

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-3-01679
Petitioners: John & Margene D. Haluska
Respondent: The Department of Local Government Finance
Parcel #: 007-26-37-0077-0024
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 not held as the Petitioners did not receive the Form 11 Notice of Assessment. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$452,000.
2. The Petitioners filed a Form 139L on July 7, 2004.
3. The Board issued a notice of hearing to the parties dated March 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 8:15 P. M. on April 28, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 5044 Columbia Avenue, Hammond. The location is in North Township.
6. The subject property consists of 2.917 acres of industrial land.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$452,000.
9. Assessed value requested by Petitioners is:
Land \$58,000.

10. Persons sworn in as witnesses at the hearing:
C. Jerome Smith, Attorney for Petitioners,
Terry Knee, Assessor/Auditor, Department of Local Government Finance.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. The subject property is bordered on one side by the Little Calumet River, on another by a city park, and on the third by the City of Hammond Sanitary plant. It is long and narrow, extending back from the street. Its only use was as a driveway to a warehouse property that no longer exists. *Smith testimony; Respondent Exhibit 2.*
 - b. On November 1, 2002, an escrow agreement was entered into by the Petitioners and Miguel, Antonio, and Benjamin Gonzalez. The Gonzalez brothers had agreed to purchase the subject property for \$80,000. This offer was made after an informal appraisal was made by Paradise Realty of Hammond, Indiana. The money was put into an escrow account because the property was encumbered by an existing 20-year financial judgment that was in its 19th year at the time of the offer. *Petitioner Exhibits 4, 5; Smith testimony.*
 - c. While awaiting the end of the judgment against the subject property; the Sanitary District of the City of Hammond sought to acquire the subject property by eminent domain and extended an offer for \$59,800 on December 6, 2003. *Petitioner Exhibit 7, pg 3, 4; Smith testimony.*
 - d. The City of Hammond had two appraisals commissioned for the purposes of setting a value. An appraisal by Cyrus Realtors, Inc. (Petitioner Exhibit 8, pg 22) determines the value of the subject property, as of October 21, 2003, to be \$54,000. The second appraisal, performed by Richard Weiss Company, Inc. on October 30, 2003, set the subject's value at \$65,000 (Petitioner Exhibit 8, pg 44). *Id; Smith testimony.*
 - e. Subsequent letter appraisals, updating the original appraisals, were obtained by the City during the on-going eminent domain negotiations. Cyrus Realtors, Inc. offered a corrected value as of July 23, 2004 of \$82,000. Richard Weiss Company, Inc. submitted their letter update on April 5, 2005 that offers a corrected value as of October 30, 2003 of \$80,000. *Petitioner Exhibit 8, pg 1 and 34; Smith testimony.*
 - f. The original offer from the Gonzales brothers was withdrawn in deference to the eminent domain proceedings. As of this date, the City of Hammond is reconsidering their plans to initiate the taking and/or purchase of the subject property. Due to the fact that said proceedings have resulted in the Petitioners being unable to offer the subject property for sale since December 6, 2003, a court action against the City may be pursued. *Petitioner Exhibit 6; Smith testimony.*
12. Summary of Respondent's contentions:
The DLGF has determined that the subject property was incorrectly classified as commercial. It has been corrected to reflect a classification of industrial, which has resulted in a neighborhood code change from #02693 to #02698. This results in a base land rate correction which will change the total assessed value from \$452,000 to \$137,700. A corrected property record card is not available at this time. *Knee 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 Lake County 1583,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petitioner,
 - Petitioner Exhibit 2: Summary of Petitioners' argument,
 - Petitioner Exhibit 3: Outline of evidence,
 - Petitioner Exhibit 4: Escrow document as to purchase,
 - Petitioner Exhibit 5: Checks to support escrow agreement,
 - Petitioner Exhibit 6: Mutual Release of Escrow,
 - Petitioner Exhibit 7: Uniform Land Acquisition offer,
 - Petitioner Exhibit 8: Appraisals of Cyrus Realtors, Inc. and Richard Weiss Inc.,
 - Petitioner Exhibit 9: Valuation records,
 - Petitioner Exhibit 10: Printout of tax charges,
 - Petitioner Exhibit 11: Reconciliation of tax bill, current,
 - Petitioner Exhibit 12: Witness list and authorization,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Plat map,
 - Respondent Exhibit 3: Land calculations/Neighborhood Land Summary,
 - Board Exhibit A: Form 139L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Hearing Sign-in Sheet,
 - d. These Findings and Conclusions.

Analysis

14. 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.

15. The Petitioners provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioners' case with substantial evidence. This conclusion was arrived at because:
- a. The Petitioners offered probative evidence demonstrating on-going negotiations for the purchase of the subject property since November of 2002, from both a private and a public party, for a price of \$80,000. These negotiations continue three years later. *Petitioner Exhibits 4 thru 8; Smith testimony.*
 - b. The Respondent testified that the assessment of \$452,000 is in error and offered a corrected value of \$137,700 which would result from correcting the subject's property classification from commercial to industrial. *Knee testimony.*
 - c. The Respondent testified as to how base land rates are derived from comparable sales; but no comparable sales were offered to justify either the original assessed value or the corrected value. *Knee testimony.*
 - d. Both parties agreed that, unlike the residential market place, sales of industrial properties are generally more limited in quantity. However, the Cyrus appraisals offer five industrial sales that took place between 1997 and 2001. The Weiss appraisals offer two from 1998 and 2001.
 - e. The Respondent did not present any sales to support the assessed value of the property. The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Meridian Towers, 805 N.E.2d at 479.*
 - f. The Board finds that the combined weight of the 2002 private purchase offer of \$80,000 and the appraisals supplied by the City of Hammond to uphold an updated offer to purchase of \$80,000 provide the best indication of value for the subject property. The Board determines that this evidence supports an assessed value for the subject property of \$80,000.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds for the Petitioner.

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 \$80,000.

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. 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.