

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00834
Petitioners: Jerry A. & Virginia R. Keilman
Respondent: Department of Local Government Finance
Parcel #: 007-26-33-0159-0003
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 took place in February of 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$14,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed the Form 139L on April 28, 2004.
3. The Board issued notices of hearings to the parties dated June 14, 2005.
4. Special Master Jennifer Bippus held a hearing on July 19, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 710 Conkey St., Hammond, in North Township.
6. The subject property is a vacant lot with a chain link fence.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$14,000 for the land and \$800 for the improvements, for a total assessed value of \$14,800.
9. On the Form 139L, the Petitioners requested an assessed value of \$5,000 for the land and \$500 for the improvements for a total assessed value of \$5,500.
10. Jerry Keilman, the taxpayer, Craig Keilman, a witness for the Petitioner, and Terry Knee, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of alleged errors in assessment:
 - a) The Petitioners argued that the property assessment is overstated. According to the Petitioners, the taxpayer only paid \$1,200 for the lot about twenty-five years ago. *J. Keilman testimony.*
 - b) Further, according to the Petitioners, the subject lot cannot be built on because of the width of the property and the code requirements. The Petitioners argued that zoning requirements, such as the size of parking spaces and a three foot landscaping policy, must be met in order to build upon the property. Because the subject property cannot meet the requirements of the regulations, the property is not buildable. *J. Keilman; Petitioner Exhibit 6.*
 - c) The Petitioners testified that the lot is used as parking for the building on the adjoining lot. According to the Petitioners, they were told to combine the lots by Cole, Layer & Trumble (CLT). While the parcels were not combined, according to the Petitioners, the chain link fence was added to the subject property assessment and raised the assessment by \$800. The Petitioners contend that the chain link fence is also on the property record card of the neighboring parcel. According to the Petitioners, this is a double assessment. *J. Keilman testimony. Respondent Exhibits 1 & 3.*
 - d) According to the Petitioners, when the Petitioners met with CLT, the assessment of the property stood at \$10,800. After the meeting, the notice of assessment was \$14,800. The Petitioners testified that they could not understand how a lot that cannot be built upon could go up so much in value. *J. Keilman testimony.*

12. Summary of Respondent's contentions in support of alleged error in assessment:
 - a) The Respondent contends that the assessment is correct. In support of the assessment, the Respondent presented a copy of the property record card for the adjacent parcel, the subject property record card and photographs of both parcels. *Respondent Exhibits 1-4.* The Respondent also presented the incremental and decremental pricing of the properties valued together as they are contiguous.
 - b) The Respondent argues that the subject lot is used in conjunction with the adjoining property. According to the Respondent, the incremental and decremental values the combined parcels at a total of \$30,000. The subject property is valued at \$14,800 and is given an influence factor of forty percent (40%) for size. The subject property is the only parcel under appeal. *Knee testimony; Respondent Exhibit 4.*
 - c) Finally, the Respondent argues that a chain link fence exists on the subject property and value was added for that; there are no other improvements. The property is not

worthless because it is being used as parking for the contiguous property. *Knee testimony; Respondent Exhibit 1.*

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 County 1628,
- c) Exhibits:

Petitioner Exhibit 1: Copy of tax receipt 2000 payable 2001,
Petitioner Exhibit 2: Copy of tax receipt 2003 payable 2004,
Petitioner Exhibit 3: Summary of Petitioners' Appeal,
Petitioner Exhibit 4: Copy of letter from the Zoning Manager of Hammond, IN,
Petitioner Exhibit 5: Copy of improvements for 714 Conkey Street, adjoining property,
Petitioner Exhibit 6: Copy of Form 11 with \$10,800 value,
Petitioner Exhibit 7: Reconciliation tax bill for new value of subject property at \$14,800, instead of \$10,800.

Respondent Exhibit 1: Copy of subject property record card,
Respondent Exhibit 2: Photograph of subject,
Respondent Exhibit 3: Copy of property record card and photograph for adjoining property,
Respondent Exhibit 4: Copy of Incremental and Decremental Land Summary.

- 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 failed to provide sufficient evidence to support the Petitioners' contention. This conclusion was arrived at because:
- a) The Petitioners contend that the property is over-valued because 1) it can not be developed, 2) the property was purchased 25 years ago for \$1,200, 3) the chain link fencing has been assessed to the adjoining parcel and to the subject property and 4) the valuation was \$830 in 2000; it is now \$14,800. In support of their contentions, the Petitioners presented tax statements, one page of the property record for the adjoining parcel and a letter from the Department of Planning and Development for the City of Hammond. *Keilman testimony; Petitioner Exhibits 1, 2, 4, 5 and 7.*

Undevelopable Property

- b) Petitioners testified that the property is worthless because the zoning laws do not allow it to be developed. In support of this contention, the Petitioners submitted a letter from the City of Hammond indicating that to develop the subject property, the Petitioners would need a minimum of 46 feet in width. *Petitioner Exhibit 4.*
- c) 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. The Petitioners have 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).
- d) While zoning restrictions limiting the development of the property may be relevant to the issue of whether a negative influence factor should apply here, the Petitioners have failed to show how this condition 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. Further, we note that the Petitioners own the adjacent property. Thus, whether the subject property is restricted in its development due to its narrow width, there is no evidence that the Petitioners' property as a whole is undevelopable.

Tax Sale

- e) The Petitioners further testified that the property was bought twenty or twenty-five years ago from the bank for \$1,200 after a fire destroyed the building and there was a lien and back taxes due on the property. *Keilman testimony*.
- f) The 2002 Real Property Assessment Manual (the 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). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an “arm’s-length transaction.” In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. “Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.” *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a tax sale is not, by itself, probative evidence of market value of a property
- g) Furthermore, the 2002 Real Property Assessment Manual provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township 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). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
- h) Here, the Petitioners testified they purchased the property approximately twenty years prior to the January 1, 1999, valuation date. Pursuant to the Indiana Tax Court ruling in *Long*, the purchase price has no probative value to determine the subject property’s market value-in-use as of January 1, 1999.

Chain Link Fence

- i) The Petitioners further argued that the chain link fence on the subject property record card is the same chain link fence listed on the neighboring property also owned by the Petitioners. *Keilman testimony*. The Petitioners claim there is no chain link fence on

the neighboring property; it is only on the subject property. *Id.* Thus, according to the Petitioners, the chain link fence is double assessed to both properties. *Id.*

- f) While improvements should only be assessed once, the only evidence before the Board is the subject property. There is no question that the fencing is properly assessed to the subject parcel as evidenced by Respondent Exhibits 1 and 2. Because the adjoining parcel is not under appeal, however, the Board cannot make a determination regarding that parcel.

Prior Assessment

- g) Finally, the Petitioners contend that the subject property should be valued in accordance with the amount set forth in the 2000 assessment. *Keilman testimony.* The Petitioners are mistaken in their reliance on that assessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*

Conclusion

16. The Petitioners failed to establish a prima facie case. The Board finds in favor of the 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>.