

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00609
Petitioner: Frank Donovan Reece
Respondent: Department of Local Government Finance
Parcel: 001-25-45-0262-0014
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 25, 2004. The Department of Local Government Finance (the DLGF) determined the assessment for the subject property and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on April 30, 2004.
3. The Board issued the notice of hearing to the parties dated February 21, 2005.
4. Special Master Joan Rennick held the hearing in Crown Point on March 23, 2005.

Facts

5. The subject property is a vacant residential lot located at 839 Vigo Street in Gary. It is currently assessed with a negative 20% influence factor for being unimproved. The subject property is located adjacent to six adjoining vacant residential properties owned by the Petitioner.
6. The Special Master did not conduct an on-site visit of the subject properties.
7. The assessed value of the property as determined by the DLGF is \$15,000 (land only).
8. On Form 139L Petitioner requested \$5,000 as the assessed land value.

9. The persons sworn as witnesses at the hearing were Gary Skish¹ and Joseph Lukomski, Jr.

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner purchased the subject property for \$12,000 on May 7, 2003. That price equals \$1.54 per square foot. *Pet'r Ex. 7*. The subject property was on the market for almost two years prior to the Petitioner's purchase. The subject property has two and one-half lots that were already combined into a single parcel. The Petitioner was responsible for the 2002 property taxes. *Skish testimony*.
 - b) The subject lot is 62.5' x 125' for an area of 7,813 square feet. There are no sewers, sidewalks, or curbs. The topography is drastically sloped. *Skish testimony; Pet'r Exs. 3, 4, 5*.
 - c) Vacant lots in this area that do not have sewers are not comparable to lots that have sewers available or to lots that were previously developed when dry wells were permitted. Those dry wells work very well for the homes that have them, but they are no longer legal. Most homes in the area predate the statewide ban on dry well leaching systems. The only way to build now is to put in a septic leach field, which is very costly due to the heavily wooded nature of the vacant lots. There is considerable tree removal expense as well as degradation of the natural beauty of wooded dune lots to create a septic field. Preparation of a lot for the septic field destroys most of the value of the lot. *Skish testimony; Pet'r Ex. 8*.
 - d) The subject property is located in the Miller Beach section of Gary. The submarket is defined as the area bounded by Montgomery Street to the west, Oak Avenue to the north, County Line Road to the east, and Marquette Trail to the south. The submarket consists of single-family residential uses and vacant lots with steep elevation and heavy woods. *Skish testimony; Pet'r Exs. 3, 8*.
 - e) The Petitioner provided an analysis of all vacant parcels sales in the submarket. The Multiple Listing Service (MLS) shows eight sales of vacant parcels without sewers for the years 1998 through 2003. During this time, there also were 67 expired listings where owners unsuccessfully attempted to sell. Most of the MLS sales were ones where adjacent landowners purchased the property, but otherwise there is not much demand for these vacant parcels.

¹ The Petitioner did not appear personally. Similarly, no attorney or authorized tax representative appeared for the Petitioner. Gary Skish is not an authorized tax representative, but he appeared for the Petitioner based on the authority of a "Durable Power of Attorney." *Pet'r Ex. 6*. Such an appearance is not permitted by the Board's procedural rules for Lake County 2002 assessment appeals. Furthermore, representation based on a power of attorney is contrary to the generally applicable rules for tax representatives to practice before the Board. 52 IAC 1-1-4; 52 IAC 1-1-6; 52 IAC 1-2-1; 52 IAC 2-2-16; 52 IAC 2-3-2. The Board has clear, specific rules for tax representatives and would normally insist that they be followed. Nevertheless, the parties have not raised this issue. Absent objection, in this case the Board will consider the merits of the case that was presented.

- f) The tax sales and commissioners' sales demonstrate that MLS was not the major source of sales of these properties. During the period from October 2001 through December 2003, in this area 27 parcels without sewers sold. These numbers indicate that tax sales are the most common method of conveyance for vacant parcels without sewers. From October 2001 to December 2003, in this area 77% of the vacant land sales were tax sale transactions. *Skish testimony; Pet'r Exs. 8-11.*
- g) The Petitioner intended to move back to Indiana and build a house. The Petitioner purchased seven lots in order to keep some of the dunes and put the septic system farther from the house. The Petitioner bought this particular property because of its location, which is adjacent to the other six lots he had recently acquired. This particular property has some more level area that the Petitioner intended to use for a septic field associated with a house on the other lots. The Petitioner had planned to build a house costing \$200,000 to \$250,000, but the taxes would be \$12,000. The taxes would be astronomical and prohibitive because a person can go just across the county line to the next town and have more reasonable taxes. *Skish testimony.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The rates applied reflect the values for that neighborhood from the land order for Lake County. The lots are receiving a negative 20% influence factor for being unimproved. *Lukomski testimony.*
- b) The Respondent presented property record cards for the subject properties and Plat/Aerial Maps showing the subject properties. *Resp't Exs. 2, 3.*

Record

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

- a) The Petition,
- b) The tape recording of the hearing labeled BTR 1289,
- c) Petitioner Exhibit 1: Form 139L petitions with Notice of Final Determinations,
 Petitioner Exhibit 2: Summary of Petitioner's Arguments,
 Petitioner Exhibit 3: Outline of Evidence,
 Petitioner Exhibit 4: Plat Map,
 Petitioner Exhibit 5: Photographs,
 Petitioner Exhibit 6: Power of Attorney,
 Petitioner Exhibit 7: Settlement Statement (RESPA),
 Petitioner Exhibit 8: Market Overview,
 Petitioner Exhibit 9: List of MLS Sales 1/1/98 – 12/31/03,
 Petitioner Exhibit 10: List of Tax Sale and Commissioners' Sale Parcels from
 10/1/01 – 12/31/03,

Petitioner Exhibit 11: Graphs of MLS and Tax/Commissioners' Sales Distribution,
Respondent Exhibit 1: Form 139L petitions,
Respondent Exhibit 2: Subject Property Record Cards (PRCs),
Respondent Exhibit 3: Plat/Aerial Maps,
Board Exhibit A: Form 139L petitions,
Board Exhibit B: Notices of Hearing,
Board Exhibit C: Sign in Sheet,

d) These Findings and Conclusions.

Analysis

13. The most applicable laws 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.

14. There is sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

- a) For the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). 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 Twp. 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 property sold on a date substantially removed from January 1, 1999.

- b) The market value-in-use of a property may be calculated by using several approaches that are generally recognized in the appraisal profession. MANUAL at 3, 5; Long, 821 N.E.2d at 469. One such approach is the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.* In order to use the sales comparison approach, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. Long, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties and explain how any differences between the properties affect their relative market values-in-use. *Id.* at 470-471.
- c) The Petitioner bought the subject property for \$12,000 on May 7, 2003. It was not a tax or commissioners’ sale. This evidence lacks weight and relevance unless there is something that establishes how the price relates to value as of January 1, 1999.
- d) The Petitioner also presented sales data from the Multiple Listing Service (MLS) sales, tax sales, and commissioners’ sales in the area. In this area, the topography, lack of utilities, and requirement for a septic leach field increase the site preparation costs dramatically.
- e) There have been very few MLS sales of comparable property. The MLS sales data shows 22 sales between 1999 and 2003 in the same area as the subject. Eight of those sales were vacant lots that had no sewer available. The sale price per square foot provides a basis for comparison. The one such sale in 1999 had a price of \$1.09 per square foot. The one sale in 2000 had a price of \$0.48 per square foot. The one sale in 2001 had a price of \$0.50 per square foot. The one sale in 2002 had a price of \$0.47 per square foot. In 2003 there were four such sales with an average price of \$0.75 per square foot. Over this four-year period the average MLS sale price for comparable lots without sewer available was \$0.70 and most of the MLS sales involved purchases by an adjacent property owner. Furthermore, testimony established that during this same period there were 67 owners who attempted to sell through the MLS, but they were unable to do so. These facts indicated a very limited market for such properties.
- f) In this case, there is substantial, un rebutted evidence that tax and commissioners’ sales primarily establish the market. Tax and commissioners’ sales are the most common method of conveyance of a comparable vacant parcel without sewers. In this area, such sales constituted approximately 77% of the sales for comparable properties. The Petitioner presented sales data of 27 vacant properties in the area that sold by tax and commissioners’ sales between 2001 and 2003. These 27 properties also had no sewers available. Although the sizes of the lots also differ, these sales establish a price range between \$0.20 and \$1.02 per square foot. The price the Petitioner paid for the subject property is well above that range. That fact supports

the Petitioner's claim that he paid more than market value and that the market value was not that much as of January 1, 1999.

- g) The comparable sales provide substantial support for the claim that the market value of the adjacent property with six lots was \$12,000 and that the market did not change significantly between 1999 and 2003. The comparable sales provide substantial evidence that the market value of those six lots was no more than \$12,000 (\$0.66 per square foot) as of January 1, 1999.
- h) The Petitioner's two purchases were less than two months apart. The subject property contains what were originally 2½ slightly larger lots. The Petitioner paid substantially more per lot for this property than for each of the other six lots. The evidence substantiates that the Petitioner paid more than market value for this particular property. Nevertheless, because of the difference in price paid, because of the difference in size, because of the difference in topography and because this property has frontage on a different street, the evidence does not lead to the conclusion that these 2½ lots have the same market value as the Petitioner's other six lots. In this case, the best evidence of market value is the average square foot price paid for MLS sales of similar properties, which is \$0.70. On that basis, the assessment for this property should be changed to \$5,500.

Conclusion

- 15. The Petitioner made a prima facie case. The Respondent failed to present probative evidence to rebut or impeach that case. The Board finds in favor of the Petitioner.

Final Determination

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