

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #'s: 45-001-02-1-5-01156
45-001-02-1-5-01157
45-001-02-1-5-01158
45-001-02-1-5-01159

Petitioner: Karen Reithel

Respondent: Department of Local Government Finance

Parcel #'s: 001-41-49-0336-0025
001-41-49-0336-0019
001-41-49-0336-0024
001-41-49-0336-0026

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 26, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessments for the subject parcels were:

Petition #45-001-02-1-5-01156, Parcel #001-41-49-0336-0025: \$2,900

Petition #45-001-02-1-5-01157, Parcel #001-41-49-0336-0019: \$2,200

Petition 345-001-02-1-5-01158, Parcel #001-41-49-0336-0024: \$1,400

Petition #45-001-02-1-5-01159, Parcel #001-41-49-0336-0026: \$2,900

The DLGF's Notices of Final Assessment were sent to the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions on April 30, 2004.
3. Pursuant to Ind. Code § 6-1.1-4-34, hearings were scheduled on December 2, 2004, at 1:00 PM and 1:45 PM, in Crown Point, Indiana. Notices of Hearings on Petitions were mailed to the Petitioner at the address listed on the Form 139L petitions.

4. On December 2, 2004, Barbara Wiggins, the duly designated Special Master authorized by the Board under Ind. Code § 6-1.1-4-34(c), conducted the administrative hearings on the Form 139L petitions. The Petitioner did not appear at the hearings.
5. At the hearings, the DLGF submitted motions to dismiss each of the above captioned petitions. On May 11, 2005, the Board issued an Order of Dismissal regarding each petition. On June 1, 2005, the Board issued its Final Determinations dismissing the petitions.
6. On June 6, 2005, the Board received a letter from the Petitioner requesting that the Board grant a rehearing on the above referenced petitions. On or about June 9, 2005, the Board issued notice granting the Petitioner's request for rehearing.
7. The Board issued new notices of hearings to the parties dated June 14, 2005.
8. Hearings were held on July 18, 2005 in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

9. The subject properties are located at 3860, 3864, and 3870 Taney Street and 2914 W. Ridge Road, Gary, in Calumet Township, Lake County.
10. The subject properties are vacant lots.
11. The Special Master did not conduct an on-site visit of the properties.

a) Assessed Values of the subject properties as determined by the DLGF are:

Petition #45-001-02-1-5-01156, Parcel #001-41-49-0336-0025:
Land: \$2,900 Improvements: -0- Total: \$2,900

Petition #45-001-02-1-5-01157, Parcel #001-41-49-0336-0019
Land: \$2,200 Improvements: -0- Total: \$2,200

Petition 345-001-02-1-5-01158, Parcel #001-41-49-0336-0024
Land: \$1,400 Improvements: -0- Total: \$1,400

Petition #45-001-02-1-5-01159, Parcel #001-41-49-0336-0026
Land: \$2,900 Improvements: -0- Total: \$2,900

b) Assessed Values requested by Petitioner per the Form 139L petitions are:

Petition #45-001-02-1-5-01156, Parcel #001-41-49-0336-0025:
Land: \$800 Improvement: -0- Total: \$800

Petition #45-001-02-1-5-01157, Parcel #001-41-49-0336-0019:
Land: \$1,000 Improvement: -0- Total: \$1,000

Petition #45-001-02-1-5-01158, Parcel #001-41-49-0336-0024:
Land: \$500 Improvement: -0- Total: \$500

Petition #45-001-02-1-5-01159, Parcel #001-41-49-0336-0026:
Land: \$800 Improvement: -0- Total: \$800

12. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearings.

13. Persons sworn in at hearings:

For Petitioner: Karen Reithel, Taxpayer

For Respondent: Don Adair, representing the DLGF

Issue

14. Summary of Petitioner's contentions in support of alleged errors in assessment:

- a) The Petitioner is paying \$4,400 a year in taxes on all of her properties and that is too much. *Reithel testimony*. She has considered letting her properties be sold for back taxes. *Id.*
- b) The Petitioner submitted a plat map with the subject parcels (Lots 19, 24, 25, and 26) highlighted in pink. *Reithel testimony; Petitioner Exhibit 1*. The Petitioner bought all of the subject parcels at tax sale. The highest price she paid for any of the parcels was \$538. *Reithel testimony*.
- c) The map also contains lots highlighted in yellow (Lots 17, 18, 20 – 23, and half of 24), which the Petitioner also owns. The Petitioner bought the lots highlighted in yellow for a total of \$5,500 in 2002. *Id.* Those lots were owned by a realtor who had bought them at a tax sale. *Reithel testimony*. Neither the subject parcels nor the lots highlighted in yellow are good for anything but grazing cows. *Id.*
- d) The Petitioner also owns Lots 1 - 11 and Lots 22 – 32. The Petitioner bought those lots at tax sales over the course of many years. *Id.* The Petitioner's house is situated on Lots 31 and 32. The Petitioner and her husband have lived in that house for thirty (30) years. *Id.*
- e) The county recently valued Lots 1 - 11 on an acreage bases, which reduced the Petitioner's taxes on those lots to \$42 per year. The Petitioner eventually would like to have all of the lots she owns valued on an acreage basis. *Id.*

- f) The Petitioner submitted photographs of the neighborhood and explained that the area is run down. According to the Petitioner, most of the properties in the area are sold via tax sales. *Reithel testimony; Petitioner Exhibits 2 – 14.* The neighborhood is at the edge of the Gary city limits, and it is comprised of older homes that are going nowhere. *Reithel testimony.* The area is going downhill and contains abandoned homes. Exhibit 4 shows a bar across the street from the subject parcels. *Id.;* *Petitioner Exhibit 4.* Exhibit 10 shows a property with rooms for rent by the week. *Reithel testimony; Petitioner Exhibit 10.* This property brings drugs and prostitution to the neighborhood. *Reithel testimony.* Exhibit 8 depicts a ten (10) to twelve (12) foot high pile of debris (dirt, concrete, and gravel) left behind when sewers were installed. *Reithel testimony; Petitioner Exhibit 8.* This debris would have to be removed before someone could build on the property. Exhibit 11 depicts a property purchased in March 2005, for \$42,000, which includes six (6) lots that had been vacant for seven (7) years. *Reithel testimony; Petitioner Exhibit 11.* Some fencing had to be erected to prevent people from dropping garbage on the property. *Reithel testimony.*
- g) The values requested on the Form 139L petitions were estimated by the Petitioner's husband. *Id.*

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

- a) The Respondent questioned the Petitioner about the value of the lots and how she arrived at the values requested on her Form 139L petitions.
- b) The assessment is correct as it stands. The Petitioner offered no evidence to establish otherwise. *Adair testimony.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled Lake #1625.
- c) Exhibits:

Petitioner Exhibit 1: Plat of subject area

Petitioner Exhibit 2: Photograph of house across from Petitioner's home

Petitioner Exhibit 3: Two photographs of woods across from property Lots 24, 25, and 26

Petitioner Exhibit 4: Photograph of bar across the street from subject parcels

Petitioner Exhibit 5: Two photographs of the fenced subject property with debris on property

Petitioner Exhibit 6: Photograph – Adjacent to Lots 24, 25, and 26

Petitioner Exhibit 7: Photograph – Lots 20 & 21, adjacent to Lot 19
Petitioner Exhibit 8: Photograph - Lots 18 & 19
Petitioner Exhibit 9: Photograph – Road view of street (west) of Block 7, Lots 1 – 11, owned by Petitioner
Petitioner Exhibit 10: Photograph – Site with rooms for rent in the subject area
Petitioner Exhibit 11: Photograph, property across from Petitioner’s property that sold for \$42,000, including 6 lots
Petitioner Exhibit 12 and 13: Photographs of homes north of subject area
Petitioner Exhibit 14: Photograph – Lots 12 – 16, adjacent to Petitioner’s Lots 17 - 21
Petitioner Exhibit 15: Notice of Assessment – Parcel #001-41-49-0336-0024
Petitioner Exhibit 16: Notice of Assessment – Parcel #001-41-49-0336-0025
Petitioner Exhibit 17: Notice of Assessment – Parcel #001-41-49-0336-0026
Petitioner Exhibit 18: Notice of Assessment – Parcel #001-41-49-0036-0019
Petitioner Exhibit 19: (no exhibit)
Petitioner Exhibit 20: Bill of Sale for Lots 17, 18, 20, 21, 22, 23, and half of 24
Petitioner Exhibit 21: Petitioner’s Notes

Respondent Exhibit 1: Copy of Form 139L Petitions
Respondent Exhibit 2: Copy of subject property record cards (PRC)

Board Exhibit A: Form 139L Petitions
Board Exhibit B: Notices of Hearings on Petitions
Board Exhibit C: Sign-in Sheet

d) These Findings and Conclusions.

Analysis

17. The most applicable governing cases and regulations 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. 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.

18. The Petitioner failed to provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject parcels are assessed in excess of their market value.
 - b) In support of this claim, the Petitioner submitted photographs of the subject parcels and of the surrounding neighborhood. According to the Petitioner, those photographs show that the subject parcels are not good for anything but grazing cows, and that the subject neighborhood is in decline. *See Reithel testimony*. While the Petitioner may be correct that conditions such as those depicted in the photographs affect the market value of the subject parcels, the pictures submitted by the Petitioner do nothing to quantify that effect.
 - c) The Petitioner, however, also presented evidence regarding the amount for which she purchased the subject parcels, as well as evidence regarding the sale prices of various other properties in the subject neighborhood.
 - d) The Petitioner testified that she bought all of the subject parcels at tax sale for amounts equal to or less than \$538. *Reithel testimony*. The sale of a property often is the best evidence of that property's market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction.
 - e) The 2002 Real Property Assessment Manual ("Manual") provides the following definition of "market value":

"The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

 - i. The buyer and seller are typically motivated;
 - ii. Both parties are well informed and advised and act in what they consider their best interests;
 - iii. A reasonable time is allowed for exposure in the open market;
 - iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
 - v. The price is unaffected by special financing or concessions."

2002 REAL PROPERTY ASSESSMENT MANUAL 10 (incorporated by reference at IND. ADMIN.CODE tit. 50, r. 2.3-1-2).

- f) Generally speaking, tax sales do not meet the conditions necessary for the sale price to be a relevant indicator of a property's market value. The seller is not typically motivated (the sale of the property is for non-payment of taxes), and the property is unlikely to have been exposed to a competitive and open market.
- g) Nonetheless, in situations where a party establishes that tax sales constitute virtually the entire market for properties in a given area, the price paid for a property at tax sale may constitute evidence of that property's market value. Here, the Petitioner made the sweeping allegation that all of the properties in the area sold at tax sales. *Reithel testimony*. The Petitioner, however, provided only a small sampling of properties that sold, and several of those, including some of her own properties, were purchased from private individuals. Consequently, the amount for which the Petitioner bought the subject parcels at tax sale does not constitute probative evidence of their market values-in-use.
- h) Finally, the Petitioner offered evidence regarding the sale prices of at least two groups of properties that were not the result of tax sales. The Petitioner, however, did not establish how those properties were comparable to the subject parcels. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that the taxpayers failed to establish a prima facie case of error, where they failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
- i) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the assessment of the subject parcels.

Conclusion

19. The Petitioner failed to establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that 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 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>.