

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-041-02-1-4-00368
45-041-02-1-5-00369
45-041-02-1-4-00370
45-041-02-1-4-00371
45-041-02-1-4-00372

Petitioner: Lake County Greenhouse Corporation

Respondent: Department of Local Government Finance

Parcels: 003-23-09-0364-0025
003-23-09-0364-0035
003-23-09-0364-0016
003-23-09-0302-0001
003-23-09-0095-0002

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 hearings as described in Ind. Code § 6-1.1-4-33 were held on February 19, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined the assessed values for the subject properties are \$134,300 for Parcel No. 003-23-09-0364-0025 (Lot 25); \$100,700 for Parcel No. 003-23-09-0364-0035 (Lot 35); \$369,500 for Parcel No. 003-23-09-0364-0016 (Lot 16); \$446,900 for Parcel No. 003-23-09-0302-0001 (Lot 1); and \$13,200 for Parcel No. 003-23-09-0095-0002 (Lot 2) and notified the Petitioner on March 12, 2004.
2. The Petitioner filed the Form 139L petitions on April 8, 2004.
3. The Board issued notices of hearing to the parties dated June 22, 2005. The hearing was continued and additional notices of hearing were issued to the parties on July 6, 2005.
4. Special Master Patti Kindler held the hearing on September 7, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 905 and 915 E. North Street in Crown Point, with the exception of parcel 003-23-09-0302-0001, which is located at 500 N. Indiana Street in Crown Point. All parcels are in Center Township.
6. The subject properties are a commercial greenhouse property with several outbuildings and two residential homes on five parcels of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed values of the subject properties as determined by the DLGF are \$95,000 for the land and \$39,300 for the improvements, for a total assessed value of \$134,300 for Lot 25; \$36,100 for the land and \$65,600 for the improvements for a total assessed value of \$100,700 for Lot 35; \$276,800 for the land and \$92,700 for the improvements for a total assessed value of \$369,500 for Lot 16; \$318,000 for the land and \$128,900 for the improvements for a total assessed value of \$446,900 for Lot 1; and \$11,100 for the land and \$2,100 for the improvements for a total assessed value of \$13,200 for Lot 2. Parcel 003-23-09-0302-0001.
9. The assessed values requested by Petitioner on the Form 139L Petitions are \$47,611 for the land and \$4,620 for the improvements, for a total assessed value of \$52,231 for Lot 25; \$20,000 for the land and \$50,000 for the improvements for a total assessed value of \$70,000 for Lot 35; \$73,250 for the land and \$92,700 for the improvements for a total assessed value of \$165,950 for Lot 16; \$100,086 for the land and \$128,900 for the improvements for a total assessed value of \$228,986 for Lot 1; and \$1,000 for the land and \$2,100 for the improvements for a total assessed value of \$3,100 for Lot 2.
10. Don Feder, President and property owner of Lake County Greenhouse Corporation, Robert Kumpfer and Miracle Blesich, tax representatives for the Petitioner, and James S. Hemming, Auditor/Assessor, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. According to the Petitioner, the five parcels at issue on appeal represent a locally owned and operated florist and garden center, which primarily raises roses for wholesale and retail sales. *Kumpfer testimony; Petitioner Exhibit 3*. The Petitioner testified that there are sixteen contiguous parcels on North Street surrounding the main greenhouse operation. *Id.*
 - b. The Petitioner contends that the subject parcels are valued disparately for assessment purposes at approximately \$78,000, \$93,000, \$127,000, \$133,000 and \$152,000 per acre for the five parcels which make up one greenhouse operation. *Kumpfer*

- testimony; Petitioner Exhibit 10.* The Petitioner alleges that these land valuations are excessive and do not conform to sales of similar parcels within a reasonable period of time relative to the 1999 valuation date. *Kumpfer testimony; Petitioner Exhibit 3.* According to the Petitioner, the average assessed value for the subject parcels is \$92,427 per acre; whereas, five comparable land sales located within a mile show an average price per acre for the comparables of \$47,624 with a range of prices from \$23,622 to \$64,077 per acre. *Petitioner Exhibits 9 and 10.* Thus, the Petitioner argues, the average price for the subject parcels, as currently assessed, is \$44,803 per acre more than the average price per acre for the comparables. *Id.*
- c. The Petitioner contends that the “comparable” sales are similar in size, shape and utility to the subject property. *Kumpfer testimony; Petitioner Exhibits 4-8.* According to the Petitioner, comparable sales 1 and 4 are less than one month from the valuation date of January 1, 1999. *Id.* Comparable sale number 1, which occurred on January 5, 1999, represents .87 acres that sold for \$46,000 and comparable sale number 4, which occurred on December 9, 1998, represents a 1.04 acre parcel that sold for \$53,000. *Petitioner Exhibits 4 and 7.* Thus, according to the Petitioner, the average price per acre for these two comparable sales is \$51,917. *Kumpfer testimony; Petitioner Exhibit 3.* The remaining comparable sales submitted include comparable sales 2 and 3, which represent the sale of the same 2.54 acre property in July 1997 for \$60,000 and in March 2002 for \$140,000, and comparable sale number 5, which represents the sale of 2.118 acre site in January 2000 for \$132,000. *Petitioner Exhibits 5, 6, and 8.* Based on the timeliest comparable sales (comparables 1 and 4), the Petitioner argues, the price per acre for Lake County Greenhouse should be set at \$52,000 per acre for all five subject parcels. *Id.*
- d. In support of the Petitioner’s argument, the Petitioner submitted photographs for three of the comparable properties.¹ *Kumpfer testimony; Petitioner Exhibit 11.* According to the Petitioner, two of the properties have been improved since their purchase. *Id.* One comparable is vacant, one is a combination retail office building site and one is an ice manufacturing facility; however, they all have a similar value in use and any commercial structure could have been built on them. *Kumpfer testimony.*
- e. The Petitioner further argues that no matter how complicated the methodology for the calculation of Lake County land values is, if the sales used to calculate those values are inaccurate, the DLGF could perform a million calculations and the values still would not be correct. *Kumpfer testimony.* According to the Petitioner, ample evidence was submitted to show that an adjustment to the land needs to be made based on the comparable sales located within the neighborhood. *Id.*
- f. Finally, the Petitioner contends that the parcels with dwellings situated on them and used in the business are priced on a front foot basis even though the balance of the greenhouse land is priced as commercial land. *Id.* According to the Petitioner, the subject parcels identified as residential properties in the assessment are an integral

¹ No photographs of comparable sales 2 and 3 were submitted due to a photographic error.

part of the commercial business and should not be priced as residential properties, but in the same manner of all the commercial land. *Id.*

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

- a. The Respondent contends that the sales disclosures submitted by the Petitioner are inadequate. *Hemming testimony.* According to the Respondent, the sales disclosures came from the county website and were not verified and all but one of the comparable sales submitted were identified as industrial zoned properties on the sales disclosures rather than commercial properties like the subject property. *Id.* Further, the Respondent alleges, the remaining comparables are located in a nearby area of industrial development rather than the subject property's established commercial location and some of the comparables represent former agricultural land. Finally, according to the Respondent, comparable sale number 4 represents a small retail property, which is nothing close to the magnitude of the larger commercial property of the subject properties. *Hemming testimony.*
- b. Further, according to the Respondent, the parcels assessed as commercial properties were assessed correctly. The Respondent testified that the two contiguous parcels, Lots 16 and 25, are assessed as commercial land at \$133,000 per acre before adjustments, but were given a negative twelve percent influence factor because they cannot be sold separately. *Hemming testimony; Respondent Exhibit 6.* The third and final commercial parcel is Lot 1. According to the Respondent, this lot is located in a separate neighborhood from the main greenhouse building and is assessed as one acre primary land at \$100,000 and 3.031 acres undeveloped unusable land at \$71,907. The Respondent contends that this lot did not warrant a negative influence factor because it could be sold separately. *Hemming testimony.*
- c. Finally, the Respondent argues that the parcels assessed as residential were assessed correctly according to use. According to the Respondent, the land reported on Lot 35, located at 915 E. North Street, was properly priced on a front foot basis as a residential property because it has a 2-unit apartment located on it and could be sold separately from the commercial greenhouse. *Hemming testimony; Respondent Exhibits 1-2.* However, the Respondent testified, Lot 2, located at 905 E. North Street, includes a small pole building on site and the land is priced as a residential home-site. According to the Respondent, this land should be priced as excess residential acreage rather than residential home-site. According to the Respondent, that would be at approximately 10% of the home-site valuation. *Hemming testimony; Respondent Exhibit 1.* The Respondent contends that the Petitioner's request that all the land at appeal be priced as commercial land is inconsistent with its usage and may result in an increase in the overall assessment. *Hemming testimony.*

Record

13. The official record for this matter is made up of the following:

- a. The Form 139L Petitions,
- b. The digital recording of the hearing,
- c. Exhibits:

Petitioner Exhibit 1: Subject Form 139L petitions with corresponding property record cards,

Petitioner Exhibit 2: Power of Attorney,

Petitioner Exhibit 3: Summary of Argument,

Petitioner Exhibit 4: Comparable Sale #1,

Petitioner Exhibit 5: Comparable Sale #2,

Petitioner Exhibit 6: Comparable Sale #3,

Petitioner Exhibit 7: Comparable Sale #4,

Petitioner Exhibit 8: Comparable Sale #5,

Petitioner Exhibit 9: Comparable sale locator map,

Petitioner Exhibit 10: Comparable sales analysis spreadsheet,

Petitioner Exhibit 11: Photos of subject and comparable properties,

For Petition 45-041-02-1-4-00368

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2: Subject photograph,

Respondent Exhibit 3: Plat map,

Respondent Exhibit 4: Incremental/decremental land summary sheet,

For Petition 45-041-02-1-4-00369

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2: Subject photograph,

Respondent Exhibit 3: Center Township sales,

Respondent Exhibit 4: Residential neighborhood summary sheet,

For Petition 45-041-02-1-4-00370

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2A and 2B: Photographs,

Respondent Exhibit 3: Incremental/decremental land summary,

Respondent Exhibit 4: Plat map,

Respondent Exhibit 5: Locator map and numbers,

Respondent Exhibit 6 - Oversized land adjustment calculation data,

For Petition 45-041-02-1-4-00371

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2: Photographs,

Respondent Exhibit 3: Incremental/decremental land summary,
Respondent Exhibit 4: Plat map,

For Petition 45-041-02-1-4-00372

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Aerial map,
Respondent Exhibit 3: Residential neighborhood valuation form,

Board Exhibit A - Form 139 L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - 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 did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

Comparable land sales

- a. The Petitioner contends that the subject properties are over-assessed and should be valued at \$52,000 per acre based on comparable sales. *Kumpfer testimony; Petitioner Exhibit 10*. In support of this contention, the Petitioner submitted sales disclosures and property reports for five sales of four properties within a mile from the subject land. *Petitioner Exhibits 4-10*. Two of the comparable sales occurred within thirty

days of the January 1, 1999, assessment valuation date and the remaining sales occurred between July 1997 and March 2002. *Id.* Of the two comparables sales that occurred nearest to the assessment valuation date, one was .87 acre that sold for \$46,000 on January 5, 1999, and the other sale was a 1.04 acre parcel that sold for \$53,000 on December 9, 1998. *Kumpfer testimony; Petitioner Exhibit 10.*

- 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. However, in order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.
- d. Here, the Petitioner’s purportedly comparable properties are located approximately one mile away from the subject parcels in an industrial park. All but one of the parcels is shown to be classified as industrial. *Petitioner Exhibits 4-10.* The Petitioner provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by the Petitioner were “comparable” properties. *See Blackbird Farms Apartments, LP v. Dep’t of Local Gov’t Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). The Petitioner failed to establish comparability between the subject property and the sales submitted. Therefore, the Petitioner failed to establish a prima facie case.
- e. 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).

Residential land pricing

- f. Further, the Petitioner contends that the two parcels which are priced as residential land should be changed to commercial pricing at \$52,000 per acre because they are part of the overall commercial greenhouse operation. *Kumpfer testimony; Petitioner Exhibit 3*. The two parcels are Lot 35, which is a 65' x 185' platted lot with a two-unit dwelling situated on it, and Lot 2, which is .083 acre with a pole building and priced as a home-site.

- g. According to the MANUAL, the "true tax value" of real estate is "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." MANUAL at 2. Here, the Petitioner testified that the properties assessed as residential are rental properties. However, the Petitioner alleged that "all family greenhouses have residential properties on site" to operate the boilers and watch the temperature of the greenhouses. *Feder testimony*. We find that Lot 35 is used as a rental property and, therefore, properly assessed as a residential property on a front foot basis. Thus, the Petitioner failed to make a prima facie showing that the lot was assessed in error as a residential property or priced in error. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 38 (incorporated by reference at 50 IAC 2.3-1-2) ("platted lots [are valued] by calculating the front foot values for each platted lot in a neighborhood.") However, the Respondent admitted that Lot 2 should not have been priced as a home-site, but rather as excess residential acreage because there is no dwelling on site. *Hemming testimony*. Therefore, based on the admission of error by the Respondent, we find that Lot 2 should be priced as residential excess acreage in accordance with the GUIDELINES.

Conclusion

- 16. The Petitioner failed to make a prima facie case. However, the Respondent admitted an error in the assessment on parcel 003-23-09-0095-0002. Thus, we find that the land on Lot 2 should be priced as residential excess acreage.

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/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. 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 days of the date of this notice.