

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-016-02-1-5-00366
Petitioners: James L. & Lawrence E. Wilson
Respondent: Department of Local Government Finance
Parcel: 006-35-50-0244-0010
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held in December 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$8,100 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is located at 62 Allen Street in Lake Station.
6. The subject property is a vacant residential lot consisting of 0.155 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is \$8,100 (land only).
9. The assessed value requested by the Petitioner is \$2,500.
10. Persons sworn as witnesses at the hearing:
James L. Wilson, owner,
Diane Spenos, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The subject property assessment is incorrect because it is higher than the comparable sale of a superior lot. The comparable land sale is similar in size and sold for \$2,000 on July 1, 2003. *Wilson Testimony; Petitioner Exhibit 5, 6.*
 - b) James Wilson is a realtor. The Petitioners have tried to sell the subject property for \$2,000. They tried to sell the property without listing the property in the Multiple Listing Service because listing will cost at least \$1,000. They were not successful. The Petitioners also offered to sell the subject property to the owner of the adjacent lot for \$2,000, but that person was not interested. *Wilson Testimony.*
 - c) The Petitioners bought the property in October 1996 for \$394.51 at tax sale. The taxes for 2002 are \$320.08, which is 81% of the original purchase price. *Id.*

12. Summary of Respondent's contentions in support of assessment:
 - a) The subject property is treated equitably to other lots in the same neighborhood and has received a 20% negative adjustment for being unimproved. *Spenos Testimony; Respondent Exhibit 2.*
 - b) No comparable land sales were available in the area because the neighborhood is built up. *Spenos Testimony.*
 - c) The Petitioners did not provide sufficient information to value their property based on their comparable. *Spenos 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 Lake Co – 960,
 - c) Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – Notice of Final Assessment,
Petitioner Exhibit 3 – Notice of Assessment,
Petitioner Exhibit 4 – Copy of deed showing purchase price,
Petitioner Exhibit 5 – Printout of a nearby sold property,
Petitioner Exhibit 6 – Map,
Petitioner Exhibit 7 – Copy of Tax Bill,
Petitioner Exhibit 8 – Notice of Hearing,

Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Subject Property Record Card,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d) These Findings and Conclusions.

Analysis

14. 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.
15. The Petitioners did not provide sufficient testimony to support their contentions. This conclusion was arrived at because:
- a) The Petitioners tried unsuccessfully to sell the subject property for \$2,000. The Petitioners offered the lot for \$2,000 to a neighboring property owner who is already using the property for storage and a swing set. That neighbor also keeps the property mowed. The neighbor was not interested in the offer. Petitioners have not listed the parcel in the Multiple Listing Service because realty companies charge \$1,000 for a listing.
 - b) The Petitioners failed to prove that the property was marketed for a reasonable time or with reasonable effort for the price of \$2,000. The fact that they have not been able to sell at that price does not help to prove market value-in-use.
 - c) The Petitioners presented a sale of land approximately $\frac{3}{4}$ mile away from the subject. The Petitioners contend that the area around the purportedly comparable property is

more desirable than their area. The purportedly comparable lot is 60'x 126' and is wooded. The Petitioner's lot is 50' x 135' and is in a swampy area.

- d) In order to establish probative value, the evidence must establish the comparability of the subject property with the purportedly comparable property. “[S]pecific reasons must be provided as to why a taxpayer believes a property is comparable.” *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). Furthermore, the Petitioners must explain “how any differences affected the relevant market value-in-use of the properties.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). In this case, the Petitioners failed to provide evidence to prove how the properties are comparable and how differences affect their relative values.
- e) The Petitioners argue that the taxes are excessive based on the purchase price of the property. In the present case, they bought the property at a tax sale for the minimum bid. The Petitioners failed to prove that their purchase price establishes a market value-in-use for this property. Furthermore, the Petitioners failed to present any probative evidence that would relate their purchase price from October 1996 to a value as of January 1, 1999. Accordingly, the purchase price is no help to establishing what the assessment should be. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2); *Long*, 821 N.E.2d at 471.
- f) The Petitioners failed to establish any relevance of the relationship between their tax bill and what they paid for this property. That evidence does not help to determine what the market value-in-use or the assessment should be.

Conclusion

- 16. The Petitioner did not establish a prima facie case. The burden never shifted to the Respondent to rebut anything. The Board finds for the Respondent. There is no change in 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>.