

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-4-00056
Petitioners: Charles L. & Bonny Kortokrax
Respondent: Department of Local Government Finance
Parcel #: 005302400090028
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 November 6, 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$62,600 and notified the Petitioners on March 25, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. A hearing was held on April 4, 2005, in Crown Point, Indiana before Special Master Ken Daly.

Facts

5. The subject property is located at 13129 Lake Shore Drive, Cedar Lake in Hanover Township.
6. The subject property is 1.35 acres of vacant commercial land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$62,600.
9. The Petitioners request that the assessed value be reduced to \$25,600.
10. Charles Kortokrax, one of the Petitioners, and John Toumey, representing the DLGF, appeared at the hearing and were sworn as witness.

11. At the hearing, the Special Master requested that the Petitioners submit a letter from the Hanover Township Assessor that supported statements made by the Petitioners regarding an incorrect assessment of the subject property. The Petitioners were given seven days from the date of the hearing to respond. The Petitioners responded in a timely manner and the response is labeled and entered into the record as Petitioner Exhibit 9.

Issues

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The property was acquired in 1995 due to a divorce settlement and was valued at \$10,000. *Kortokrax testimony; Petitioner Exhibit 5.*
 - b) The property is zoned R-2 (residential single-family), not commercial. *Kortokrax testimony; Petitioner Exhibit 7.*
 - c) The property is adjoined by homes on the east, south and west sides with a main road separating it on the north. *Kortokrax testimony.*
 - d) A current appraisal valued the property at \$25,600 not \$62,600. *Kortokrax testimony; Petitioner Exhibit 8.*
 - e) According to Petitioners, Mr. Spiker, the Hancock Township Assessor, stated that Petitioners were overcharged in property taxes because the property is listed as commercial land. *Kortokrax testimony; Petitioner Exhibit 2.*
13. Summary of Respondent's contentions in support of assessment:
 - a) The Respondent testified that the DLGF did not receive a copy of the 139L petition for review of the issues until moments before the hearing. *Toumey testimony.*
 - b) The Respondent argued that the most likely use would be commercial and not residential. *Toumey testimony.*
 - c) The Respondent objected to the Petitioners' appraisal. According to the Respondent, comparable #2 is 40 acres and comparable #3 is 20 acres whereas the subject is only 1.35 acres. The larger parcels have no bearing in the valuation of the smaller parcel. *Toumey testimony; Petitioner Exhibit 8.*
 - d) The Respondent also objected to the 1995 value from the divorce settlement. According to the Respondent, it is not an arm's length transaction. *Toumey testimony; Petitioner Exhibit 5.*
 - e) Respondent Exhibit 3 was prepared for this hearing on the basis that this was a commercial unimproved lot. Using the abstraction method, the total price minus the

improvements equals the land value converted to a price per acre. The value the Respondent came up with is greater than the assessment of record of \$62,600. *Toumey testimony & Petitioner Exhibit 3.* However, according to the Respondent, if the subject property is determined not to be commercial land, then the value would be different. *Toumey testimony.*

- f) Finally, the Respondent testified that the letter from Cedar Creek (Planning, Zoning, Building, and Inspection Departments) was not verified with the Township Assessor as to whether or not the property is commercial or residential. According to the Respondent, the DLGF understood that the property is mixed use and most likely commercial and not residential. *Toumey testimony.* A “mixed use” property is one that could be used for residential or commercial. *Id.* Upon questioning, the Respondent testified that there was no other criteria used to determine commercial land other than the notation on the PRC under Property Class – 400 Commercial Vacant Land. *Id.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1466.
- c) Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Notice of Assessment
- Petitioner Exhibit 3: Notice of Final Assessment
- Petitioner Exhibit 4: Summary of Petitioner’s arguments
- Petitioner Exhibit 5: Letter from Marciadene Ballas, Realtor, in reference to the property value at time of 1995 divorce
- Petitioner Exhibit 6: 2000 property taxes
- Petitioner Exhibit 7: Town of Cedar Creek zoning letter
- Petitioner Exhibit 8: Appraisal dated December 31, 1999
- Petitioner Exhibit 9: Response to request for additional evidence

- Respondent Exhibit 1: Subject property record card (PRC)
- Respondent Exhibit 2: Map
- Respondent Exhibit 3: Commercial sales Hanover Township

- Board Exhibit A: Form 139L petition
- Board Exhibit B: Notice of Hearing on Petition
- Board Exhibit C: Sign-in Sheet

- d) These Findings and Conclusions.

Analysis

15. The most applicable laws are:
- a) A petitioner seeking review of a determination of the DLGF 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 Township Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Petitioner’s evidence. *See American United Life Ins. 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 479.
16. The Petitioners provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the classification of the 1.35 acres should be changed to residential excess acres (land type 91) from useable undeveloped commercial property (land type 13). *Kortokrax testimony; Petitioner Exhibit 9*. The Petitioners submitted the current assessment (2005) in support of the residential excess acreage classification. In addition, the Petitioners testified that the property is zoned residential family (R-2), not commercial. *Kortokrax testimony; Petitioner Exhibit 7*. To support these contentions, the Petitioners submitted an appraisal which estimates the market value of the property at \$25,600 as of December 31, 1999. *Kortokrax testimony; Petitioner Exhibit 8*.
 - b) Usable undeveloped land is vacant or raw land that is zoned for commercial or industrial purposes. REAL PROPERTY ASSESSMENT GUIDELINES- VERSION A (the GUIDELINES), ch.2 at 86. To value commercial and industrial acreage the township assessor delineates neighborhoods based characteristics, such as zoning, major roads or streets, natural geographic features, and availability of certain modes of transportation. *Id.* at 84.
 - c) Residential land is land that is utilized or zoned for residential purposes. *Id.* at 68. Residential acreage parcels of more than one acre and not used for agricultural

- purposes are valued using the residential homesite base rate (if applicable) and the excess acreage base rate established by the township assessor. The excess acreage base rate represents the 1999 acreage value of land when purchased for residential purpose. If there is no dwelling unit on the parcel, the amount of acreage in the entire parcel is multiplied by the appropriate excess acre rate. *Id.* at 68, 69.
- d) Here, the Petitioners submitted a letter from Walt Gembala, Zoning Administrator for the Town of Cedar Creek Lake Planning, Zoning, Building, and Inspection Departments that states the subject property is zoned as R-2. *Petitioners Exhibit 7*. Furthermore, the Petitioners submitted a PRC for 2005 that stated in the memorandum section of the card that the subject's land was listed in the commercial class but is residential and in the wrong neighborhood code. *Petitioner Exhibit 9*. The Respondent was unable to dispute the evidence that the property was zoned residential. No evidence was submitted whatsoever that supports a finding that this is commercial property other than Respondent's testimony that the area was mixed use which meant it could be used as either commercial or residential. *Bennington testimony*. Thus, the Board finds that the Petitioners have presented a prima facie case that the land has been improperly categorized as usable undeveloped commercial property.
- e) 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 similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).
- f) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present probative evidence of the true tax value of the property, a party relying on any form of appraisal should explain how the value on appraisal relates back to the property's value as of January 1, 1999. *See Long v. Wayne Twp.Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct.2005) (Holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- g) Here the Petitioners submitted an appraisal valuing the subject property at \$25,600 in 1999. *Petitioner Exhibit 8*. The Board finds that the appraisal is probative evidence

of market value-in-use. Therefore the Petitioners established a prima facie case for a change in assessment based on the appraisal. The burden, therefore shifts to the Respondent to impeach or rebut the appraisal. The Respondent alleged that two of the three comparable properties used in the appraisal were large properties (20 and 40 acres) that bore no relation to Petitioners' 1.35 acre parcel. However, the Respondent raised no issue with the remaining comparable. Further, the only "comparable" properties Respondent submitted were for commercial property. As determined above, there is no evidence to support a finding that the subject property is commercial property. Accordingly, the preponderance of the evidence supports a finding that the current assessment is incorrect and that the correct assessment is \$25,600.

Conclusion

17. Based on the evidence submitted by the Petitioners, the Board finds that the classification of the subject property should be residential excess acreage and valued at \$25,600.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the value of the assessment should be changed.

ISSUED: **10-03-2005**

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.