

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00759A
45-001-02-1-5-00760
45-001-02-1-5-00761
45-001-02-1-5-00762
45-001-02-1-5-00763
45-001-02-1-5-00764
45-001-02-1-5-00765

Petitioner: Maize W. Sasser

Respondent: Department of Local Government Finance

Parcel #: 001-01-39-0111-0019
001-01-39-0111-0014
001-01-39-0111-0013
001-01-39-0111-0012
001-01-39-0111-0011
001-01-39-0111-0010
001-01-39-0111-0009

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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$2,700 for Lot 19, \$4,700 for Lot 14, \$4,700 for Lot 13, \$2,600 for Lot 12, \$4,700 for Lot 11, \$4,700 for Lot 10, and \$2,300 for Lot 9. The DLGF's Notices of Final Assessments were sent to the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions on April 28, 2004.
3. The Board issued notices of hearings to the parties dated February 21, 2005.

4. Hearings were held on March 23, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject properties are located at 5900 W. 42nd Avenue, 5915 W. 41st Avenue (rear lot), 5914 W. 42nd Avenue (rear lot), 5914 W. 42nd Avenue (rear lot), 4158 Calhoun Street (rear lot), 4170 Calhoun Street (rear lot), and 5914 W. 42nd Avenue, Gary, in Calumet Township.
6. The subject properties are residential vacant lots.
7. The Special Master did not conduct an on-site visit of the properties.
8. The DLGF determined the assessed values for the vacant lots to be \$2,700 for parcel # 001013901110019, \$4,700 for parcel # 00101390111014, \$4,700 for parcel # 001013901110013, \$2,600 for parcel # 001013901110012, \$4,700 for parcel # 001013901110011, \$4,700 for parcel # 001013901110010, and \$2,300 for parcel # 001013901110009.
9. The Petitioner requests an assessed value of \$600 for each lot.
10. Maize W. Sasser, the property owner, and Joseph Lukomski Jr., representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The properties under review are Lots 9 – 14 and Lot 19. Lots 9 – 14 are 50 feet by 75 feet deep. Lot 19 is 50 feet wide and runs the length of the other lots. *Sasser testimony.*
 - b) According to the Petitioner, the properties are landlocked and located in a flood area near the Cady Marsh ditch. There is no access to electricity, gas, sewer, or water. The streets are only proposed streets. King Street, Dallas Street and 42nd Avenue do not exist. Further, the Petitioner testified that the lots are not within the city limits and that the street addresses do not exist. *Sasser testimony; Respondent Exhibit 3.*
 - c) There are no houses across from the subject lots, nor are there any houses to the east or west with only the ditch to the south. According to the Petitioner, there are houses on 41st Street. *Sasser testimony.*
 - d) The Petitioner testified that different real estate agents have attempted to sell the properties, but to no avail. *Sasser testimony.* According to the Petitioner, there were

discussions with different neighbors about buying the properties but there was no interest in the landlocked lots. *Id.*

- e) The Petitioner alleged that there was a soil test done in 1994 to see if it would be possible to build on the lots, but the properties failed the soil test. *Sasser testimony.* However, according to the Petitioner, the soil test results cannot be found and the persons who conducted the tests are no longer in business. *Id.* Thus, the Petitioner concluded that the properties cannot be sold nor can they be built on. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent submitted a property record card (PRC) for each parcel, plat maps, and the Residential Neighborhood Valuation Forms. *Respondent Exhibits 2 – 4.*
- b) According to the Respondent, the base rates for the subject properties at \$175 per front foot agrees with the value found on the Neighborhood Valuation Form. The correct values were applied to the subject lots. *Lukomski testimony & Respondent Exhibits 2 and 4.*
- c) A negative influence factor of 75% was applied to Lot 9 changing the assessment from \$9,300 to \$2,300. Other lots did not receive an influence factor. *Lukomski testimony; Respondent Exhibit 2 for Lot 9.*
- d) Finally, the Respondent argued that there was no evidence submitted by the Petitioner to support her claims. *Lukomski 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 BTR # 1271.
- c) Exhibits:

Petitioner submitted no documentary evidence

Respondent Exhibits 1: Form 139L Petitions
Respondent Exhibits 2: Subject PRCs
Respondent Exhibits 3: Plat Maps
Respondent Exhibits 4: Neighborhood Valuation Forms

Board Exhibits A: Form 139 L Petitions
Board Exhibits B: Notice of Hearing on Petitions
Board Exhibits C: Sign in Sheets

- d) These Findings and Conclusions.

Analysis

14. The most applicable laws are:
- a) A Petitioner seeking review of a determination of the DLGF 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”).
 - d) 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 failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that her property is overvalued. The Petitioner claims that her property is landlocked and is unable to be developed. *Sasser’s testimony*. Further, the Petitioner contends that she has tried to sell the properties on several different occasions and that there is no market for the lots since they are unable to be developed and have no street access. *Id.* In addition, the Petitioner claims that a 1994 soil test determined that the lots were not buildable.
 - b) Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel.” PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- c) While the property's soil conditions and land-locked status may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject property, or show what the actual market value of the property is. *See Talesnick*, 756 N.E.2d at 1108.
- d) Further, the Petitioner's statements that the lots cannot be sold or developed are unsupported by any factual evidence. As determined in *Whitely Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 890 (Ind. Tax 1995), the Petitioner must submit "probative evidence" that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error.
- e) Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

- 16. The Petitioner failed to make a prima facie case and the Board finds that no changes should be made 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 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 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>>.