

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-026-02-1-4-00593
45-026-02-1-4-00602
Petitioner: Bank Calumet Trust #P4649
Respondent: The Department of Local Government Finance
Parcel #s: 007-26-35-0132-0002
007-26-35-0132-0001
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 for both parcels. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$556,800 for parcel 007-26-35-0132-0002 (Parcel 2) and \$63,700 for parcel 007-26-35-0132-0001 (Parcel 1) and notified the Petitioner on March 31 and April 1, 2004.
2. The Petitioner filed a Form 139L petition on both parcels on April 29, 2004.
3. The Board issued a notice of hearing for both parcels to the parties dated September 8, 2005.
4. Special Master Kathy J. Clark held a hearing at 11:00 A.M. on October 13, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 1014 165th Street and 1041 Ridge Street, Hammond, in North Township.
6. The subject properties consist of 3.526 acres of commercial land with miscellaneous structures operating mostly as a lumberyard with a small portion of one building rented to another commercial user.
7. The Special Master did not conduct an on-site visit of the properties.

8. The DLGF determined the assessed value of Parcel 2 to be \$401,700 for the land and \$155,100 for the improvements, for a total assessed value of \$556,800 and the assessed value of Parcel 1 to be \$61,500 for the land and \$2,200 for the improvements, for a total assessed value of \$63,700.
9. The Petitioner requested a total assessment for both parcels of \$475,000.
10. Thomas Rueth, Managing Member, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessments:
 - a) The Petitioner contends that the subject properties are over-valued. In support of this contention, the Petitioner submitted a Restricted Appraisal Report prepared by Mr. David R. Davies of Allstate Appraisal that established the value of the parcels under appeal to be \$475,000 as of February 17, 2002. *Petitioner Exhibit 1; Rueth testimony.* According to the Petitioner, Allstate Appraisal has moved their offices more than once since the time of the Restricted Appraisal and was not able to find the back-up documentation to the appraisal when it was requested by the Petitioner. *Rueth testimony.* However, the Petitioner argued, the \$475,000 value was derived from the work of an appraiser who has attained the highest professional designation (MAI) afforded someone in the industry. *Rueth testimony.*
 - b) The Petitioner further alleged that Lake County adjusted the 2003 land value for Parcel 2 to \$296,000 and kept the improvement value on this parcel at \$155,100. Similarly, Parcel 1 was given an adjusted land value of \$26,900 and the improvement value was kept at \$2,200. According to the Petitioner, Lake County appeared to be reducing the land to come close to the appraisal value of \$475,000. *Rueth testimony.*
 - c) In addition, the Petitioner alleged that there were conditions on the subject properties that affected the value of those properties. First, according to the Petitioner, Parcel 1 was sold sometime in the past to the City of Hammond for an incinerator site. *Rueth testimony.* However, after a few years the city tore down the incinerator leaving only a huge concrete base. *Id.* The Petitioner contends that there is no way to develop this parcel because the cost to remove the slab is prohibitive. *Rueth testimony.* Further, the sewers in the area back up in heavy rains causing flooding on parts of the subject parcels and other surrounding commercial businesses. *Rueth testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the subject properties are priced using the Incremental/Decremental pricing method. *Elliott testimony.* According to the Respondent, Parcel 1 is priced as useable/undeveloped commercial land and Parcel 2 is priced as prime commercial land. *Id.* The Respondent testified that prime land is

identified as any land on which buildings are located, or is regularly used for parking, storage, or in any way in support of a commercial business. *Respondent Exhibits 1 and 3; Elliott testimony.*

- b) The Respondent further objected to the Petitioner's appraisal. According to the Respondent, the Allstate Appraisal does not explain how the \$475,000 value was derived. Moreover, according to the Respondent, no indication is given in the report as to what appraisal approaches were used to arrive at the \$475,000 value nor what parts of that total value the appraiser has assigned to each parcel, the land of each parcel, or the structures sitting on each parcel. *Petitioner Exhibit 1; Elliott testimony.*

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 Tape 1888,
- c) Exhibits:

Petitioner Exhibit 1: Allstate Appraisal Restricted Report for the subject properties as of February 17, 2002,

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photographs,
Respondent Exhibit 3: Incremental/Decremental sheets and other land summaries,
Respondent Exhibit 4: Plat map,

Board Exhibit A: Form 139L petitions,
Board Exhibit B: Notices of Hearing,
Board Exhibit C: Hearing 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 failed to provide probative evidence sufficient to establish a prima facie case. This conclusion was determined due to the following:

Appraised Value

- a) The Petitioner contends the total assessed value for both parcels should be \$475,000. In support of this contention, the Petitioner presented an appraisal that estimated that value for both parcels to be \$475,000 as of February 17, 2004. *Petitioner Exhibit 1*.
- b) Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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) (hereinafter “MANUAL”). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- c) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL. 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. *Id.*
- d) Here, the Petitioner presented a Restricted Appraisal prepared by David R Davies of Allstate Appraisal that establishes a market value for both parcels, including land and buildings, at \$475,000 as of February 17, 2002. While a Restricted Appraisal may be simply a value conclusion, all information as to how that value was derived must be available to those parties interested in reviewing it. The Petitioner was unable to obtain that documentation for either the informal hearing or this administrative hearing. With the limited information contained in the appraisal, the Respondent had no basis for cross examination. The Petitioner was unable to explain the basis for the \$475,000 value or the method by which such a value was determined. Further, the Petitioner presented no evidence as to the value of Parcel 2 or the value of Parcel 1

individually. Consequently, the Board finds that the Appraisal is little more than an opinion of value and is not probative of the subject property's market value-in-use. *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). In addition, the Appraisal failed to value the subject property as of the January 1, 1999, valuation date as required by *Long*. Therefore, the Petitioner has failed to raise a prima facie case that the subject property is over-valued on the basis of the Appraisal.

2003 Assessed Value

- e) The Petitioner further testified that the assessment was changed by the local officials for 2003. *Rueth testimony*. Presumably the Petitioner contends that this is evidence that the property is over-valued for the 2002 assessment. The Petitioner is mistaken in its reliance on the 2003 assessment. Each assessment and each tax year stand alone. *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)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*

Negative Influence Factor

- f) Finally, the Petitioner alleges that there are conditions on the subject properties that affect the value of those properties including the concrete incinerator base and sewer back ups. *Rueth testimony*.
- g) Generally, land values in a given neighborhood are 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. 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). While the existence of a large concrete slab left over from a municipal incinerator or sewer back-ups on the property may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject property, or show what the actual market value of the properties are. *See Talesnick*, 756 N.E.2d at 1108.

- g) The Petitioner failed to establish a prima facie case. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to establish a prima facie case. The Board finds in favor of the 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 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/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.