

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00325
Petitioners: James J. & Barbara J. Kozak
Respondent: Department of Local Government Finance
Parcel #: 008-43-53-0085-0029
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 November 2003 between the Petitioners and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$203,400 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties on September 14, 2005.
4. A hearing was held on October 14, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 9220 Norris Drive, Hobart, in Ross Township.
6. The subject property is a single-family home on 0.193 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land \$51,200 Improvements \$152,200 Total \$203,400
9. Assessed Value requested by the Petitioner during hearing:
Land \$30,000 Improvements \$152,200 Total \$182,200
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:
For Petitioner: James J. & Barbara J. Kozak, Owners
For Respondent: Larry Vales, Representing the DLGF

Issue

12. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The Petitioners' contention for a lower value is based the purchase price of \$121,633 for the subject property. *James Kozak Testimony; Barbara Kozak testimony; Petitioners Exhibit A.*
 - b. The Petitioners contend that vacant lots in their subdivision list for \$30,000. *Id.*; *Petitioners Exhibit B.* The Petitioners believe that the subject land should be valued for that amount as well. *James Kozak argument.*
13. Summary of Respondent's contentions in support of assessment:
- a. The Respondent contends that the land sales presented by the Petitioner are for vacant land and should not be considered comparable sales. *Vales Testimony.*
 - b. The Respondent testified that vacant parcels were adjusted upward by 20% to account for utilities and landscaping. *Vales Testimony.*
 - c. The Respondent contends that the sale prices of comparable improved properties support the current valuation of the improved parcel. *Vales Testimony; Respondent Exhibit 4.*
 - d. The Respondent did acknowledge an error in the valuation of the subject land. *Vales Testimony.* The Respondent indicated that a negative influence factor of 25% should be applied to the subject land to account for the fact that it is larger than other parcels in the subdivision. *Id.* The Respondent testified that application of the proposed negative influence factor would reduce the value of the subject land to \$38,000.

Record

14. The official record for this matter is made up of the following:
- a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #527.
 - c. Exhibits:

Petitioner Exhibit A: Purchase Price Agreement
Petitioner Exhibit B: Vacant Lot Listing Information

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Comparable sales sheet
Respondent Exhibit 5: Comparable property record cards with photos
Respondent Exhibit 6: Subdivision plat map

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

d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases, laws, and regulations 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.
16. The Petitioners provided sufficient evidence to support a reduction in the assessed value of the subject land. This conclusion was arrived at because:
- a. The Petitioners contend that the subject land should be valued at an amount equal to the listing and sale prices of other lots within their subdivision. In support of their position, the Petitioners submitted a letter from a realtor dated October 13, 2004. *James Kozak testimony; Petitioners Exhibit B*. According to the letter, the subject lot is identical in size to two lots that were being listed for \$30,000 as of the date of the letter. *Petitioners Exhibit B*. The letter also states that the subject lot is "close in size" to a third lot that sold "late last year" for \$30,000.

- b. For purposes of 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 the sale of a comparable property at a time substantially removed from the relevant valuation date should explain how the sale price relates to that property's value as of January 1, 1999. Without such an explanation, the sale lacks probative value. *See Long v. Wayne Twp. Assessor*, Cause No. 49T10-0404-TA-20 at 8-9 (Ind. Tax Ct. corrected original opinion dated January 28, 2005) (holding that, without further explanation, an appraisal indicating a property's value for December 10, 2003 was not probative of that property's market value-in-use as of January 1, 1999).
 - c. Even assuming that the Petitioners established that that the vacant lots referenced in the realtor's letter are comparable to the subject lot, they have not explained how the listing and sale prices for those lots relate to their value as of January 1, 1999. The Petitioners therefore failed to establish a prima facie case that the subject land should be valued at \$30,000.
 - d. However, the Respondent conceded that the assessed value of the subject land was incorrect due its size in comparison to other lots in the neighborhood. *Vales testimony*. The Respondent therefore recommended the application of a negative influence factor of 25%, which would reduce the value of the subject land to \$38,000. *Id.*
 - e. Based on the Respondent's concession, the preponderance of the evidence supports a finding that the current valuation of the subject land is incorrect, and that a correct valuation should not exceed \$38,000.
17. The Petitioners did not present sufficient evidence to support a reduction in the total assessed value of the subject property beyond the reduction in the land valuation discussed above. This conclusion was arrived at because:
- a. The Petitioners also contend that the total assessed value of the subject property is excessive. The Petitioners submitted a purchase agreement for the subject property in support of their position. *Barbara Kozak testimony; James Kozak testimony; Petitioners Exhibit A*. The purchase agreement is dated November 19, 1997, and reflects a purchase price of \$121,663. *Petitioners Exhibit A*.
 - b. However, a dispute evolved between the Petitioners and the developer regarding the developer's inability to timely complete construction of the subject dwelling in accordance with the terms of the purchase agreement. *Barbara Kozak testimony; James Kozak testimony*. This dispute apparently resulted in a lawsuit, given the Petitioners' reference to the dispute as being "in court." *James Kozak testimony*. The Petitioners eventually settled the dispute sometime during 2000 and they ultimately paid \$100,000 for the purchase of the partially completed dwelling. *Id.* The Petitioners had to pay additional sums to third parties in order complete construction of the dwelling. *Id.* The Petitioners testified regarding some of the

additional costs incurred to complete the construction, but it is not clear from their testimony whether there were costs beyond those to which the Petitioners testified. *Barbara Kozak testimony; James Kozak testimony.*

- d. A bona fide sale of the subject property is typically the best evidence of its market value. However, the sale of the subject property in this case suffers from significant problems affecting its probative value. First, the original purchase agreement is dated November 19, 1997. *Petitioners Exhibit A.* This is substantially before the relevant valuation date of January 1, 1999. The Petitioners did not explain how that purchase amount relates to the value of the subject property as of the relevant valuation date. Thus, as with the sales of the purportedly comparable lots discussed above, the 1997 purchase amount of the subject property is not probative of the subject property's true tax value. The same is true with regard to the \$100,000 ultimately paid by the Petitioners in 2000.
- e. The two purchase amounts lack probative value for another reason. Neither amount appears to actually relate to the subject property as it existed on the assessment date of March 1, 2002. With regard to the 1997 price, the Petitioners testified that the developer did not actually build the subject house in accordance with the specifications set forth in the purchase agreement. *Barbara Kozak testimony; James Kozak testimony.* Similarly, the negotiated settlement reached in 2000 was for a partially completed house, which the Petitioners subsequently improved. *Id.*
- f. Moreover, a negotiated settlement of an actual or potential lawsuit, such as the settlement between the Petitioners and the developer in 2000, is not an indication of market value. Under the 2002 Real Property Assessment Manual, market value is defined, in part, as "the most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgably, and assuming the price is not affected by undue stimulus." MANUAL at 10. The settlement was not the result of exposure of the subject property to a competitive and open market, and the existence of the lawsuit giving rise to the settlement necessarily constitutes an undue stimulus.
- g. The Petitioners also testified to numerous problems with the subject property, such as poor drainage and the lack of adequate heating ducts. While those problems might well detract from the value of the subject property, the Petitioners did not present any evidence to quantify the amount by which they reduce the subject property's market value-in-use.
- h. Based not the foregoing, the Petitioners failed to establish a prima facie case for a reduction in the assessed value of the subject property beyond the previously discussed reduction in land value.

Conclusion

- 18. The evidence demonstrates that there is an error concerning the assessed valuation of the subject land. The Board finds that the land valuation should be reduced to \$38,000.
- 19. The Petitioner failed to establish a prima facie case for a reduction in assessed value beyond the reduction in land value set forth above. The Board finds for the Respondent in that regard.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to reflect a land value of \$38,000.

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.