

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00461
Petitioner: Andrea A. Basarich
Respondent: Department of Local Government Finance
Parcel #: 001254702850042
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 Department of Local Government Finance ("DLGF") determined that the assessment for the subject property is \$26,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated September 24, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 3, 2004.

Facts

5. The subject property is located at 6212 Fir Avenue, Gary. The location is in Calumet Township.
6. The subject property consists of a one-story frame bungalow on Lots 41 and 42, Block 3 of the George H. Wilson's 2nd Subdivision.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$14,400 Improvements \$12,100 Total \$26,500.
9. Petitioner requested a total assessed value of \$19,400.
10. Persons sworn as witnesses at the hearing:
For Petitioner — Andrea A. Basarich, Owner,
For Respondent — Anthony Garrison, Assessor/Auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Lots in this area are negatively affected by a spring fed pond and are partially or completely underwater. Two neighboring landowners, Mr. Bob Calvert and Ms. Lee Botts, joined the Petitioner in obtaining letters from three realtors who address this and other negative factors about lots 35 through 39. Lot 37 sold for \$750. *Petitioner Exhibit 3; Basarich testimony.*
 - b) Mr. Bob Calvert, who owns neighboring lots, received a stipulated assessment from the DLGF in September of 2004 that lowered the value of his lots from \$5,800 to \$700 each. *Petitioner Exhibit 2.* Mr. Calvert purchased Lots 38 and 39 on December 23, 2002, for a total of \$1,500. *Petitioner Exhibit 4; Basarich testimony.*
 - c) The Petitioner sold two other lots in this area in 1999 to the Shirley Hines Land Trust. The selling price was \$1,000 for each lot. *Basarich testimony.*
 - d) Lots 35-42 are each approximately 30 feet wide. *Petitioner Exhibits 1, 3; Basarich testimony.* The Petitioner's lots, Calvert's lots 38 and 39, and the lots of the Shirley Hines Land Trust are affected equally by the pond that occupies the area to the back of all of them. *Basarich testimony.*
12. Respondent offered no contentions in support of the assessment.

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 531,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Plat map,
 - Petitioner Exhibit 2 – Stipulation agreement between DLGF and Bob Calvert for neighboring property,
 - Petitioner Exhibit 3 – Three letters from Realtors with their opinion of value for lots 35 through 39,
 - Petitioner Exhibit 4 – Vacant Land Purchase Agreement for lots 38 and 39,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Photograph of subject,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign in Sheet,

- d) These Findings and Conclusions.

Analysis

14. The most applicable 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) 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. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).
- 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 made a prima facie case to support of her contentions. This conclusion was arrived at because:

- a) Petitioner submitted a plat map that shows a dark area that the Petitioner identifies as water or a spring fed pond. Petitioner testified that the pond had the same negative impact on her lots, 40-42, as it had on lots 35-39. Based upon proximity, size, the map and her testimony, Petitioner established at least a prima facie case for comparability of lots 35-42. Respondent did not rebut or impeach that evidence. While the Petitioner's house is the only improvement on any of these lots, Respondent offered no explanation or argument that the lots were not comparable because the subject property is improved and the others are not.
- b) The Petitioner submitted a Joint Motion to Stipulate Final Assessed Value, which is an agreement establishing the assessed value between the DLGF and the owner of neighboring lots. This agreement established an assessed value of \$700 each for lots 38 and 39. The Board notes the agreement provides that it is for settlement purposes

only and "shall not be used for any other purpose." Petitioner, however, was not a party to that language and is not bound by it. Significantly, Respondent made no objection to consideration of this agreement as evidence and Indiana Code § 6-1.1-15-4(a) authorizes the Board to assign full, limited or no evidentiary value to the assessed value determined by stipulation when it is submitted as evidence. In consideration of all the evidence submitted in this case regarding land value in this area, in this case it is appropriate to give some limited weight to the value that was agreed upon for lots 38 and 39.

- c) The Petitioner submitted a letter dated August 29, 2002, from Megan E. Cecil of Cecil Real Estate, Inc. The letter is specific to lots 35 through 39. Ms. Cecil notes that the above referenced lots appear to be under water and therefore have limited area to build according to the City of Gary's building codes. Ms. Cecil does not provide a specific value for the referenced lots.
- d) The Petitioner submitted a letter dated August 27, 2002, from Gene Ayers of Ayers Realtors, Inc. This letter is again specific to lots 35 through 39. It notes that because these lots are primarily covered by water, their value would fall at the low end of a \$500 to \$1,000 range apiece.
- e) The Petitioner submitted a letter dated August 24, 2002, letter from Frank L. Ennis of Ennis, Moore & Associates, Inc. Once again, this letter is specific to lots 35 through 39. Mr. Ennis states that he believes the value of the entire parcel would be in the \$2,000-\$3,000 range. There is no information in this letter about how the estimated value of these five vacant parcels relates to the Petitioner's property.
- f) Lots 38 and 39 sold in December 2002 for \$1,500. In addition, Petitioner sold two other lots on the block to the Shirley Hines Land Trust in 1999 for \$1,000 each. No documentation was provided to support this testimony, a fact that diminishes its credibility somewhat. Nevertheless, because Respondent did not dispute the testimony and because it is generally consistent with the other evidence Petitioner has introduced, this sale carries some weight as evidence of value in 1999.
- h) The evidence has established a range of values for the subject lots; however, the Board is persuaded that the best indication of value in this case is Petitioner's own testimony that she sold two comparable lots in 1999 for \$1,000 each. The land in this assessment is composed of two lots, therefore, the land value should be changed to \$2,000 and the total assessed value should be changed to \$14,100.

Conclusions

16. The Petitioner made a prima facie case that Respondent did not rebut. The Board finds in favor of Petitioner.

Final Determination

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