

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00024
Petitioner: Thomas G. Pruzin
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0023-0034
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 November 18, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$664,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 21, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 6350 Broadway (rear), Merrillville, Indiana.
6. The subject property is a parcel of land comprised of 6.731 acres as shown on property record card 008-08-15-0023-0034.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land: \$664,700 Improvements: 0
9. Assessed Value requested by Petitioner:
Land: \$80,000 Improvements: 0

10. The following persons were present and sworn in at hearing:
For Petitioner: Thomas G. Pruzin, Owner
For Respondent: Gary Utt, Staff Appraiser, CLT

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioner contends that sales of commercial property in his area do not support his assessed land value. The Petitioner has provided purchase agreements, sales listings, and written acknowledgment of sale price by a buyer to support his position. *Pruzin testimony.*
 - b) The Petitioner also contends that due to a rerouting of a creek in the 1960s that ran through his land the Petitioner now has an estimated two-acre area of "wet lands" that cannot be built on. *Pruzin testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a) Respondent contends that the sales information the Petitioner submitted as evidence does not represent the market. *Utt testimony.*
 - b) The Respondent contends that an Income Approach to Value supports the current assessed value of record for this parcel along with the contiguous land and improvements that are under appeal on Petition #45-028-02-1-4-00025. *Utt testimony.*
 - c) The Respondent contends that, because a Lake County "land order" was created whereby an analysis of land sales was conducted by neighborhood, type and use and appropriate influences for lot size, topography, use and multiple parcel ownership were given and the land order was offered for public review, the Lake County land values are consistent, fair and reasonable. *Utt testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake County #207.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Summary of Petitioner's Arguments
 - Petitioner Exhibit 3: Aerial View of Property
 - Petitioner Exhibit 4: Land Purchase Agreement for 6755 Broadway
 - Petitioner Exhibit 5: Statement from Lasser & Associates for 6501 Broadway
 - Petitioner Exhibit 6: Statement from Lasser & Associates for 6490 Broadway
 - Petitioner Exhibit 7: Times News Article on Sale of K of C Building
 - Petitioner Exhibit 8: Merrillville Conservancy Letter

 - Respondent Exhibit 1: Form 139L Petition 45-028-02-1-4-00024
 - Respondent Exhibit 2: Form 139L Petition 45-028-02-1-4-00025
 - Respondent Exhibit 3: Subject property record for 00024

Respondent Exhibit 4: Comparable record cards/Sales questions

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 not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner’s contention was that the subject property was not assessed correctly when compared to several commercial property sales within his immediate neighborhood.
 - b) The Petitioner presented a letter from the Merrillville Conservancy (*Pet’r Ex. 8*) in an attempt to support their contention. The letter stated that the Merrillville Conservancy purchased a property at 6251 Broadway in October of 1997 at a cost of \$315,909. The letter also states the property purchased consists of 17.21 acres.
 - c) The Petitioner did not present any information establishing the comparability of the subject property with the property purchased by the Merrillville Conservancy. The Petitioner did not discuss the topography, physical features, or the proximity of the property purchased by the Merrillville Conservancy and the subject property.¹ The Board finds the letter (*Pet’r Ex. 3*) to be of little probative value. The taxpayer must explain how the properties are comparable. *Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
 - d) The Petitioner also presented a purchase agreement (*Pet’r Ex. 4*) relating to 12 acres of land and five Residential lots located at 6755 Broadway. The purchase agreement indicates the land was sold for \$274,250.
 - e) Again, the Board finds this exhibit to be of little probative value. The Petitioner did not present any evidence showing how the property identified in the purchase

¹ The Petitioner testified that the properties were on the same block, but no other information regarding the location of the properties was presented.

- agreement was comparable to the subject property. *Blackbird Farms*, 765 N.E.2d at 715.
- f) The Petitioner presented a real estate listing (*Pet'r Ex. 5*) from McColly Real Estate. The listing was for a property located on Broadway. There is a notation on the form that it is "Across St." *Pet'r Ex. 5*. This property was listed for \$995,000 and was for five acres of land and a building with 21,654 square feet. There is a notation, hand written, on the document that it sold on October 9, 2003 to Hendricks Dev. For \$500,000. *Pet'r Ex. 5*.
 - g) The Board finds this exhibit to be of little probative value. The Petitioner did not establish how the property is comparable to the subject property. *Blackbird Farms*, 765 N.E.2d at 715. Furthermore, the Petitioner did not attempt to show how the building on the property was comparable to the improvement located on the subject property.
 - h) The Petitioner presented an advertisement (*Pet'r Ex. 6*) for an auction of a property located at 6490 Broadway. This property is a 9-acre site containing a free-standing 78,000 square foot retail building. According to notations made on the advertisement the building was originally listed for \$1,200,000 and was last listed at \$600,000. *Pet'r Ex. 6*. The notations also indicate the building sold for \$406,850 as a result of the auction. *Id.*
 - i) Again, the Board finds this to be of little probative value. The Petitioner failed to show how the subject property is comparable to the property being sold at auction. *Blackbird Farms*, 765 N.E.2d at 715. It is the duty of the taxpayer to explain how the properties are comparable.
 - j) The Petitioner presented a newspaper article from The Times (*Pet'r Ex. 7*). This article states that the Knights of Columbus sold a 12,000 square foot building and 10 acres of land for \$340,000. The article states the property sold was located at 530 W. 61st Ave.
 - k) The Petitioner failed to establish the comparability of the subject property with the property identified in Petitioner's Exhibit 7. The Petitioner did not present an analysis comparing the topography of the land, amenities, and condition of the buildings, quality of construction of the buildings. It is the Petitioner's duty to establish the comparability of the properties. *Blackbird Farms*, 765 N.E.2d at 715.
 - l) The Petitioner stated that the exhibits presented show the land should be assessed between \$18,000 and \$20,000 an acre. *Pruzin testimony*. However, the evidence presented does not establish how the land of the subject property is comparable to the land of the purported comparables.²
 - m) Petitioner's Exhibit 2 is a summary of the Petitioner's arguments. The Petitioner contends that the fair market value of the subject property is \$80,000. However, the Petitioner never explains how this fair market value was determined. The Petitioner has the burden to show both the current assessment is incorrect and what the correct assessment is. *Meridian Towers*, 805 N.E.2d at 478.

² The Board did not analyze whether the evidence presented establishes a rate of \$18,000 to \$20,000 per acre for the properties submitted. In fact, three of the properties (*Pet'r Exs. 5, 6, and 7*) included buildings. There was no allocation of value on these properties between land and improvements in the exhibits presented.

- n) Petitioner also testified that approximately two acres of the land should probably be classified as a wetland. *Pruzin testimony*. In Petitioner’s Exhibit 2, the Petitioner stated: “Turkey Creek originally flowed through our property and the car dealership next door had the Creek re-routed. You can check with the Army Corps of Engineers.” *Pruzin testimony*. The Petitioner did not present any probative evidence supporting the claim that any portion of the land should be classified as wetlands. *See Miller Structures, Inc., v. State Bd. of Tax Comm’rs*, 748 N.E.2d 943, 947 (Ind. Tax Ct. 2001) (“to establish a prima facie case, the taxpayer must offer probative evidence concerning the alleged assessment error”).
 - o) The Petitioner’s statements are not probative in determining whether the subject property is part of a wetlands area. The Petitioner did not present any evidence indicating a portion of the subject property should be classified as a wetlands area. Petitioner’s statement that “[y]ou can check with the Army Corps of Engineers[,]” is not probative. The Petitioner must present the evidence he thinks supports his contentions. It is not the Board’s duty to gather the evidence for the Petitioner.
 - p) The Petitioner failed to establish a prima facie case that the current assessment is in error. The Petitioner did not establish a prima facie case supporting the contended fair market value of \$80,000.
16. The Petitioner failed to establish a prima facie case. Accordingly, the burden never shifted to the Respondent to rebut the Petitioner’s evidence. However, the Board will briefly summarize the Respondent’s evidence.
- a) The Respondent contends the assessment is correct. The Respondent presented property record cards for properties it contended support the assessment. *Utt testimony*. These properties contained anywhere from 25,047 square feet to over 18 acres.
 - b) The Respondent questioned the Petitioner about the lease payment. The Petitioner testified that he leases the building back to himself for \$9,000 per month. *Pruzin testimony*. The Petitioner further stated that this was for estate planning purposes and that the rate was above market value. *Id.*
 - c) The Respondent testified that this equated to a \$10.20 per square foot lease rate. *Utt testimony*. The Respondent then stated that he used an \$8.00 per square foot lease rate, a 5% vacancy rate, a 20% expense rate, and a 10% capitalization rate, which provided an Income Approach value of \$1,416,700. *Id.*³ The total assessed value of the subject property and Petitioner’s other property, which is also under appeal (45-028-02-1-4-00024), is \$1,346,600.

³ The Board declines to determine whether the result of the method used by the Respondent establishes a fair market value-in-use of the subject property. The Petitioner did not establish a prima facie case, therefore the burden never shifted to the Respondent.

Conclusion

17. The Petitioner failed to make a prima facie case as to the assessed value of this parcel. The Board finds in favor of Respondent, there is no change in the assessment of 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 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.