

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00135
Petitioner: Jack Gross
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0272-0012
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$195,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. A hearing was held on December 8, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1160 Shelby St., Gary in Calumet Township.
6. The subject property is a single-family home on .294 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$56,700 for the land and \$138,800 for the improvements for a total assessed value of \$195,500.
9. The Petitioner requested an assessed value of \$44,800 for the land and \$74,800 for the improvements for a total assessed value of \$119,600 in his Form 139L. At hearing, the Petitioner requested an assessed value of \$17,300 for the land and \$138,800 for the improvements for a total assessed value of \$156,100.

10. Jack Gross, the owner of the subject property, and Steven Kovachevich, a witness for the property owner, appeared and were sworn as witnesses. Further, Diane Spenos, with the DLGF, appeared and was sworn.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The assessment of the subject property's land is too high. *Kovachevich testimony*. According to a sample of 1999 sales of vacant lots, a more appropriate market value for the subject lot is \$17,300. *Id; Petitioner's Ex. 1*.
 - b) The subject land is valued in the appraisal as if vacant, and at its highest and best use, as required by appraisal industry standards. *Kovachevich testimony; Petitioner Ex. 1*. According to the Petitioner's witness, the appraisal compares vacant lot sales of similar size, with similar proximity to Lake Michigan and similar lack of a lake view. *Id*. The value of the improvements were not examined or analyzed in the appraisal of the subject property. *Id*.
 - c) The assessment method utilized by the DLGF makes no division between land value and improvement value. The DLGF method merely takes "a big ball of wax" by dividing a square footage price by a sales price, and then applying percentages to determine an assessment of an entire unit. There is no market evidence to show the percentage of the sale prices that are actually the land value component. *Kovachevich argument*.
12. Summary of Respondent's contentions in support of the assessment:
 - a) An analysis of comparable properties shows the subject property is correctly assessed. *Spenos testimony; Respondent Ex. 4*. Petitioner's property, at \$87.59 per square foot, is lower than the average sale price of \$120 per square foot. *Id*.
 - b) The Respondent also argues that because the subject property is improved, valuing the land as vacant is not accurate. The value of the land must be taken together with the value of the improvement to determine an accurate value for the property as a whole. *Spenos testimony*.

Record

13. The official record for this matter is made up of the following:
 - a) The Petition.
 - b) The tape recording of the hearing labeled BTR #933.

c) Exhibits:

Petitioner Exhibit 1:	Appraisal
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photo
Respondent Exhibit 4:	Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photos
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet

d) These Findings and Conclusions.

Analysis

14. 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”).
- 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.

15. The Petitioner failed to make a prima facie case to support the Petitioner’s contention that the assessment of land is incorrect. This conclusion was arrived at because:

- a) The assessment of real property includes land, buildings and fixtures situated on the land and appurtenances to the land. THE REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), Chap. 1, p. 2.

- b) Property is assessed according to a base rate established for land by class in each neighborhood. GUIDELINES, Chap. 2, p. 9. The established value of land “represents the January 1, 1999 market value in use of improved land.” *Id.* at 7. Thus, although land is valued according to a base rate, it is based on market value principles. According to the *Uniform Standards of Professional Appraisal Practice and Advisory Opinions*, “land is appraised as though vacant and available for development to its highest and best use” and “the appraisal of improvements is based on their actual contribution to the site.” *Uniform Standards of Professional Appraisal Practice and Advisory Opinions*, Appraisal Standards Board, (2004 Ed.), Standards Rule 1-3(b), p. 19. For vacant property to be comparable to improved lots to determine land value, however, the vacant property must be developed for improvement. Thus, all utilities must be in place and “comparable” vacant lots must have the same or similar access, sidewalks and street lighting as the subject property. Alternatively, the Petitioner must provide evidence of the costs of such improvements to the vacant lots to make the land comparable. Further, the Indiana Supreme Court has held that whether properties are “comparable” depends on many factors including size, shape, topography, accessibility and use. *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- c) Petitioner’s witness prepared an appraisal of the value of the land evidencing that the market value of Petitioner’s land is \$17,300. However, Petitioner’s witnesses provided no evidence of the shape, topography or use of the purported “comparable” properties. Nor did Petitioner’s witness testify that the properties were developed for improvement or what the cost of adding utilities, sidewalks and other improvements to the vacant lots would have been. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Thus, Petitioner failed to raise a prima facie case that the land at the subject property is over-valued.
- d) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

16. The Petitioner has failed to make a prima facie case that the value of the land should be \$17,300. The Board finds in favor of 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>.