

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00321
Petitioner: Beth M. Buckley
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0081-0009
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 hearing as described in Ind. Code § 6-1.1-4-33 was held on February, 20, 2004. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessment for the subject property is \$5,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 9, 2004.

Facts

5. The subject property is located at 4019 Marshall Place, Gary, IN, in Calumet Township.
6. The subject property is a residential lot measuring 42 feet by 128 feet legally known as lot 9. This lot is considered vacant. It is adjacent to lot 10, also owned by the Petitioner.
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 is \$5,500 (land only).
9. Assessed value requested by Petitioner is land \$239.
10. Persons sworn as witnesses at the hearing:
For Petitioner — Beth M. Buckley, Owner,
For Respondent — John Toumey, Assessor/Auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner purchased the land at a tax sale for \$239 fourteen years ago. *Petitioner Exhibit 3A; Buckley testimony.*
 - b) Petitioner also owns lot 10, an adjoining property where her home is located. On the other side, a neighbor's dwelling is located on lot 8. At one time the Petitioner wanted to build a garage on the subject lot, but neither the health department nor the plan commission would provide a clear answer for permission to build. *Buckley testimony.*
 - c) The Petitioner identified two parcels located approximately four blocks from the subject that she offers as comparables. Each contain more than one acre of land and are only assessed at \$2,600 each. *Petitioner Exhibit 3A, C, D, E; Buckley testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The land is priced according to the Lake County Land Order as a vacant residential lot. It is currently receiving a 20 percent negative influence factor because it does not have any utilities. *Respondent Exhibit 2; Toumey testimony.*
 - b) The Respondent submitted an aerial map verifying that the subject lot is contiguous to lot 10, which is also owned by the Petitioner and where the Petitioner's dwelling is located. *Respondent Exhibit 3; Toumey testimony.*
 - c) The subject lot is priced using the front foot method. The subject's neighborhood has a base land rate of \$175 per front foot. The Petitioner's two comparables contain much more square footage and are priced using the residential acreage method, which has a base rate of \$2,600 per acre. *Petitioner Exhibits 3d, 3e; Respondent Exhibit 2; Toumey testimony.*
 - d) Tax sales are not considered to be representative of arms-length transactions and are not valid market value sales. The time of the sale (1990) also makes it unreliable as a determiner of market value in January 1999. *Toumey 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 County 620,

- c) Exhibits:
- Petitioner Exhibit 1: Form 139L,
 - Petitioner Exhibit 2: Summary of arguments (Form 139L, page 2),
 - Petitioner Exhibit 3: Written outline of evidence explaining relevance,
 - A. Documents from tax sale purchase of subject,
 - B. Square footage in one acre/square footage of subject,
 - C. Subject property record card,
 - D. Property record card for 3515 W. 41st Ave. Gary,
 - E. Property record card for 3537 W. 41st Ave. Gary,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Aerial map, plat map,
 - 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 governing cases and regulations 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 Petitioner failed to provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) "Market Value" is "[t]he 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 of 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 interest;
 - 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."
- 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (incorporated by reference at 50 IAC 2.3-1-2).
- b) Petitioner contends the subject parcel should be assessed for no more than what she paid for it at a tax sale. Generally tax sales, however, are not good indicators of market value. *Id.* There is no evidence that the seller was typically motivated. There is no evidence that the property got a reasonable time of exposure on the open market. There is no evidence that the tax sale price was unaffected by special considerations. Petitioner has not proved a basis for considering the tax sale price as an indication of market value. *Id.*
- c) Furthermore, that tax sale was almost ten years prior to the valuation date of January 1, 1999. A sale that remote in time is not an appropriate indicator of value for the 2002 reassessment unless there is evidence that relates the value to the valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d) The Petitioner presented two properties as comparable to the subject, but failed to explain how they were comparable. The two lots are approximately three blocks from the subject and each lot contains 43,560 square feet. The subject lot contains only 5,376 square feet. Other than proximity, Petitioner did not explain how those properties are comparable to her property. Petitioner's conclusory statement that something is comparable does not constitute probative evidence. *Id.* at 470; *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
- e) The evidence established that those comparables were assessed on an acreage basis, while the subject property was assessed on a front foot basis. Residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate established by the assessor. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 69 (incorporated by reference at 50 IAC 2.3-1-2). The subject lot is less than one acre and is valued at front foot value. *Id.* at 70.
- f) Petitioner failed to establish a basis for comparing the assessed values on these properties. Accordingly, the assessed values on those other lots are not probative evidence for this case. *Long*, 821 N.E.2d at 470; *Blackbird*, 765 N.E.2d at 715.

- g) The Petitioner testified that she had intended to construct a garage on the subject lot, but she could not receive a clear explanation of how to proceed to obtain the necessary permits. The fact that the Petitioner failed to obtain a building permit because of lack of a clear explanation does not indicate that the lot is unbuildable or has sustained any negative impact. Petitioner failed to establish how this fact demonstrates anything about or is probative regarding the value of the lot. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

Conclusions

16. The Petitioner failed to establish a prima facie case. The Board finds for 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.