

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00170
Petitioner: Gloria J. Smith
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0213-0010
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 13, 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 \$7,300, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated January 26, 2005.
4. A hearing was held on March 1, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at: 2 Deep River Drive, Hobart, Hobart Township.
6. The subject property is an unimproved .294 acre parcel.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$7,300, Improvements \$0.
 - b) Assessed Value requested by Petitioner:
Land \$1,000, Improvements \$0.
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Gloria J. Smith, Owner
Dennis S. Smith, Owner

For Respondent: John Toumey, DLGF, Assessor/Auditor

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The subject lot is unusable and cannot be sold. *Gloria Smith testimony.*
- b) There are no water or sewer lines to the property. *Id.* Petitioner is unable to obtain a septic permit because of the soil, and because the subject lot is too small. *Id; Pet'r Ex. 3.*
- c) Other homes in the subject's subdivision are on septic systems, but the zoning regulations concerning minimum lot size changed after these homes were built. *Gloria Smith testimony.*
- d) The subject lot actually has no value, but because a request for a zero assessment did not seem appropriate, the Petitioner settled on an arbitrary figure of \$1,000. *Dennis Smith testimony.* Once potential buyers are told that they will not be able to build on the property, they are no longer interested in purchasing the property. *Id.*

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

- a) Prior to the informal hearing, the subject lot was valued at \$30,000, as are similar lots in the subject's neighborhood. *Toumey testimony.* As a result of the informal hearing, a 76% negative influence factor was applied to the assessment to account for the fact that the Petitioner can not presently build on it. *Id; Resp't Ex. 2.* This lowered the assessment to \$7,300. *Id.*
- b) An aerial map shows two smaller neighboring lots with dwellings. *Toumey testimony; Resp't Ex. 3.*
- c) The Petitioner submitted no market evidence to support a \$1,000 assessment. *Toumey argument.*

Record

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

- a) The Petition, and all subsequent submissions by either party.

- b) The tape recording of the hearing labeled Lake Co 973.
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Summary of Petitioner’s arguments
 - Petitioner Exhibit 3: Letter from Lake County Health Department

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject property record card
 - Respondent Exhibit 3: Aerial map of subject’s neighborhood

 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice 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 at 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”).
 - a) 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. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
 - a) The Petitioner contends that the assessment of the subject property should be lowered from \$7,300 to \$1,000 because the Petitioner cannot build on the property.

- b) 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 a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c) While the Petitioner submitted evidence that the subject property cannot be built upon until water and sewer lines are connected to the property, the Petitioner failed to show how this condition impacts the market value-in-use of the subject property, or show what the actual market value of the property is. See *Clark*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- d) The Respondent, meanwhile, provided evidence that the assessment reflects the fact that the property cannot presently be built upon, as a 76% negative influence factor has been applied. The Petitioner provided no market data showing that this adjustment is incorrect.
- e) For the reasons set forth, the Petitioner has failed to make a prima facie case that the assessment of the subject property is incorrect.

Conclusion

- 15. The Petitioner failed to make a prima facie case. The Board finds in favor of 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. 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>.