

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-041-02-1-4-00286
45-041-02-1-4-00287
45-041-02-1-4-00288
Petitioner: Robert T. Neises
Respondent: Department of Local Government Finance
Parcel #s: 003-23-09-0461-0003
003-23-09-0451-0002
003-23-09-0451-0004
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. Informal hearings were held in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined the Petitioner's property tax assessments for the subject properties were \$190,400 for Parcel #003-23-09-0461-0003 (Parcel 3); \$219,500 for Parcel #003-23-09-0461-0002 (Parcel 2); and \$623,900 for Parcel #003-23-09-0461-0004 (Parcel 4).
2. The Petitioner filed Form 139Ls on April 12, 2004.
3. The Board issued notices of hearings to the parties dated March 3, 2005.
4. Special Master, Ken Daly, held the hearing on April 6, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 1640 E. North Street, Crown Point, in Center Township, Lake County, Indiana.
6. The subject properties are 2.389 acres of secondary industrial land with fencing (Petition #45-041-02-1-4-00286, Parcel 3); 3.049 acres of vacant usable undeveloped industrial land (Petition #45-041-02-1-4-00287, Parcel 2); and 2.238 acres of primary, secondary and unusable undeveloped industrial land with buildings (Petition #45-041-02-1-4-00288, Parcel 4).

7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed values of the subject properties to be \$167,000 for the land and \$22,900 for the improvements for a total assessed value of \$190,400 on Parcel 3; \$219,500 for the land on Parcel 2; and \$187,000 for the land and \$436,900 for the improvements for a total assessed value of \$623,900 on Parcel 4. There are no improvements on Parcel 2.
9. On the Form 139L petitions, the Petitioner did not indicate what values he was requesting. On each of his petitions the Petitioner noted that there was a “pending appraisal.”
10. Robert T. Neises, the property owner, and Everett Davis, representing the DLGF appeared at the hearing and were sworn in as witnesses. *See* Board Exhibit C. The Petitioner was also represented by Douglas Kvachkoff, Attorney for Petitioner, at the hearing.¹
11. At the hearing, the Respondent submitted additional property record cards (PRCs) for Petition #45-041-02-1-4-00288, parcel #003-23-09-0451-0004. The additional PRCs completed the set of PRCs submitted by the Petitioner attached to the appraisal for this parcel. The Petitioner reviewed these cards and agreed to their submission. *See Respondent Exhibit 4.*

Issues

12. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the assessed values of the properties are incorrect. *Neises testimony; Kvachkoff argument.* The Petitioner testified that the three properties were purchased separately. According to the Petitioner, two of the parcels were purchased in the early 1980’s and one in 1987. All were purchased as bare land. *Neises testimony.* For the Parcels 3 and 4, the Petitioner testified that he paid \$40,000 for both. *Id.* For the Parcel 2, the Petitioner testified he paid \$21,000. *Id.*
 - b) According to the Petitioner, the improvements were added after he purchased the parcels. *Id.* Parcel 3 only has fencing. The Petitioner testified that he paid about \$8,000 for the fencing. *Id.* Parcel 4 has a mini-warehouse complex. However, the Petitioner was unable to recall the cost of the improvements. *Id.* Finally, the Petitioner testified that there are no improvements on Parcel 2. *Id.*

¹ The Board’s procedural rules, 50 IAC 3-3-2(b), state, “[o]ther authorized representatives, including attorneys, must file a notice of appearance with the board, stating that the party has authorized the representative to appear on the party’s behalf.” The Special Master requested the submission of a Notice to Appear from Mr. Kvachkoff. Mr. Kvachkoff was given until April 13, 2005, to submit such evidence. Mr. Kvachkoff responded in a timely manner on April 9, 2005. The Request for Additional Evidence and Mr. Kvachkoff’s response are entered into the record and labeled as Board Exhibit D and Petitioner Exhibit 7, respectively.

- c) In support of his contention that the properties are over-assessed, the Petitioner submitted an appraisal for each of the three properties. *Petitioner Exhibits 2, 4, and 6*. According to the Petitioner, the appraisals accurately reflect the value of the parcels. *Neises testimony*. Further, the Petitioner asserted that the appraisals were in line with the neighbor's assessed values. *Id.* However, the Petitioner argued, the assessed values of the subject properties are much higher than the appraisals. *Id.*
- d) The Petitioner finally noted that the photograph on Respondent's Exhibit 3 for Petition #45-041-02-1-4-00288, Parcel 4, is not the Petitioner's building but a structure on the neighbor's property. *Neises testimony*.

13. Summary of Respondent's contentions in support of assessment:

- a) The Respondent argues that the appraisal does not value the property as of the proper date. According to the Respondent, the effective date of the appraisals is March 1, 2002, and the valuation date should be January 1, 1999. The Respondent contends that the appraisals would need to be trended to January 1, 1999. *Davis testimony & Petitioner Exhibits 2, 4, and 6*.
- b) The Respondent further argued that the appraisals were not reliable. First, for all of the parcels, the appraisals do not identify what comparable properties were used to estimate the value of the subject properties. *Davis testimony*. Also, the appraisal does not identify what adjustments were made on the properties. *Id.* Thus, according to the Respondent, there is no evidence of the similarity between the subject properties and the properties on which the appraiser relied for her valuation. *Id.*
- c) The Respondent similarly objected to the appraisals' valuation of improvements on Parcels 3 and 4. According to the Respondent, the appraiser identified physical depreciation, internal, external and functional obsolescence, but does not identify the type or amount of depreciation she applied to each improvement. *Davis testimony & Petitioner Exhibits 4 and 6*. Further, the Respondent argued, there were no computations submitted by the Appraiser. *Id.*
- d) In response to questioning by Petitioner's counsel, the Respondent testified that prices in 2002 would be higher than prices in 1999 in that area. *Davis testimony*. Thus, the Respondent agreed, the appraisal value for 2002 would be the "upper limit" of the market value in 1999. *Id.*

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 #1486.
- c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition for Petition #45-041-02-1-4-00287,
Parcel #003-23-09-0451-0002
Petitioner Exhibit 2: Appraisal for Petition #45-041-02-1-4-00287,
Parcel #003-23-09-0451-0002
Petitioner Exhibit 3: Form 139L Petition for Petition #45-041-02-1-4-00286,
Parcel #003-23-09-0451-0003
Petitioner Exhibit 4: Appraisal for Petition #45-041-02-1-4-00286,
Parcel #003-23-09-0451-0003
Petitioner Exhibit 5: Form 139L Petition for Petition #45-041-02-1-4-00288,
Parcel #003-23-09-0451-0004
Petitioner Exhibit 6: Appraisal for Petition #45-041-02-1-4-00288,
Parcel #003-23-09-0451-0004
Petitioner Exhibit 7: Notice of Appearance

Respondent Exhibit 1: Subjects PRCs
Respondent Exhibit 2: Form 139L Petitions
Respondent Exhibit 3: Subject Photograph for Petition #45-041-02-1-4-00288,
Parcel #003-23-09-0451-0004
Respondent Exhibit 4: Additional PRCs for Petition #45-041-02-1-4-00288,
Parcel #003-23-09-0451-0004

Board Exhibit A: Form 139L Petitions
Board Exhibit B: Notice of Hearings on Petitions
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 assessments on the subject parcels are incorrect. *Neises testimony*. In support of this claim the Petitioner submitted three separate appraisals in summary form for the three properties. The appraisals estimated the value subject properties as of 2002. *See Petitioner Exhibits 2, 4 and 6*.
 - b) The 2002 Real Property Assessment 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 similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).²
 - c) However, in order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of properties being examined. 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* at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to those of purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect the relative market values-in-use. *Id. See also Hoogenboom-Nofziger*, 715

² 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 at 4. 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.* Here, while the Petitioner's appraisals did not relate the 2002 appraisal value to 1999, the Respondent, in response to questioning, testified that property values increased from 1999 to 2002. *Davis testimony*. Thus, as Petitioner argued, the 2002 appraised value would represent the upper limit of the properties' value. Stated another way, if the appraisals are valid appraisals, the 1999 market value would not exceed the 2002 appraisal value. To the extent, however, that the Petitioner presented the purchase price of the properties as evidence of the market value of those properties, those purchases were too remote in time to the assessment date and no trending evidence was presented sufficient to determine what the 1980 and 1987 purchase prices would equate to in 1999.

N.E.2d at 1024 (holding that taxpayer failed to make a 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); *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).

- d) Here, the Petitioner's appraisals are little more than an opinion of value. While Ms. Speichert purports to do a comparable sales approach, she does not identify any specific property to which she compared the subject properties.³ Nor do the "appraisals" identify the adjustments Ms. Speichert made to comparable properties to estimate the subject properties' market value. Further, the "appraisals" do not state whether Ms. Speichert used generally accepted appraisal methods to arrive at her opinion of value. Consequently, there is no evidence of "comparability" between the properties. Similarly, with regard to her "cost approach" valuations, Ms. Speichert, failed to submit any information as to what type of depreciation applied to the improvements and how the depreciation was determined. *Davis testimony*. Finally, we note that Ms. Speichert uses vacant land to determine the "market value" of the two improved properties (Parcel 3 and 4). We have previously held that for vacant property to be comparable to improved lots to determine land value, the vacant property must be developed for improvement. Thus, all utilities must be in place and "comparable" vacant lots must have the same or similar access, sidewalks and street lighting as the subject property. Alternatively, the Petitioner must provide evidence of the costs of such improvements to the vacant lots to make the land comparable. Further, the Indiana Supreme Court has held that whether properties are "comparable" depends on many factors including size, shape, topography, accessibility and use. *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Thus, we find that the appraisals are 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).
- e) The Petitioner also alleges that the appraised values were "in line" with the assessment on neighboring properties. However, the Petitioner presented no evidence of such neighboring properties or their assessments. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); *and Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).

³ We also note that Ms. Speichert is a certified *residential* appraiser purporting to appraise commercial property.

- f) The Board, therefore, determines that the Petitioner has failed to raise a prima facie case that the assessments on the subject properties are in error. Where the Petitioner has not supported his 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Petitioner failed to make 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: **February 1, 2006**

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>.