

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-001-02-1-5-00243
45-001-02-1-3-00244
45-001-02-1-3-00245
45-001-02-1-3-00246
45-001-02-1-3-00247

Petitioner: Frank L. Gray Jr.

Respondent: Department of Local Government Finance

Parcels: 001-25-46-0162-0002
001-25-46-0162-0003
001-25-41-0180-0037
001-25-41-0180-0038
001-25-46-0161-0003

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 hearings as described in Ind. Code § 6-1.1-4-33 were held in February 2004. The Department of Local Government Finance (the DLGF) determined the tax assessments for the subject properties. The Petitioner was notified of the assessments on March 31, 2004.
2. The Petitioner filed the Forms 139L on April 23, 2004.
3. The Board issued notices of hearing to the parties dated February 21, 2005.
4. Special Master Joan Rennick held the hearing in Crown Point on March 21, 2005.

Facts

5. The subject properties are located at 2708 Delaware Street, 2712 Delaware Street, 2715 Pennsylvania Street, 2705 Pennsylvania Street, and 2708 Pennsylvania Street in Gary.
6. The subject properties are unimproved, vacant lots. Each of the lots has a negative twenty percent influence factor for being unimproved. Each of the lots has the same neighborhood code.

7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value determined by the DLGF for parcel 001-25-46-0162-0002:

Land \$3,500	Improvements \$-0-	Total \$3,500.
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 The assessed value requested by Petitioner for this parcel:

Land \$722	Improvements \$-0-	Total \$722.
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9. The assessed value determined by the DLGF for parcel 001-25-46-0162-0003:

Land \$2,700	Improvements \$-0-	Total \$2,700.
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 The assessed value requested by Petitioner for this parcel:

Land \$557	Improvements \$-0-	Total \$557.
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10. The assessed value determined by the DLGF for parcel 001-25-41-0180-0037:

Land \$3,500	Improvements \$-0-	Total \$3,500.
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 The assessed value requested by Petitioner for this parcel:

Land \$722	Improvements \$-0-	Total \$722.
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11. The assessed value determined by the DLGF for parcel 001-25-41-0180-0038:

Land \$6,200	Improvements \$-0-	Total \$6,200.
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 The assessed value requested by Petitioner for this parcel:

Land \$1,278	Improvements \$-0-	Total \$1,278.
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12. The assessed value determined by the DLGF for parcel 001-25-46-0161-0003:

Land \$2,700	Improvements \$-0-	Total \$2,700.
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 The assessed value requested by Petitioner for this parcel:

Land \$557	Improvements \$-0-	Total \$557.
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13. Persons sworn as witnesses at the hearing:
 - Frank L. Gray,
 - Joseph Lukumski Jr., assessor/auditor.

Issues

14. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The subject properties are located in an area zoned F-1 by the City of Gary. *Gray testimony.*
 - b) The subject properties are located in an area zoned in the A-5-Flood Hazard Zone. *Id.*
 - c) The subject properties are irregular shaped and on irregular levels. *Id.*
 - d) The subject properties are vacant and unimproved. *Id.*

- e) The subject properties have soil conditions listed as “Mm” and Mb” that loses stability when wet. *Id.*
- f) The subject properties have restricted access. *Id.*
- a) Petitioner presented a market appraisal prepared by a general appraiser on Lot 37 (Parcel 001-25-41-0180-0037) and Lot 38 (Parcel 001-25-41-0180-0038). The appraisal valued the properties located at 2705 and 2715 Pennsylvania together. The appraiser arrived at a value of \$2,000 for these two properties. This value is approximately \$0.20 per square foot. The Respondent did not dispute this calculation. The remaining three parcels under appeal are adjacent to the two parcels considered in the appraisal. Petitioner testified that the five lots have the same influences, characteristics, zoning, and flood designation. The two parcels appraised are lower in elevation than the others, but all five parcels are wet most of the year. Again, the Respondent did not dispute this testimony. *Id.*

15. Summary of Respondent’s contentions in support of the assessment:

- a) The values placed on the subject properties were established by using land values in the area compiled by the township assessors. These land values were presented in a public hearing where landowners could protest values and sometimes those values were adjusted. This process is generally used. *Lukumski testimony.*
- b) The subject properties are currently receiving a negative twenty percent influence factor for being unimproved. *Respondent Ex. 2; Lukumski testimony.*

Record

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

- a) The Petition,
- b) The tape recording of the hearing labeled BTR 1295,
- c) Petitioner Exhibits 1-1 through 1-5: 139L Petitions with attached Notices of Final Assessment for each parcel,
 Petitioner Exhibit 2: Letter dated March 14, 2000, to Mr. Frank Gray (Petitioner) from the Calumet River Basin Development Commission regarding appraisal; cover letter dated January 20, 1999, to Daniel Gardner regarding appraisal; appraisal of parcel 001-25-41-0180-0037 and parcel 001-25-41-0180-0038 located at 2715 and 2705 Pennsylvania Street respectively prepared by Associated Property Counselors,
 Petitioner Exhibit 3: Land valuation from 1994 for four of the subject properties,
 Petitioner Exhibit 4: Assessments from 1995 for four of the subject properties,

Petitioner Exhibit 5: Real Estate and Transfer Records,
Petitioner Exhibit 6: Petitioner's notes,
Respondent Exhibit 1: Form 139L for each parcel,
Respondent Exhibit 2: Property Record Card (PRC) for each parcel,
Respondent Exhibit 3: Plat map page of each parcel,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign in Sheet,

d) These Findings and Conclusions.

Analysis

17. The most applicable law is:
- 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.
18. The Petitioner provided sufficient evidence to support his contention that the assessments must be changed. This conclusion was arrived at because:
- a) The purpose of the appraisal was to estimate the market value of those two parcels as of January 15, 1999. The client was the Little Calumet River Basin Development Commission and the intended use was the estimated market value to be used in negotiations for the acquisition of real estate required for the project. This appraisal provides an opinion of market value that is very close to the valuation date for the 2002 reassessment, and accordingly, it provides probative evidence for this case. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - b) The Petitioner has established similarity among all five lots that is a sufficient basis for comparison and that is undisputed by the Respondent. Accordingly, the appraisal has probative value in determining market value for all five lots. *Id.*

- c) Petitioner’s Exhibits 3, 4, and 5 are not relevant to the 2002 assessment. The valuation date for the 2002 assessment is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 1-7 (incorporated by reference at 50 IAC 2.3-1-2).
- d) Respondent stated the parcels should probably have more of a negative influence factor applied because of the current zoning and flood classification. The Respondent did not indicate what additional negative influence factor should be applied. Respondent did not offer any evidence regarding differences in the five parcels.
- e) Petitioner established a prima facie case by proving the current assessment is incorrect and establishing what the correct assessment should be by using the formula applied by the appraiser to arrive at the market value-in-use for the two appraised lots. Based on the evidence, it is reasonable to conclude that the other three lots should be valued using the same formula.
- f) The Petitioner presented evidence indicating the parcels under appeal all have similar characteristics, zoning, influences, and flood zone designation. The appraisal presented establishes the properties have a market value of \$0.20 per square foot. The Respondent did not offer any evidence to rebut the Petitioner’s case. Therefore, the Board finds for the Petitioner.
- g) Based on the value established by the appraisal (20¢ per square foot) and the size shown on the property record cards with the result rounded to the nearest \$100¹, the assessments should be as follows:
 - Parcel 001-25-46-0162-0002 assessed value will be \$800,
 - Parcel 001-25-46-0162-0003 assessed value will be \$600,
 - Parcel 001-25-41-0180-0037 assessed value will be \$800,
 - Parcel 001-25-41-0180-0038 assessed value will be \$1400,
 - Parcel 001-25-46-0161-0003 assessed value will be \$600.

Final Determination

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

ISSUED: _____

 Commissioner,
 Indiana Board of Tax Review

¹ REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A, ch. 2 at 81 (incorporated by reference at 50 IAC 2.3-1-2).

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>.