

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00115
Petitioner: David R. Staf
Respondent: Department of Local Government Finance
Parcel #: 001254703900011
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 hearing as described in Ind. Code § 6-1.1-4-33 was held February 24, 2004, in Lake County. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$12,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the party dated February 24, 2005.
4. Hearing was held on March 29, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is a vacant residential lot located at 1020 Spencer Avenue, Gary in 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: \$12,200
8. Assessed Value requested by Petitioner on the Form 139L petition:
Land: \$6,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: David R. Stalf, Owner
Lark M. Lile, Witness

For Respondent: Stephen Yohler, DLGF Representative

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The assessment is overstated and the land is not at market value. The subject property is an unimproved lot and not considered buildable due to the lot size and elevation and slope of the land. *Stalf testimony; Pet'r Ex. 3.*
- b) The subject property measures 40' x 128' equaling 5,128 square foot and cannot be built on. The minimum required size for construction is 50' width and a minimum of 6,000 square feet. *Stalf testimony; Pet'r Ex. 5.*
- c) The Petitioner owns other properties all located within 50 to 100 feet of each other. *Stalf testimony.*
- d) There are guidelines for construction with respect to slopes. The Petitioner presented a page from the 2000 International Residential Code describing the required clearance. The nature and height of the slopes diminish the ability to build on the subject property. *Stalf testimony; Pet'r Ex. 11.*
- e) The Petitioner presented sales data for three comparable properties which sold close to January 1, 1999. Each of the comparable properties is larger than the subject property and is considered buildable. Each of the comparables sold for less than the subject property. *Stalf testimony; Pet'r Ex. 6.*
- f) The comparable properties are in the same general area as the subject property and the sales are as follows:

6508 Miller Ave., Gary, IN	sold 5/5/98	\$4,000
7524 Harold, Gary, IN	sold 5/19/99	\$6,250
662 Pike St., Gary, IN	sold 4/21/00	\$10,500

Stalf testimony; Pet'r Ex. 6.
- g) An Auctioneer Worksheet and Commissioner's Deed indicate a similar unbuildable property sold for the minimum bit of \$1,370 on December 6, 2000. The Petitioner was one of the purchasers of the auctioned property. *Stalf testimony; Pet'r Exs. 7, 8.*
- h) The Petitioner presented a Plat Map to substantiate platted dimensions and location. A Zoning Map was presented to show the classification of R-2 with restrictions and requirements. *Stalf testimony; Pet'r Exs. 9, 10.*

12. Summary of Respondent's contentions in support of the assessment:
- a) Every property in the neighborhood is assessed from the neighborhood land valuation order for that particular neighborhood. The subject property has been assessed at \$385 per front foot as the other properties have been. *Yohler testimony; Resp't Ex. 3.*
 - b) If the Petitioner checks his neighbor's property record cards he would find that everyone in the neighborhood has the same values determined by the land commission. *Yohler testimony.*
 - c) The subject property record card shows a depth factor of 99% making the adjusted rate \$381 per front foot. *Yohler testimony; Resp't Ex. 2.*
 - d) The subject property also receives a negative influence factor of 20% for being undeveloped. *Yohler testimony; Resp't Ex. 2.*
 - e) The Petitioner could consider combining properties to create an excess frontage and the value would be lower. *Yohler testimony.*

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 Lake #1333.
 - c) Exhibits:
 - Petitioner Exhibit 1: Copy of Form 139L
 - Petitioner Exhibit 2: Notice of Final Assessment
 - Petitioner Exhibit 3: Summary of Petitioner's Argument
 - Petitioner Exhibit 4: Outline of Evidence Explaining Relevance
 - Petitioner Exhibit 5: Zoning Ordinance
 - Petitioner Exhibit 6: Sales Data of Comparable Lots
 - Petitioner Exhibit 7: Auctioneer Worksheet
 - Petitioner Exhibit 8: Commissioner's Deed
 - Petitioner Exhibit 9: Plat Map
 - Petitioner Exhibit 10: Zoning Map
 - Petitioner Exhibit 11: 2000 IRC (International Residence Code)
 - Petitioner Exhibit 12: Photographs of Property
 - Petitioner Exhibit 13: Property Record Card

 - Respondent Exhibit 1: Copy of Form 139L
 - Respondent Exhibit 2: Copy of PRC of subject property
 - Respondent Exhibit 3: Residential Neighborhood Valuation Form

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 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 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 Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the assessment of the subject property is overstated. The Petitioner supports this contention by arguing the subject property is unbuildable and comparable sales.
 - b) The Petitioner submitted the zoning rules and requirements construction with respect to slopes. *Pet'r Exs. 5, 11*. The Petitioner owns other properties in the area. It is not clear whether or not the Petitioner owns the property adjacent to the subject property and whether the properties could be combined. The Petitioner testified the slopes diminish the ability to build on the subject property, but did not say the subject property could not be built on. The Petitioner failed to show the subject property is unbuildable.
 - c) The Petitioner provided sales data for three lots in the same general area as the subject property. These lots were all larger than the subject property. The sales prices ranged from \$4,000 to \$10,500 and took place between May 1998 and April 2000.

Pet'r Ex. 6. The Petitioner also provided sale of a property purchased at an auction on December 6, 2000. *Pet'r Exs. 7, 8.*

- d) In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(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.”); *See also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- e) 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 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.*
- f) The Petitioner pointed out the lots which sold were larger, but did not provide any explanation of how the lots were actually comparable to the subject property. The Petitioner did not explain how the auctioned property was comparable to the subject property. The Petitioner’s statements that the properties are comparable are not probative evidence of comparability. *Long*, 821 N.E.2d at 470.
- g) The Petitioner made several arguments as to why the assessment is overstated. However, the Petitioner has failed to prove the current assessment is incorrect.

Conclusion

- 16. The Petitioner 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: _____

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>>.