

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00676
Petitioners: Kermit & Paula Bryan
Respondent: Department of Local Government Finance
Parcel #: 001254300580026
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 (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$19,100. The Petitioners did not receive the Notice of Assessment.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 23, 2005 in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is an unimproved residential lot located at 280 North Montgomery Street, Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:
Land \$19,100
8. Assessed Value requested by Petitioners on the Form 139L petition:
Land \$2,136
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Kermit Bryan, owner
Paula Bryan, owner

For Respondent: Joseph Lukomski, Jr., Assessor/Auditor, DLGF

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The Petitioners purchased the subject lot in December 2000 for \$2,136 at a Commissioners' Sale. It was a bid situation. *K. Bryan testimony; Pet'r Ex. 3.*
- b) The Petitioners presented a listing of properties on Commissioners' Sale. A description of the subject lot appears under the heading "List of Buildable Unimproved Sites." The listing contains the parcel number, street address, legal description, lot size, zoning information, and appraised value of \$495 for the subject lot. *K. Bryan testimony; Pet'r Ex. 3.*
- c) The subject lot is very low, very swampy and will need extensive fill before any building could take place. *K. Bryan testimony.*
- d) There have been 6 or 7 lots sold on Montgomery Street, but those lots are all sand and there is very little clearing needed. The lots that are high and dry on Montgomery Street are worth \$20,000. On the east side of Montgomery Street they are building big beautiful houses up high. The subject lot is on the west side of Montgomery Street down in a gully. It will take a lot of work to make the subject lot buildable. *K. Bryan & P. Bryan testimony.*
- e) The subject lot is worth \$3,000 to \$4,000 as it sits now. It will be worth more when the work is done and the property is buildable. *K. Bryan testimony.*
- f) The Petitioners assume that all utilities are available. There are houses on the north and south, and a sewer drain in the street. *K. Bryan & P. Bryan testimony.*
- g) The subject lot is close to Lake Michigan, maybe 1/2 or 3/4 of a mile from the lake. *P. Bryan testimony.*

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

- a) The subject property record card shows a base rate of \$325 for the subject neighborhood. *Lukomski testimony; Resp't Ex. 2.*
- b) A negative 20% influence factor applied to the subject lot for Code 7. *Lukomski testimony; Resp't Ex. 2.*

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 BTR #1288.
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Summary of Petitioners' arguments
 - Petitioner Exhibit 3: Bill of Sale – Appraised Value
 - Petitioner Exhibit 4: Pictures

 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject PRC

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

Analysis

14. 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 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 Township 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the subject lot is overvalued. The Petitioners purchased the subject lot in December 2000 for \$2,126 at a Commissioners' Sale. The Petitioners presented the letter from the City of Gary and the receipt of payment.
 - b) Tax and Commissioners' sales are not reliable indicators of true market value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). Tax and Commissioners' sales are by their very nature not indicative of a competitive and open market. In this type of sale, the seller is not typically motivated. The seller is attempting to sell the property in order to return the property to the county tax rolls. The purchase price from the Commissioners Sale is not probative evidence of the market value-in-use of the subject property.
 - c) The listing of properties for sale at the Commissioners' Sale shows the subject lot with an appraised value of \$495. It is not known who appraised the lot or how the appraised value was determined. The appraised value is not probative evidence of the market value-in-use.
 - d) The Petitioners contend the subject lot is unbuildable because it is low and swampy. The Petitioners further contend the lot will need extensive fill before any building could take place.
 - e) On the listing of properties for the Commissioners' Sale the subject lot is included under the heading "List of Buildable Unimproved Sites." The subject lot is located on a street and the Petitioners assume utilities are available. The fact that the subject lot may need work before building can begin does not mean the subject lot is unbuildable.
 - f) The Petitioners have failed to show the current assessment is incorrect.

Conclusion

16. The Petitioners 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: _____

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>