

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions On Rehearing Lake County

Petitions: 45-001-02-1-5-00742
45-001-02-1-5-00743
45-001-02-1-5-00753
45-001-02-1-5-00754
45-001-02-1-5-00755
45-001-02-1-5-00756

Petitioner: James Skish
Respondent: The Department of Local Government Finance
Parcels: 001-25-45-0252-0045
001-25-45-0252-0044
001-25-45-0252-0040
001-25-45-0252-0042
001-25-45-0252-0041
001-25-45-0252-0043

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 Petitioner's property tax assessments for the subject properties were \$8,400 each and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L for each parcel 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 24, 2005. The Board granted rehearing on September 15, 2005.

Facts

6. The subject properties are located at 1074, 1070, 1054, 1062, 1058, and 1066 N. Wells Street, Gary. The location is in Calumet Township.
7. The subject properties consist of six, contiguous, vacant residential lots with each lot measuring 25' by 225'.
8. The Special Master did not conduct an on-site inspection of the properties.
9. Assessed values as determined by the DLGF are \$8,400 for each parcel (land only).
10. Petitioner requested the total assessed value be changed to \$4,000 for each parcel.
11. The persons sworn as witnesses at the hearing were Gary Skish¹ and John Toumey.

Issues

12. Summary of Petitioner's contentions in support of errors in the assessments:
 - a. Petitioner bought all six parcels on the open market. A realtor had the properties on the market for 433 days. Though the lots were purchased from an estate, the transaction meets every definition of "well advertised on the open market." The Petitioner has no relationship with anyone involved that estate. *Skish testimony*.
 - b. There is currently no sewer available to the parcels and water service ceases approximately 75 feet to the north of the subject lots. *Skish testimony*.
 - c. The settlement statement dated February 6, 2001, shows that the contract price for all the lots was \$45,000, but there was a \$10,000 credit because the lots have no utilities. *Petitioner Exhibit 1 at 7; Skish testimony*. The true purchase price was \$35,000. Therefore, the market value of each lot was \$5,833. *Id.*
 - d. It is also important to note that the purchase took place two years after the date of assessment. The property would have been expected to sell for a lower price at that time. *Petitioner Exhibit 1 at 6; Skish testimony*.

¹ The Petitioner did not appear personally. Similarly, no attorney or authorized tax representative appeared for the Petitioner. Gary Skish is not an authorized tax representative, but he appeared for the Petitioner based on the authority of a "Durable Power of Attorney." *Petitioner Exhibit 1*. Such an appearance is not permitted by the Board's procedural rules for Lake County 2002 assessment appeals. Furthermore, representation based on a power of attorney is contrary to the generally applicable rules for tax representatives to practice before the Board. 52 IAC 1-1-4; 52 IAC 1-1-6; 52 IAC 1-2-1; 52 IAC 2-2-16; 52 IAC 2-3-2. The Board has clear, specific rules for tax representatives and would normally insist that they be followed. Nevertheless, the parties have not raised this issue. Absent objection, in this case the Board will consider the merits of the case that was presented.

- e. The topography is drastically sloped with several sharp rises and drops across the site. *Skish testimony.*
 - f. The parcels are zoned for multifamily residential use, which is not typical of this area. *Skish testimony.*
13. Summary of Respondent’s contentions in support of the assessments:
- a. The lots are valued as residential lots and each are receiving a negative 20% land influence factor because of being unimproved or having no utilities. *Respondent Exhibit 2; Toumey testimony.*
 - b. Estate sales generally “wave a red flag” when determining whether or not a sale is an arms-length transaction. The Respondent does recognize that the properties were purchased on the open market. *Toumey testimony.*
 - c. The properties are valued using the base land rate as set forth in the Lake County Land Order and are believed to be a correct reflection of market value-in-use for the neighborhood. *Toumey testimony.*

Record

14. The official record for this matter is made up of the following:
- a. The Petitions,
 - b. The tape recording of the hearing labeled Lake County 1234,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 139L Petitions with Power of Attorney and Settlement Statement,
 - Petitioner Exhibit 2 – Summary of Petitioner’s arguments,
 - Petitioner Exhibit 3 – Outline of Evidence,
 - Petitioner Exhibit 4 – Plat map,
 - Petitioner Exhibit 5 – Market overview,
 - Petitioner Exhibit 6 – MLS sales 1/1/98 through 12/31/03,
 - Petitioner Exhibit 7 – Tax and commissioner sales 10/1/01 through 12/31/03,
 - Petitioner Exhibit 8 – Written appeal from 2/25/04 informal hearing,
 - Respondent Exhibit 1 – Form 139L Petitions,
 - Respondent Exhibit 2 – Subject property record cards,
 - Respondent Exhibit 3 – Plat map/Aerial map,
 - Board Exhibit A – Form 139L Petitions,
 - Board Exhibit B – Notices 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 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.

16. There is sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
 - a. The properties were purchased for a total of \$35,000 on February 6, 2001, and were listed with a realtor more than a year, since December 1999. The record does not establish any reason to believe the properties would have sold for more than that amount as of January 1, 1999.
 - b. The Petitioner failed to provide any probative evidence or explanation regarding how his purchase price supports his requested value of \$4,000 per lot. The Petitioner's statement that it can be assumed that the purchase price would have been less two years before the purchase date is unsupported by probative evidence and is only a conclusory opinion. It is not probative evidence to establish an assessment error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
 - c. The Petitioner failed to provide evidence as to how the presence of trees and dunes on the properties would affect the value. Again, in making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club, Inc.*, 802 N.E.2d at 1022.
 - d. In this area, there were no other sales involving land zoned for multifamily use that occurred between 1998 and 2003, either through MLS or tax/commissioner sales. It is also noted that Petitioner Exhibits 6 and 7 reveal no other sales of lots or units comparable in size to the total of the subjects under appeal.

- e. The Respondent offered no rebuttal of any substance. The testimony that an estate sale is a red flag in determining whether a sale is an arms-length transaction is merely an unsupported, conclusory opinion. It is not probative evidence that the Petitioner failed to pay market value for this property. *Whitley Products*, 704 N.E.2d at 1119.
- f. The purchase price of the subject property carries the most weight in determination of a market value-in-use. The Board finds for the Petitioner and determines that each parcel's assessed value should be changed to \$5,800 to reflect the total final sale price of \$35,000.

Conclusion

- 17. The Petitioner provided sufficient evidence to establish a prima facie case. The Board finds for the Petitioner and determines that each subject parcel's assessed value should be \$5,800.

Final Determination

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