

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions On Rehearing Lake County

Petition: 45-001-02-1-5-00744
Petitioner: Gary Skish
Respondent: The Department of Local Government Finance
Parcel: 001-25-45-0262-0019
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 25, 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$5,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated February 1, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on March 4, 2005.
5. The Board originally issued a determination regarding this matter on August 30, 2005. The Board granted rehearing on September 15, 2005.

Facts

6. The subject property is located at 835 N. Vigo Street, Gary. The location is in Calumet Township.
7. The subject property consists of a vacant residential lot 25' by 121'.
8. The Special Master did not conduct an on-site inspection of the property.
9. Assessed value as determined by the DLGF is \$5,900 (land only).

10. Assessed value requested by Petitioner is \$600.
11. Persons sworn as witnesses at the hearing:
Gary Skish, owner,
John Toumey, assessor/auditor.

Issues

12. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The subject parcel has only 25 feet of frontage. The parcel cannot be improved because it is smaller than the minimum 50 feet required under the City of Gary Building Ordinance. *Petitioner Exhibits 2, 4; Skish testimony.*
 - b. There is no sewer available to the parcel and water service ceases approximately 75 feet north of the subject. *Petitioner Exhibit 2; Skish testimony.*
 - c. The topography of the subject is highly irregular and there is a burned-out home on the adjacent lots to the south. *Petitioner Exhibits 2, 5; Skish testimony.*
 - d. The subject property was acquired through a commissioner's sale on November 23, 2002 for \$600 or \$0.20 per square foot. It had previously been offered for sale at the A and B tax auctions and went unsold. In addition, the previous transfer was through a tax deed, indicating that this is the common method of transfer. *Petitioner Exhibit 1 at 6; Petitioner Exhibit 2; Skish testimony.*
 - e. A review of all sales in the Multiple Listing Service (MLS) was performed for the period from January 1, 1998 through December 31, 2003. There were no land sales in 1998 and only three sales in each year from 1999 to 2002. Only four of those sales were for lots with no sewer and the average sale price of those four lots equals \$0.64 per square foot. All four were buildable lots under the City of Gary Building Ordinance, unlike the subject. *Petitioner Exhibits 2, 6, 7; Skish testimony.*
 - f. In comparison to the MLS sales, from October 2001 through December 2003 there were 27 tax sale and commissioner's sale properties, all with no sewer available. Available data shows that all of the sales that occurred in 2002 were for non-buildable lots like the subject. The average sale price of these sales is \$0.39 per square foot. *Petitioner Exhibits 2, 6, 8; Skish testimony.*
 - g. The MLS and tax/commissioner sales data indicates that an overwhelming 77% of sales of vacant parcels with no sewer available in the subject's submarket were conveyed through tax/commissioner sales.
 - h. The subject parcel has no sewer available, is below the minimum buildable lot size, and is adjacent to a burned-out house. As such, it would sell for a price at the low end of the comparable sales. This opinion is supported by the actual purchase price

of \$600, or \$0.20 per square foot, in November of 2002. It is also important to note that the subject purchase is almost four years after the date of assessment. It would have been expected to sell for a lower price at that time. *Petitioner Exhibits 2, 6, 9; Skish testimony.*

13. Summary of Respondent's contentions in support of the assessment:
 - a. The Petitioner bought this parcel at a commissioner's sale. The DLGF does not recognize tax or commissioner sales as arms-length transactions. *Toumey testimony.*
 - b. The lot is valued as a residential lot and is receiving a negative 20% land influence factor because it has no improvements. *Respondent Exhibit 2; Toumey testimony.*
 - c. During review for this hearing, it was discovered that the Petitioner is acting as a representative for other petitioners appealing three adjacent lots, numbers 15, 16, and 17. There is a question of vested interest in these lots that are contiguous to the subject under appeal. *Respondent Exhibit 3; Toumey testimony.*

Record

14. 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 1237,
 - c. Petitioner Exhibit 1: Form 139L,
Petitioner Exhibit 2: Summary of arguments,
Petitioner Exhibit 3: Outline of Evidence,
Petitioner Exhibit 4: Plat map,
Petitioner Exhibit 5: Photographs of parcel,
Petitioner Exhibit 6: Market overview,
Petitioner Exhibit 7: MLS sales 1/1/98 through 12/31/03,
Petitioner Exhibit 8: Tax and commissioner sales 10/1/01 through 12/31/03,
Petitioner Exhibit 9: Pie charts illustrating sale type market shares,
Petitioner Exhibit 10: Notice of Final Assessment for 001-25-45-0262-0019,
Petitioner Exhibit 11: Written appeal from 2/25/04 informal hearing,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Plat map,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign-in Sheet,
 - d. These Findings and Conclusions.

Analysis

15. 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.
16. The Petitioner provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. That evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c. The Petitioner bought the subject property for \$600 through a commissioner's sale on November 23, 2002. This evidence lacks weight and relevance unless there is something that establishes how the price relates to value as of January 1, 1999.
- d. The Petitioner also presented sales data from the Multiple Listing Service (MLS) sales, tax sales, and commissioners' sales in the area. In this area, the topography, lack of utilities, and requirement for a septic leach field increase the site preparation costs dramatically.
- e. There have been very few MLS sales of comparable property. The MLS sales data shows 22 sales between 1999 and 2003 in the same area as the subject. Eight of those sales were vacant lots that had no sewer available. Those eight lots were bigger than the Petitioner's lot, but the sale price per square foot provides a basis for comparison. The one such sale in 1999 had a price of \$1.09 per square foot. The one sale in 2000 had a price of \$0.48 per square foot. The one sale in 2001 had a price of \$0.50 per square foot. The one sale in 2002 had a price of \$0.47 per square foot. In 2003 there were four such sales with an average price of \$0.75 per square foot. Over this four-year period the average MLS sale price for comparable lots without sewer available was \$0.70 and most of the MLS sales involved purchases by an adjacent property owner. Furthermore, testimony established that during this same period there were 67 owners who attempted to sell through the MLS, but they were unable to do so. These facts indicated a very limited market for such properties.
- f. In this case, there is substantial, un rebutted evidence that tax and commissioners' sales primarily establish the market. Tax and commissioners' sales are the most common method of conveyance of a comparable vacant parcel without sewers. In this area, such sales constituted approximately 77% of the sales for comparable properties. The Petitioner presented sales data of 27 vacant properties in the area that sold by tax and commissioners' sales between 2001 and 2003. These 27 properties also had no sewers available. Although the sizes of the lots also differ, these sales establish a price range between \$0.20 and \$1.02 per square foot. The price the Petitioner paid for the subject property is at the bottom of that range; however, nothing in the record indicates that the Petitioner did not pay market value for his lot.
- g. The Respondent failed to offer probative evidence or substantial explanation to support the conclusory testimony that the Petitioner's purchase was not an arms-length transaction. Such conclusory opinions do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- h. Similarly, the Respondent failed to offer probative evidence or substantial explanation regarding how the Petitioner's relationship with other petitioners who appealed adjacent lots raises a question of vested interest or what the relevance of that

point might be to this case. Again, such conclusory opinions do not qualify as probative evidence. *Id.*

- i. The actual purchase price for this parcel provides substantial support for the claim that the market value was \$600. The comparable sales establish that the market did not change significantly between 1999 and 2002. Therefore, the assessed value should be changed to \$600.

Conclusion

17. The Petitioner made a prima facie case. The Respondent failed to rebut that case with substantial evidence. The Board finds for the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$600.

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>.