

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00573
Petitioners: Robert A. & Deborah M. Liden
Respondent: Department of Local Government Finance
Parcel: 009-09-11-0114-0004
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 on December 1, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$151,700 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated February 14, 2005.
4. Special Master Patti Kindler held the hearing on March 16, 2005, in Crown Point.

Facts

5. The subject property is located at 8817 Lee Street in Crown Point, Indiana (St. John Township).
6. The property is a residential one story dwelling situated on a platted lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$41,600 Improvements \$110,100 Total \$151,700.
9. The assessed value requested by the Petitioners is:
Land \$13,268 Improvements \$110,100 Total \$123,368.

10. The following persons were sworn in at the hearing:
Robert A. and Deborah M. Liden, taxpayers,
Diane Spenos, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The land pricing in the subject neighborhood is unjust and not in accordance with Article 10, Section 1 of the Indiana Constitution, which provides for an equal rate of property assessment and taxation. *R. Liden testimony; Petitioners Exhibit 5.*
 - b) Lots greater than one acre in size are priced differently than lots with less than one acre. The lots that exceed an acre are assessed for less than the lots with less than an acre. *R. Liden testimony.* The subject property has a .429-acre lot and has a land assessment of \$41,600, or \$2.22 per square foot. *Petitioners Exhibit 7.*
 - c) A comparison of three properties across the street from the subject shows the disparity in pricing between neighborhood lots with more than one acre and lots with less than one acre of land. *R. Liden testimony; Petitioners Exhibit 9.*
 - d) The property across the street at 8814 Lee has 1.002 acres and has a land assessment of \$31,000, or \$.71 per square foot. *Petitioners Exhibits 7 at 2, 8.* If priced the same, the value of the subject lot would be only \$13,268. *Petitioners Exhibit 8.*
 - e) A vacant .998-acre lot, also located at 8814 Lee Street, sold for \$25,000 in February of 2002 as shown on the sales disclosure statement. *Petitioners Exhibit 11.* , Applying the St. John Township Assessor's time adjustment sale price multipliers, that sale price should be \$22,000, or \$.51 per square foot. *Petitioners Exhibits 12-13.*
 - f) Based on the sale of the above comparable land at \$.51 per square foot, the subject would be valued at \$9,531. The Petitioners contended their land should be valued somewhere between the two estimates of \$.51 to \$.71 per square foot. *R. Liden testimony; Petitioners Exhibit 13.*
 - g) The property at 8906 Lee Street with .941 acre was originally assessed at \$63,000. The property subsequently was given a twenty percent negative influence factor and the assessment was lowered to \$50,400 as a result of a stipulation agreement. The Petitioners contended their land should receive a similar influence factor to reduce its value. *R. Liden testimony; Petitioners Exhibits 10, 14.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The Petitioners' lot was priced according to the Neighborhood Valuation Form at \$415 per front foot for platted lots. The unplatted neighboring parcels identified by the Petitioners were assessed at \$31,000 for the first acre with the homesite and

- \$3,100 for any additional acreage in accordance with the Neighborhood Valuation Form for St. John Township. *Spenos testimony; Respondent Exhibit 5.*
- b) All of the neighbors who have a platted lot are assessed at \$415 a front foot, although some have influence factors applied for excessive frontage or other reasons. That is the only difference in the prices of the platted lots. *Spenos testimony.*
 - c) The stipulation agreement between a neighboring taxpayer and the DLGF cannot be used as evidence in an appeal, according to the terms listed on the agreement. *Spenos testimony; Petitioners Exhibit 10.*
 - d) Some corrections noted at the informal hearing were not made. These corrections include the removal of 672 square foot of finished basement area from the base area pricing and adding it as Type 3 recreation room¹ and an increase in the negative influence factor for the land to 10%. *Spenos testimony; Respondent Exhibit 6.*
 - e) The notes from the informal hearing state that the above items were to be corrected, but the corrections were not made by Cole-Layer-Trumble after the hearing. *Id.* The changes would result in a reduction in the total assessed value to \$147,800. The Respondent offered a stipulation agreement to the Petitioners for the \$147,800 prior to the hearing, but they refused to sign the document because they felt the land price was excessive. *Spenos testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Form 139L Petition,
 - b) The tape recording of the hearing labeled Lake Co. 1218,
 - c) Petitioners Exhibit 1: Notice of Hearing,
Petitioners Exhibit 2: Form 139L,
Petitioners Exhibit 3: Notice of Final Assessment dated March 26, 2004,
Petitioners Exhibit 4: 1995 and 2002 property record cards for the subject property,
Petitioners Exhibit 5: Copy of Article 10, Section 1 of the Indiana Constitution,
Petitioners Exhibit 6: Map of the neighborhood,
Petitioners Exhibit 7: Property record cards for subject and 8814 Lee Street,
Petitioners Exhibit 8: Land calculation based on 8814 Lee Street pricing,
Petitioners Exhibit 9: Property record cards for subject and 8906 Lee Street,
Petitioners Exhibit 10: Stipulation Agreement for property at 8906 Lee Street,
Petitioners Exhibit 11: Sales disclosure form for vacant land at 8814 Lee Street,
Petitioners Exhibit 12: St. John Township time adjustment sale price multipliers,

¹ A Type 3 recreation room indicates the presence of flooring, ceiling, interior wall finish, and partitioning. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), ch. 3 at 31.

Petitioners Exhibit 13: Land calculation based on sale of land at 8814 Lee Street,
Petitioners Exhibit 14: Property record card for 8906 Lee reflecting stipulation,
Petitioners Exhibit 15: Property record card for 8814 Lee Street,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Property record card,
Respondent Exhibit 3: Subject street scene and front view photographs,
Respondent Exhibit 4: Aerial and plat maps of neighborhood,
Respondent Exhibit 5: Land order for neighborhood 00933,
Respondent Exhibit 6: Notes from the informal hearing,
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 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners claimed the subject platted lot was priced excessively at \$41,600 (or \$2.22 per square foot) compared to acreage tracts located immediately across the street from the subject. The Petitioners claimed the subject should be priced between \$.51 and \$.71 a square foot.
- b) The subject Residential Neighborhood Valuation Form shows the appropriate pricing for a platted lot in the subject neighborhood, 00933, is \$415 per front foot. The

acreage value is \$31,000 for an acreage homesite with \$3,100 for each additional acre of excess acreage. The Petitioners failed to offer probative evidence that this methodology violates Article 10, Section 1 of the Indiana Constitution.

- c) The Petitioners did not contend that the Neighborhood Valuation Form was applied incorrectly or that the pricing of the subject lot deviated from the established base rates. Instead, the Petitioners identified three purportedly comparable properties in their neighborhood that were assessed differently than the subject. 1) A neighboring homesite with 1.002 acres was assessed at \$31,000, or \$.71 per square foot (8814 Lee Street). 2) A neighboring .941-acre homesite has a stipulated assessed value of \$50,400 (8906 Lee Street). 3) The time adjusted 2002 sale of a vacant neighborhood lot was \$22,000, or \$.51 per square foot (8814 Lee Street). *R. Liden testimony; Petitioners Exhibits 8, 13, 14.*
- d) The Petitioners presented a property record card for the property across the street at 8814 Lee Street, which they asserted was comparable to their own land. The mere introduction of a property record card, however, is not sufficient to show the two properties are comparable. Instead, the Petitioners were required to demonstrate how the characteristics of the 1.002-acre lot compare to those of the subject. The Petitioners presented no comparison of lot shapes, no comparison of topography or geographical features, and no comparison of lot accessibility and uses. Rather, the Petitioners merely asserted that the lot across the street is comparable. Such evidence is not probative. *Blackbird Farms Apts., LP v. Dep't of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).
- e) The Petitioners also asserted the time adjusted sale of a neighborhood vacant lot indicated the subject should have been assessed at approximately \$.51 per square foot, or \$9,531. Again, they did not establish that the subject property and the vacant lot are comparable. The vacant lot was not shown to have any site improvements, nor does it represent a homesite like the subject land. Furthermore, the property record cards show it is located in a different neighborhood (99503) than the subject (00933). That vacant lot is therefore subject to a different Neighborhood Valuation Report. Without comparability, this evidence is not probative. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- f) The Petitioners also submitted a property record card for 8906 Lee Street. This platted property was assessed at the same base rate as the Petitioners' property, \$415 per front foot. The assessment for this property was reduced as a result of a Stipulation Agreement between the taxpayer and the DLGF. The Petitioners requested that their assessment be lowered in a similar manner. The DLGF, however, has indicated no willingness to agree to the same value for the subject property.
- g) The Stipulation Agreement reads in pertinent part: "The parties agree that this stipulation resolves all matters and controversies raised in the petition or which could have been raised in this cause of action, and the statements, actions, and findings made in this Agreement are made **for settlement purposes only and shall not be**

used for any other purpose.” Although the DLGF failed to make a proper objection to offering the settlement agreement as evidence in this case, the Board will not determine the current assessment based upon a settlement reached with some other taxpayer. As with most other legal proceedings, there is good reason to promote settlement. Using the settlement to establish a land value for the subject property would work against that end and the Board will not do so. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1228 (Ind. 2005); *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax Ct. 2001).

- h) For all the reasons listed above, there is no change in the assessment as a result of this issue.

Conclusion

15. The Petitioners failed to make a prima facie case regarding the land pricing issue. The Board finds in favor of the Respondent.

Other Findings

16. Nevertheless, the DLGF admitted that several items listed on the property record card should have been corrected after the informal hearing, but these corrections were never made. Due to that admission, the certain items must be corrected on the property record card. 1) Remove 672 square feet from the finished basement column. 2) Add the same 672 square feet of basement as a Type 3 recreation room. 3) Increase the negative influence factor from 8% to 10%. Thus, there must be a change to the assessment.

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>.