

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-001-02-1-5-01044; 45-001-02-1-5-01044A; 45-001-02-1-5-01045;
45-001-02-1-5-01045A; 45-001-02-1-5-01046; 45-001-02-1-5-01046A;
45-001-02-1-5-01047; 45-001-02-1-5-01047A; 45-001-02-1-5-01048;
45-001-02-1-5-01048A

Petitioner: James H. Nowacki

Respondent: Department of Local Government Finance

Parcels #: 001-25-45-0261-0039; 001-25-45-0261-0034; 001-25-45-0261-0037;
001-25-45-0261-0033; 001-25-45-0261-0032; 001-25-45-0261-0035;
001-25-45-0261-0029; 001-25-45-0261-0030; 001-25-45-0261-0028;
001-25-45-0261-0027

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 February 20, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined the Petitioner's property tax assessments for the subject properties, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions with regard to the above referenced properties on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated June 3, 2005.
4. A hearing was held on July 6, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject properties are located at 800-828 Vigo Street, Gary, Calumet Township, in Lake County.
6. The subject properties are vacant, unimproved, residential, platted lots.
7. The Special Master did not conduct an on-site visit of the properties.

8. The assessed values for each parcel as determined by the DLGF, and as requested by the Petitioner, are as follows:

| <u>Parcel No.</u> | <u>Assessed Value</u> | <u>Requested Value</u> |
|---------------------|-----------------------|------------------------|
| 001-25-45-0261-0039 | \$4,000 | \$700 |
| 001-25-45-0261-0034 | \$6,000 | \$600 |
| 001-25-45-0261-0037 | \$5,900 | \$700 |
| 001-25-45-0261-0033 | \$4,000 | \$800 |
| 001-25-45-0261-0032 | \$3,200 | \$800 |
| 001-25-45-0261-0035 | \$4,000 | \$700 |
| 001-25-45-0261-0029 | \$4,000 | \$600 |
| 001-25-45-0261-0030 | \$4,000 | \$700 |
| 001-25-45-0261-0028 | \$4,000 | \$700 |
| 001-25-45-0261-0027 | \$2,400 | \$600 |

9. James H. Nowacki, Petitioner; John R. Craig, attorney¹; and Stephen H. Yohler, representing the DLGF, appeared at the hearing. Mr. Nowacki and Mr. Yohler were sworn as witnesses.²

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Petitioner purchased the subject parcels at a commissioner's sale on November 18, 2002. *Pet'r Exs. 1-2*. The sale was an auction open to the public, and it was advertised. *Id.* The sales were arm's-length transactions and the Petitioner bought the properties free and clear of all liens and encumbrances. *Id.*
 - b) In March of 2005, the Petitioner sold the subject properties to Miller Beach Investments, LLC. *Pet'r Ex. 3*. The sale prices for the subject properties ranged from \$680 to \$930. *Pet'r Ex. 3*.
 - c) The properties should be assessed at the final price paid on the open market as listed in the purchase agreement from James Nowacki to Miller Beach Investments, LLC.

¹ Mr. Craig did not file an appearance on behalf of the Petitioner. Mr. Craig referred to his client as Miller Beach Investments, LLC ("Miller Beach"), the entity that bought the subject properties from the Petitioner in 2005. There is no indication that Miller Beach was responsible for property taxes on the subject properties in 2002. It therefore does not appear that Miller Beach is a real party in interest in this case. Nonetheless, the Respondent did not object to Mr. Craig's participation in the hearing. The Board therefore will consider Mr. Craig's arguments in support of the Petitioner's position.

² Neither of these witnesses took an oath at this hearing. This was one of a series of hearings involving the same parties held on the same day. Mr. Nowacki and Mr. Yohler both took oaths at the first hearing (Pet. Nos. 45-001-02-1-5-01049; 45-001-02-1-5-01050; 45-001-02-1-5-01051), and they were reminded that they were under oath at the hearing immediately prior to the instant hearing (45-001-02-1-5-01052; 45-001-02-1-5-01058). Thus, it is clear from context that the witnesses believed themselves to be under oath for the instant hearing as well. The Board therefore views their testimony as sworn testimony.

Craig argument. The properties should not be assessed for a value higher than they can bring on the open market. *Id.*

11. Summary of Respondent's contentions in support of the assessment:
- a) The subject properties are being assessed from the Lake County Land Order, which is based on sales in the subjects' area. *Yohler testimony.* Lots in the subjects' neighborhood are correctly assessed. *Id.*
 - b) The commissioners' sale is not an arms length transaction. *Yohler argument.*
 - d) It is difficult to tell from the plat map submitted by the Petitioner whether any of the subject properties are rear lots. They are not assessed as rear lots. *Yohler testimony.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1805.
- c) Exhibits:
 - Petitioner Exhibit 1: Summary of Petitioners' Arguments
 - Petitioner Exhibit 2: Tax Deed
 - Petitioner Exhibit 3: Purchase Agreement and Deed
 - Petitioner Exhibit 4: Tax Bill
 - Petitioner Exhibit 5: Plat of lots on Vigo Street
 - Petitioner Exhibit 5a: Hand drawn plat of Vigo Street lots³

 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject property record card (PRC)⁴

 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
- d) These Findings and Conclusions.

³ The Petitioner submitted identically numbered exhibits with regard to each Form 139L petition. Where the Board refers to an exhibit number without referencing specific petitions, the reference is to all petitions.

⁴ The Respondent submitted identically numbered exhibits with regard to each Form 139L petition. Where the Board refers to an exhibit number without referencing specific petitions, the reference is to all petitions.

Analysis

13. 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.
14. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).
 - b) A petitioner may offer evidence relevant to the fair market value-in-use of his or her property to rebut an assessment and to establish the actual true tax value of the property. This evidence includes sales information regarding the subject or comparable properties. MANUAL at 5. In fact, the sale of a subject property is often the most compelling evidence of its market value.
 - c) Here, the Petitioner has submitted evidence of two sales of the subject properties. The Petitioner bought the subject properties at a commissioners' sale in November 2002. The Petitioner then sold the properties in March 2005.
 - d) The sale prices from the commissioners' sale are not probative of the subject properties' market value. The Manual defines market value as:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this

definition is the consummation of a sale as of a specified date and the passing title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

- e) In a commissioners' sale, the seller is not typically motivated. Normally, a property owner seeks to sell his property for the highest amount the market will bring. The commissioners, on the other hand, have little motivation other than to secure a price sufficient to cover any unpaid taxes on the property.
- f) There is no evidence that the Petitioner was anything other than a typically motivated seller, when it later sold the subject properties to Miller Beach Investments, LLC ("Miller Beach") in 2005. Thus, the sale prices from those transactions are probative of the market values of the subject properties as of the dates of sale.
- g) The Manual, however, provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4; *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- h) Here, the Petitioner sold the subject properties to Miller Beach more than six (6) years after the relevant valuation date. There is no evidence in the record to explain how the 2005 sale prices relate to the market value of the subject properties as of January 1, 1999.
- i) Based on the foregoing, the Petitioner failed to make a prima facie case of error in the assessment. As a result, no change in the assessment is warranted.

Conclusions

15. The Petitioner failed to make a prima facie case. The Board finds in favor of 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: _____

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>>.