

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00503
Petitioner: Dana Ramos
Respondent: Department of Local Government Finance
Parcel #: 001-25-43-0057-0017
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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$14,000 and notified the Petitioner.
2. The Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties on February 21, 2005.
4. Special Master Peter Salveson held a hearing on March 21, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 7165 Hemlock Street, Gary in Calumet Township.
6. The subject property is an unimproved residential lot consisting of 0.143 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$14,000 for the land. There are no improvements on the property.
9. The Petitioner requested an assessed value of \$835.
10. Dana Ramos, the owner of the subject property, and Terry Knee, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that the current assessment is incorrect because it exceeds the amount paid for the property through a tax sale. The Petitioner testified that she purchased the vacant lot on January 8, 2000, for the amount of \$835. *Ramos testimony; Attachment to Board Exhibit A.*
 - b. The Petitioner contends that there were no sales other than tax sales in the area of the subject property. *Ramos testimony.*
 - c. The Petitioner contends that approximately half of the subject property is in a ravine, which significantly reduces the value of lot. *Ramos testimony.* The property record card shows the lot to be level; it is not. *Id.*

11. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent presented the property record card for the subject property and testified that it is being valued as a vacant residential lot. The plat map submitted does not show the topography. *Knee testimony; Respondent Exhibits 2 and 3.*
 - b. The Respondent contends that tax sales are not arms-length transactions and should not be considered for determining the fair market value of the property. *Knee testimony.*

Record

12. 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 1261,
 - c. Exhibits:

Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Plat map page,
Respondent Exhibit 4: Neighborhood land summary sheet,

Board Exhibit A: Form 139L Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign in Sheet,
 - d. These Findings and Conclusions.

Analysis

13. 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.

14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
 - a. The Petitioner purchased the property at auction in 2000 for \$835 and contended that amount was the value of the subject property. According to the Petitioner, she did not obtain an appraisal because she was informed that there weren’t any comparable sales; most of the sales in the area were tax sales.
 - b. The 2002 Real Property Assessment Manual (the 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 a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an “arm’s-length transaction.” In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. “‘Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.” *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977).

- c. A tax sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. While the Petitioner testified that properties in that neighborhood are only sold by tax sale and, thus, the tax sale purchase price reflects market value, this is nothing more than a conclusory statement. 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). For Petitioner to succeed in proving that the tax sale price reflected market price, the Petitioner would have had to present evidence to the Board showing that all or virtually all of the sales in that neighborhood were tax sales. This the Petitioner did not do. Thus, the purchase price of property obtained in a tax sale is not, by itself, probative evidence of market value of a property.
- d. The Petitioner also testified that part of the property is in a ravine and is unbuildable. 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." GUIDELINES, 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 property's topography may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value-in-use of the subject property, or show what the actual market value of the property is. *See Talesnick*, 756 N.E.2d at 1108.
- e. 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

15. The Petitioner did not establish a prima facie case that the assessment is in error. 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>.