

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-008-02-1-5-00018
Petitioner: Francis K. Malis
Respondent: Department of Local Government Finance
Parcel #: 008081501150074
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 January 28, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$143,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 8, 2004.
3. The Board issued a notice of hearing to the parties dated June 22, 2004.
4. A hearing was held on August 11, 2004 in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 7376 Gable Road, Merrillville, in Ross Township.
6. The subject property is a brick ranch style single family dwelling located on 3.25 acres of land.
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: \$29,400 Improvements: \$114,100 Total: \$143,500.
9. Assessed Value requested by Petitioner:
Land: \$2,500 Improvements: \$114,100 Total: \$116,600.

10. The persons indicated on the attached sign-in sheet (*Board Exhibit C*) were present at the hearing.
11. Persons sworn in at hearing:
 - For Petitioner: Francis K. Malis, Owner
 - For Respondent: Cathi Gould, Staff Appraiser, CLT

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The parcel is full of large rocks and is sufficiently swampy.
 - b) The creek goes in and out of the parcel in three places.
 - c) Not sure that any house could be constructed on the south end of the property because of the wetness.
 - d) Subdivision Ordinance restrictions make it impossible to subdivide. A 60 foot road is mandated. They would have to construct 3 automobile bridges. The surrounding properties are not conducive to the high cost of such a subdivision.
 - e) This land cannot be farmed due to the lack of access and the trees and boulders.
 - f) The Petitioner opined that a fair assessment for the land is \$2,500.
13. Summary of Respondent's contentions in support of the assessment:
 - a) At the informal hearing, the Petitioner presented information about the creek and swamps and was given a 25% negative land influence factor to the residential excess acreage.
 - b) A 25% influence factor is what is typically given to land with swamps and flooding.
 - c) Land in this township sells for \$23,500 per acre. This was arrived at by using land sales
 - d) The subject is a 3.25 acre tract. One acre is the homesite. The remaining 2.25 acres are excess acreage and received the 25% influence factor.
 - e) The assessment is fair and reasonable based on the evidence.

Record

14. The official record for this matter is made up of the following:
 - a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co. Tape #118.
 - c) Exhibits:
 - Petitioner Exhibit 1: Map of subject area
 - Petitioner Exhibit 2: Subject property record card
 - Petitioner Exhibit 3: Form 11 from 1997
 - Petitioner Exhibit 4: Form 11
 - Petitioner Exhibit 5: Notice of Final Assessment
 - Petitioner Exhibit 6: Form 139L
 - Petitioner Exhibit 7: Summary of Petitioner's arguments

Petitioner Exhibit 8: Addendum to Petitioner's arguments
Petitioner Exhibit 9: Newspaper clipping on state reassessment
Petitioner Exhibit 10: Newspaper clipping regarding hiring of outside contractor

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Photograph of subject property
Respondent Exhibit 4: Comparable sales analysis, with property record cards and photographs
Respondent Exhibit 5: Plat maps of subject's area

Board Exhibit 1: Form 139L petition
Board Exhibit 2: Notice of Hearing
Board Exhibit 3: Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases:
- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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. Wash. 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.
16. The Petitioner did not provide sufficient evidence to prove the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner offered no evidence to support her allegations that the swampy land, the creek, and subdivision ordinances directly affected the value of the land.
 - b) The Petitioner failed to provide any evidence to support the requested value of \$2,500 for the land.
 - c) The Respondent testified the land was valued the same as other properties in the township.
 - d) The Petitioner was given a negative 25% influence factor on the excess acreage for the swampy land. The Respondent testified that 25% is the typical influence factor for land with swamps and flooding.

Conclusion

17. The Petitioner failed to make a prima facie case. The Board finds in that the assessment should not be changed.

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.