

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-4-00362
Petitioner: Mercantile National Bank Trust #2624
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0007-0029
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 December 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$135,900 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated August 23, 2005.
4. A hearing was held on October 4, 2005, at 10:15 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located on 1716 Sheffield Avenue, Dyer, St. John Township in Lake County.
6. The subject property as shown by the DLGF record for March 1, 2002, is 2.685 acres of vacant land. As explained below, the evidence at the hearing shows that the subject property also contained a Quonset building on March 1, 2002.
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of the subject property;

As determined by the DLGF:

Land: \$135,900 Improvements: -0-

As requested by the Petitioner:

Land: \$25,000 Improvements: -0-

9. The following persons were present and sworn in at the hearing:

For Petitioner: Janet Furman, Owner
 Robert Vander Heyden, Owner

For Respondent: Sharon S. Elliott, Assessor/Auditor, DLGF

Patrick Mysliwy represented the Petitioner at the hearing, but he was not sworn as a witness.

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The assessed value is overstated in comparison with the assessments of properties located in the surrounding area. Seven (7) comparable properties within the same area as the subject property have assessed values that are lower than the assessed value of the subject property. Six (6) of the seven (7) comparable properties have the same industrial zoning classification as the subject. *Petitioner Exhibits 6-10; Mysliwy argument.*
- b. For the 2002 general reassessment, the comparable properties were assessed at rates ranging from \$11,700.00 per acre to \$60,113.00 per acre. *Petitioner Exhibit 13.*
- c. The subject property has a negative utility in the shape and size of the land. In addition, due to zoning restrictions, the subject parcel has limited or no industrial truck access from Lake Street. *Mysliwy argument.*
- d. An appraisal, with an effective date of February 17, 1994, concluded that a larger parcel, which at that time included what is now the subject property had a market value of \$6,100 per acre. *Petitioner Exhibit 5.*

- e. The subject land previously was used as a staging area for equipment that was repaired on an adjoining parcel. *Mysliwy statement*. Environmental hazards likely exist that would prevent the subject property from being usable. *Id.* The subject land therefore should be classified as unusable/undeveloped. *Mysliwy argument*.
 - f. The Petitioner requests that the subject land be assessed for a total of \$25,000. *Petitioner Exhibit 13; Mysliwy argument*.
11. Summary of Respondent’s contentions in support of assessment:
- a. The subject property is valued as industrial land with one (1) acre classified as primary and 1.685 acres classified as usable undeveloped. The subject property is assessed for a total value of \$135,900. *Respondent Exhibit 1; Elliott testimony*.
 - b. Three (3) of the purportedly comparable properties identified by the Petitioner are receiving negative influence factors of ninety percent (90%). Moreover, one of the purportedly comparable properties is classified as residential land. *Elliott testimony*.
12. Pursuant to Ind. Admin. Code tit. 52 r. 2-7-4, the Board took official notice of records from the proceedings for petition #45-032-02-1-5-00040 (hereinafter “Petition No. 00040”). That proceeding involves a related parcel, Parcel # 009-12-14-0007-0003 (hereinafter “Parcel 0003”) also owned by the Petitioner. Both the subject property and Parcel #0003 were part of the land appraised by the 1994 appraisal submitted by the Petitioner.
13. The ALJ entered the property record card for Parcel 0003 and a plat of survey prepared by Torrenga Engineering into the record as Board Exhibit D and E. These were both entered as exhibits at the hearing on Petition No. 00040. The ALJ also took notice of the testimony of Patrick Mysliwy at the hearing on Petition No. 0040 that Parcel 0003 was being improperly assessed for a Quonset building that was actually located on the subject property.
14. In accordance with 52 IAC 2-7-4, the ALJ gave the parties the opportunity to contest or rebut the materials noticed by the Board. The parties agreed the Quonset building is located on the subject property. The parties further agreed that the building is 40’ x 160’, was built in 1960 and was valued at \$7800 for March 1, 2002. The Petitioner also presented un rebutted testimony that an office building and concrete paving as shown on the plat of survey and property record card officially noticed by the ALJ were not constructed until May 2002, and therefore should not be assessed until March 1, 2003. *Furman testimony*.

Record

15. 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. 1669.
- c. Exhibits:

Petitioner Exhibit 1 – Aerial map prepared by Air Maps, Inc.,
Petitioner Exhibit 2 – Zoning map and restrictions for the subject area,
Petitioner Exhibit 3 – Plat of survey prepared by Torrenga Engineering,
Petitioner Exhibit 4 – Mortgage Location Plat prepared Fabian Engineers and Associates,
Petitioner Exhibit 5 – Appraisal report prepared by Harkin Realty Company,
Petitioner Exhibit 6 – Real property maintenance report and property record card for Gregory M. & Angela M. Furman for parcel #009-12-14-0007-0042,
Petitioner Exhibit 7 – Real property maintenance report for Town of Dyer for parcel #12-14-0008-0005,
Petitioner Exhibit 8 – Real property maintenance reports for Walter Cotton for parcel #12-14-0008-0009, #12-14-0008-0013, and #12-14-0200-0001,
Petitioner Exhibit 9 – 1995 property record cards for South Chicago Bank Trust #2201710 for parcel #009-12-14-0008-0005 and #009-12-14-0008-0007,
Petitioner Exhibit 10 – Property record card and real property maintenance report for Mercantile National Bank Trust #2624 for parcel #009-12-14-0007-0003,
Petitioner Exhibit 11 – 2002 property record card for Mercantile National Bank Trust #2624 for parcel #009-12-14-0007-0029,
Petitioner Exhibit 12 – Aerial map of the subject area,
Petitioner Exhibit 13 – Summary of Petitioner’s argument,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject,
Respondent Exhibit 3 – Incremental/Decremental Land Pricing in Lake County, Land Recommendations, and Commercial and Industrial Neighborhood Valuation Form for neighborhood #01298,
Respondent Exhibit 4 – Plat maps of the subject area,

For the Board:

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Property record card for Mercantile National Bank Trust #2624
for parcel #009-12-14-0007-0003,
Board Exhibit E – Plat of survey prepared by Torrenga Engineering,

- d. These Findings and Conclusions.

Analysis

16. The most applicable 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 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.

Land Value

17. The Petitioner did not provide sufficient evidence to support its contentions that the assessment of the subject land is in error. This conclusion was arrived at because:
- a. The Petitioner relies upon essentially four grounds to support its claim. First, the Petitioner contends that the subject property was part of a larger parcel that was appraised for only \$6,100 per acre in 1994. Second, the Petitioner contends that seven (7) comparable properties are assessed for less than the subject property. Third, the Petitioner contends that several factors, such as the size and shape of the subject property and limitations on truck access, negatively impact the market

value of the subject property. Finally, the Petitioner contends that the subject property should be classified as unusable/undeveloped land.

- b. The Board turns first to the 1994 appraisal submitted by the Petitioner. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the 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). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals conducted in accordance with generally accepted appraisal techniques, to contest a property’s assessment. *See* MANUAL at 5; *see also Kooshtard Property VI, LLC v. White River Twp. Assessor*, No. 49T10-0412-TA-57, 2005 Ind. Tax LEXIS 76, at *5 (Ind. Tax Ct. Nov. 3, 2005). An assessor may rely on the same type of evidence to support an assessment. *See Kooshtard Property VI*, 2005 Ind. Tax LEXIS at * 11, n.6.
- c. Nonetheless, a party cannot rely exclusively on conclusory opinions to meet its burden of proof in a tax appeal to the Board. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). Thus, even the opinion of a certified appraiser may lack probative value if unsupported by sufficient explanation as to the basis underlying that opinion. *See Inland Steel Co. v. State Bd. of Tax Comm’rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- d. The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value 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 value estimated by an appraisal of the subject property relates the property’s market value-in-use 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 a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- e. The appraisal submitted by the Petitioner is not probative of the subject property’s true tax value for a number of reasons. First, the appraisal is largely conclusory concerning the basis underlying its opinion that the land being appraised had a market value of \$6,100 per acre. While the appraiser indicated that he investigated sales of thirty-five (35) properties in Northwest Indiana in reaching his opinion, the appraisal does not contain any information concerning the properties upon which he relied or their respective sale prices. *Petitioner Exhibit at 12.*

- f. Moreover, the Petitioner did not explain how the 1994 appraised value relates to the subject property's market value in use as of January 1, 1999. The Petitioner argued that an appraisal performed within five (5) years of the valuation date of January 1, 1999, is "acceptable" under the relevant regulations. *Mysliwy argument*. The Petitioner, however, did not cite to any authority for that proposition. As explained above, the Tax Court in *Long* held that such an appraisal lacks probative value absent some explanation of how it relates to the market value-in-use of the subject property as of January 1, 1999. *Long*, 821 N.E.2d at 471.
- g. The Petitioner next claims that the assessment is excessive in light of several factors that affect the market value of the property, including the size and shape of the subject property, limitations on truck access and potential environmental concerns. The Petitioner, however, did not provide any evidence to quantify the effect of those factors on the market value-in-use of the subject property. The Petitioner's mere conclusory assertions that those factors negatively affect the market value of the subject property are insufficient to establish a prima facie case. See, *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998)(holding that taxpayer's conclusory statements regarding construction materials and quality of workmanship did not constitute probative evidence concerning the appropriate grade to be assigned to an improvement).
- h. The Petitioner next claims that the assessment of the subject property is excessive in comparison to the assessments of seven (7) other properties from the same general area as the subject property
- i. A taxpayer must do more than simply assert that two properties are comparable in order to establish that they should be valued similarly. *Blackbird Farms Apartments, LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Thus, for example, a taxpayer should present probative evidence to show that the properties are similar in terms of things such as size, shape, location, topography, use and accessibility. *Blackbird*, 765 N.E.2d at 714. A taxpayer must also present probative evidence to demonstrate how any significant differences between the properties affect their relative values. See *Long* 821 N.E.2d at 471.
- j. The Petitioner provided little explanation regarding how five (5) of the seven (7) properties compare to the subject property. With regard to the properties that the Petitioner identified as comparables 3-7, the Petitioner simply asserted that such properties were located within approximately ½ mile of the subject property and that they are within the same zoning classification as the subject property. *Mysliwy argument*. This falls short of the type of comparison contemplated under *Long* and *Blackbird*. Moreover, simply asserting that properties are within ½ mile

of each other does little to establish the potential impact of the location of the relative values of the two parcels.

- k. In addition, with regard to comparable 7, the Petitioner submitted values from the 1998 assessment of that property. *Petitioner Exhibits 9, 13*. That information is irrelevant to the appropriate assessment of the subject property for 2002. Each assessment and each tax year stand alone, and evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).
- l. Comparables 1 and 2 present a slightly different question. Together with the subject property, comparables 1 and 2 previously comprised the larger parcel that was the subject of the 1994 appraisal submitted by the Petitioner.
- m. The property record card and other information submitted by the Petitioner for comparable 2, however, indicate that comparable 2 contains a residential dwelling and receives a homestead credit. *Petitioner Exhibit 6*. Given the difference in use between that property and the subject property, the Board finds that the two properties are not comparable.
- n. Comparable 1, by contrast, is assessed for industrial use. Moreover, it is immediately adjacent to the subject property and is generally similar in shape to the subject property. *Petitioner Exhibit 12*. Given the close relationship between the two properties, the Petitioner has presented probative evidence from which one may infer that the properties are comparable in most respects relevant to a determination of market value-in-use.
- o. Nonetheless, there is one significant difference between the two properties – comparable 1 is significantly larger than the subject property (5.158 acres v. 2.865 acres). As explained above, the Petitioner was required to explain how that difference affects the relative values of the two properties. *Long*, 821 N.E.2d at 471. Although it did not explicitly address that question, the Petitioner apparently believes that the difference should be reflected by simply applying the flat rates per acre for primary land (\$60,113.00) and useable undeveloped land (\$40,875) used to assess comparable 1 to the subject property.
- p. Thus, the Petitioner arguably presented some evidence, which if unrebutted, would establish that the assessment of one of the two properties is incorrect. This does little, however, to establish which of the two assessments the incorrect one is. Thus, the Petitioner did not establish a prima facie case demonstrating either that the current assessment is incorrect or what the correct assessment should be.

- q. Moreover, the Respondent presented evidence to rebut the Petitioner's comparison of the subject property to comparable 1. The Respondent contends that its method of assessment was based upon the premise that properties of different sizes do not sell for the same per unit rate. Thus, while larger properties sell for more money than do otherwise comparable properties that are smaller, the larger properties do not sell for the same per unit rate as the smaller properties. *Elliot testimony; Respondent Exhibit 3*. The price per square foot or per acre increases as lots decrease in size. *Id.* The Respondent therefore applied "incremental and decremental" rates in assessing industrial properties that differed in size from the one (1) acre standard lot upon which it calculated its standard base rates. *Id.* Thus, the Respondent assessed lots that were larger than one (1) acre at a decremental rate that was lower than the standard base rate, and it assessed lots that were smaller than one (1) acre at an incremental rate that was larger than the standard base rate. *Id.*
- r. It is possible to dispute whether this accurately reflects the behavior of the market for industrial property in the subject property's neighborhood. The Petitioner, however, did not present any probative evidence on that point. Instead, the Petitioner asserted that the subject property was not assessed in the same manner as comparable properties were assessed. The Respondent demonstrated that, for purposes of its assessment methodology, simply multiplying parcels of a different size is not an appropriate manner by which to adjust for the difference in size between the parcels. There is no indication that the Respondent did not apply this methodology uniformly and equally.
- s. Finally, the Petitioner contends that the subject property should be assessed as unusable/undeveloped land. The Petitioner bases this contention on the unsworn statements of its attorney that the subject property previously had been used for the staging of construction equipment while it was waiting to be repaired on the adjoining parcel (comparable 1). *Mysliwy statement*.
- t. The statements of the Petitioner's attorney in that regard were conclusory and speculative. Thus, had Mr. Mysliwy been sworn under oath, his statements still would have been insufficient to establish that the Respondent improperly classified the subject land. The Board recognizes that classification of one (1) acre of the subject land as primary land appears somewhat incongruous with the fact that the land had no improvements other than a Quonset building as of March 1, 2002. Nonetheless, the Petitioner did not present any evidence concerning the use of the subject land as of the date of the assessment. Thus, the Board does not have sufficient evidence upon which to find error in the Respondent's classification of the subject property.

Improvements

18. As set forth above, the parties agreed that 40' x 160' Quonset building is currently assessed on Parcel 0003, although it is actually located on the subject property. The Board has issued a separate decision regarding the appeal of the assessment of Parcel 0003, pursuant to which the Board has ordered that the Quonset building be removed from the assessment of that parcel. That building should be assessed as part of the subject property.

Conclusion

Land Value

19. The Petitioner failed to make a prima facie case regarding the land portion of the assessment of the subject property. The Board finds in favor of the Respondent.

Improvements

20. The preponderance of the evidence supports that a 40' x 160' Quonset building described in Board Exhibit D was located on the subject property as of March 1, 2002. That Quonset building should be assessed to the subject property.

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>.