted in ¶ 15(i).

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 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>