

INDIANA BOARD OF TAX REVIEW

**Final Determination
Findings and Conclusions
Lake County**

Petition #s

45-026-02-1-5-00929	45-026-02-1-5-00937
45-026-02-1-5-00930	45-026-02-1-5-00938
45-026-02-1-5-00931	45-026-02-1-5-00939
45-026-02-1-5-00932	45-026-02-1-5-00940
45-026-02-1-5-00933	45-026-02-1-5-00941
45-026-02-1-5-00934	45-026-02-1-5-00942
45-026-02-1-5-00935	45-026-02-1-5-00943
45-026-02-1-5-00936	

Petitioner: Bank Calumet Trust P-4338

Respondent: Department of Local Government Finance

Parcel #s

007263500130047	007263500130046
007263500130005	007263500130048
007263500130004	007263500130008
007263500130003	007263500130007
007263500130002	007263500130007
007263500130001	007263500130042
007263500130044	007263500130043
007263500130045	

Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matters 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 February 3, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject properties is \$106,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L petitions on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.

4. A hearing was held on April 6, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject properties are vacant lots designated for multi-family residential development located at 3698 165th Street, 3624 165th Street, 3622 165th Street, 3620 165th Street, 3618 165th Street, 3616 165th Street, 3614 165th Street, 3612 165th Street, 3610 165th Street, 3606 165th Street, 6518 Nebraska Avenue, 6516 Nebraska Avenue, 6514 Nebraska Avenue, 6515 Grand Avenue and 6513 Grand Avenue in Hammond, North Township, in Lake County.
6. The Special Master did not conduct an on-site visit of the properties.
7. The DLGF determined the assessed values of the individual parcels to be \$6,800, \$8,800, \$6,800, \$6,800, \$6,800, \$6,800, \$6,800, \$6,800, \$6,800, \$6,800, \$7,300, \$7,300, \$7,300, \$7,300 and \$7,300 respectively. The total assessed value of the subject parcels as determined by the DLGF is \$106,500.
8. The Petitioner requests an assessed value of \$3,240, \$3,800, \$3,240, \$3,240, \$3,240, \$3,240, \$3,240, \$3,240, \$3,240, \$3,240, \$3,800, \$3,440, \$3,440, \$3,440, \$3,440 and \$3,440 respectively, for a total assessed value of \$50,720.
9. Nancy Seroczynski, the beneficial owner of Bank Calumet Trust P-4338, and Jerry Kulik, a certified appraiser, appeared at the hearing on behalf of the Petitioner and were sworn as witnesses. Mr. Kenneth Reed, attorney at law, appeared at the hearing and represented the Petitioner. John Toumey, representing the DLGF, also appeared on behalf of the Respondent and was sworn as a witness.

Issue

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contends that the properties are over-valued. In support of this contention, the Petitioner submitted an appraisal of the subject properties prepared by Jerry Kulik, MAI, CCIM, in December 2003. The appraisal values the properties for \$48,000 as of March 1, 2002. *Kulik testimony; Board Exhibit A.*
 - b) The Petitioner contends that the appraisal was done in accordance with the 2002 REAL PROPERTY ASSESSMENT MANUAL. According to the Petitioner's witness, the appraisal compared "comparable" properties with the subject properties on the basis of apartment units buildable per property and per acre. The Petitioner's witness testified that the appraisal was not done as a "highest and best use" appraisal, but instead the properties were valued according to their contemporary use as vacant land designated for apartment construction. *Kulik testimony.*

- c) The Petitioner's witness also testified that the subject properties were purchased in 1997 for \$110,000. However, the Petitioner argued, subsequent to the purchase a change in zoning reduced the number of units buildable. *Kulik testimony; Petitioner Exhibit 2*. At the time of the purchase, 36 apartment units could be constructed on the subject properties under R-3 zoning. *Petitioner Exhibit 2 at 11*. After the zoning change, only 20 apartment units could be built. According to the Petitioner's witness, this change in zoning caused the properties' values to dramatically decrease in a short period of time. *Id.*
- d) The Petitioner further argued that the subject properties are assessed higher than comparable properties. According to the Petitioner's witness, the subject properties can only have 20 units maximum. Therefore, the assessed value of the properties equates to a per unit value of \$5,325. The "per unit" assessed value of properties that Petitioner alleges are comparable varies from \$715 per unit to \$3213 per unit. Further, according to the Petitioner, the purportedly "comparable" properties are within a one mile radius of the subject property. *Kulik testimony, Petitioner Exhibit 2*.
- e) Finally, the Petitioner argued that all assessments prepared by Cole-Layer-Trumble are invalid as a result of re-valuation of large manufacturing and petrochemical facilities within Lake County by the DLGF. Due to those revised valuations, the amount of taxes per individual property change drastically because of the effect of the tax burden on property value. *Reed argument*.¹

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

- a) The subject properties were purchased in June of 1997 for \$110,000. *Toumey testimony, Board Exhibit A*.
- b) The Respondent testified that the subject properties have been erroneously valued from the residential neighborhood valuation form, when the commercial and industrial neighborhood valuation form should have been used.
- c) According to the Respondent, at the March 1, 2002, assessment date, the property was undeveloped. Thus the undeveloped, useable land rate should be used. When the correct valuation form is applied, the assessed value is \$98,460. *Toumey testimony; Respondent Exhibits 3-5*.

¹ Petitioner's attorney's arguments need not be addressed here as the Indiana Supreme Court has reviewed these same arguments and rejected them as barred by laches. *See State v. Lake Superior Court*, 820 N.E.2d 1240, 1255 (Ind. 2005) ("Plaintiffs cannot wait until the eve of the date on which already overdue tax bills are to be sent out to launch an attack on a process that has been underway for over three years and is critical to the operation of government.")

Record

14. 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 #1407.
- c) Exhibits:

Petitioner Exhibit 1: Qualifications of Jerry J. Kulik, MAI, CCIM²

Petitioner Exhibit 2: Supplemental information on assessed values and sales comparison for appraisal³

Respondent Exhibit 1: Property Record Cards (PRCs) for subject parcels

Respondent Exhibit 2: Spreadsheet of parcels and values under appeal

Respondent Exhibit 3: Residential Neighborhood Valuation Form 2620

Respondent Exhibit 4: Commercial & Industrial Neighborhood Valuation Form 2699

Respondent Exhibit 5: Incremental/Decremental Valuation sheet

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in Sheet

- 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 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t

² Petitioner Exhibits 1 and 2 are identified as Exhibits C and D, respectively, on the recording of the hearing.

³ The appraisal was submitted as part of Board Exhibit A, the Form 139L Petition.

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 subject properties are overvalued. In support of this contention, the Petitioner presented an appraisal that valued the property pursuant to a “price per dwelling unit” for its development as a residential apartment complex. The appraisal estimates a value of \$48,000 as of March 1, 2002, for the parcels under appeal based on zoning restrictions that only allow 20 apartment units to be constructed on the properties. *Board Exhibit A; Petitioner’s Exhibit 2*.
- b) 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 similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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).
- c) Petitioner’s appraisal here relies on the sales comparison approach to valuation. *See Board Exhibit A, Appraisal at 18; MANUAL* at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the 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. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any

differences between the properties affect their relative market values-in-use. *Id.* Here, Petitioner's witness compared the undeveloped subject properties to developed apartment complexes on a "per unit" basis. Although the subject properties are zoned R-3, there is no requirement that apartment complexes be constructed. In fact, R-3 zoning is a residential district consisting "of single family, two family and multiple family dwellings, set in a medium density living environment." *Board Exhibit A, Appraisal Addenda*. Moreover, we cannot conceive of how an undeveloped piece of land can be "comparable" to various existing apartment complexes. The entire basis of Petitioner's purported valuation was that the undeveloped subject properties were limited to the development of 20 apartment units and that other existing apartments had per unit sales values of \$2,000 to \$2,483. *Board Exhibit A, Appraisal at 19*. This falls far short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

- d) Further, 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 the Petitioner submitted an appraisal that valued the subject property at \$48,000 as of March 1, 2002. The Petitioner provided no explanation as to how the March 1, 2002, appraisal valuation relates to the January 1, 1999, assessment valuation date.
- e) The Petitioner also argues that the subject properties are not assessed comparably with other properties. In support of this argument, the Petitioner submitted assessment information for five apartment complexes in the Hammond area.
- f) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that the subject properties are not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.* Thus, to introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Like the Petitioner's appraisal here, Petitioner failed to provide sufficient evidence showing that existing apartment complexes are "comparable" to undeveloped property. The Petitioner only made a "de minimis factual showing" and failed to "sufficiently link its evidence to the uniform and equal argument it raises." *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

g) 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). However, the Respondent testified that the assessment was in error because the *Residential Neighborhood Valuation Form* was used. According to the Petitioner, the properties should have been assessed from the *Commercial and Industrial Neighborhood Valuation Form* for "all apartment complexes in Hammond excluding small units located in residential areas." *Respondent Exhibit 4*. According to the Respondent, if the subject properties were properly valued as commercial, the assessed value falls to \$98,460. Based on the Respondent's admission that the subject properties are over-valued and that that properties should be valued at \$98,460, the Board finds that a prima facie case has been raised that the property is over-valued and holds that the value of the subject properties are \$98,460.

Conclusion

17. Based on the Respondent's testimony, a prima facie case was made that the subject properties are over-valued. The Board, therefore, finds that the value of the subject properties is \$98,460.

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: December 29, 2005

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>>.