

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00452
Petitioner: Ilija Prentoski
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0232-0016
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County, Indiana in December, 2004. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$19,300 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 15, 2004.
3. The Board issued a notice of hearing to the parties on September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 11508 Irvin Place, Schererville, in North Township.
6. The subject property is an unimproved residential parcel consisting of 0.394 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$19,300
 - b) Assessed Value requested by the Petitioner:
Land \$100

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: Ilija Prentoski, Owner
For Respondent: Larry Vales, Representing the DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner bought the subject property at a tax sale in 1994 for \$1,000. *Prentoski testimony.*
 - b) The highest bid that the Petitioner received for the property was \$2,000 in 2004, from the owner of an adjacent property. *Id.*
 - c) The subject property is "nothing but wilderness" and has never been developed. There are no utilities or water, and the only access to the property is via dirt path. A creek runs across the middle of the property. *Id; Petitioner Exs. A-B.*
11. Summary of Respondent's statements regarding of assessment:
 - a) The subject property has been valued as being on a "paper street," meaning that no real street access to the property exists. As a result, a 50% negative influence factor has been applied to the property. *Vales testimony; Respondent Ex. 2.*
 - b) The property should be given an additional 40% negative influence factor due to the creek that runs across it. *Vales testimony.*

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 Lake Co. #510.
 - c. Exhibits:

Petitioner's Exhibit A: Photo of Subject Property
Respondent's Exhibit 1: Form 139L Petition
Respondent's Exhibit 2: Subject Property Record Card
Respondent's Exhibit 3: Arial Map
Respondent's Exhibit 4: Platt Map

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

d. These Findings and Conclusions.

Analysis

13. The most applicable governing cases 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. The Petitioner provided sufficient evidence to support a reduction in the assessment. This conclusion was arrived at because:
- a) The Respondent conceded that an additional negative influence factor of 40% should be applied to the subject property to account for the creek that runs across the property. *Vales testimony*.
 - b) The Petitioner, however, requested a further reduction in value. In support of his position, the Petitioner testified that he purchased the subject property at a tax sale in 1994 for \$1,000. Generally, a tax sale is not probative evidence of a property's fair market value, because the buyer and seller are not typically motivated and the property has not been exposed to the market for a sufficient period of time. Thus, the burden is on the Petitioner to prove that the circumstances surrounding the sale render it representative of the fair market value of the property. The Petitioner failed to meet this burden.
 - c) Moreover, for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party that submits

evidence of the property's market value as of a date substantially removed from January 1, 1999 must explain how that evidence demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township 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 Petitioner failed to provide such an explanation.

- d) The Petitioner may believe that the subject property's location and physical characteristics impair its value beyond the amount agreed to by the Respondent. It was the Petitioner's burden, however, to present evidence to quantify the effect of those factors on the property's market value. He did not do so.
- e) For the reasons set forth above, the Board hereby determines that the assessment should be changed to reflect an additional negative influence factor of 40% to account for the creek running across the subject property.

Conclusion

- 15. The preponderance of the evidence supports a finding that the assessment should be changed to reflect an additional negative influence factor of 40%.

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>.