

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-001-02-1-5-00751 and
45-001-02-1-5-00752
Petitioner: Jon R. Beacher
Respondent: Department of Local Government Finance
Parcels: 001-25-45-0255-0023 and
001-25-45-0255-0024
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 held on February 25, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for each parcel is \$7,400. The DLGF notified the Petitioner of these assessed values on March 31, 2004.
2. The Petitioner filed a Form 139L for each parcel on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated November 16, 2004.
4. Special Master Peter Salvesson held the hearing in Crown Point on December 16, 2004.

Facts

5. The subject properties are located at 1003 and 1007 North Vigo Street in Gary.
6. The subject properties are adjacent vacant lots, each consisting of 0.069 acres.
7. The Special Master did not conduct an on-site inspection of the property.
8. The DLGF determined the assessed value of each parcel is \$7,400.
9. Petitioner contended the assessed value of each parcel is \$900.

10. Persons sworn as witnesses at the hearing:
For Petitioner - Gary Skish, Agent for Jon R. Beacher,¹
For Respondent - Sharon S. Elliott, assessor/auditor.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The subject properties were purchased for approximately \$925 each at a tax sale in March 2001. This was the second time these parcels were offered at a tax sale. They did not sell at the first tax sale. *Skish testimony; Petitioner Exhibits 2, 11.*
 - b) County records indicate the prior two transfers of the parcels under appeal were also by tax deeds. *Petitioner Exhibit 2.*
 - c) The properties are not on a paved street. They lack sidewalk or an alley. There is no sewer available to the parcels. The topography of the two parcels is drastically sloped, experiencing an elevation change of approximately 60 feet. *Petitioner Exhibits 2, 6; Skish testimony.* The costs to prepare the sites for construction are prohibitive. *Skish testimony.*
 - d) These types of properties are typically conveyed through tax sale transactions. A review of Multiple Listing Service (MLS) listings for the period 1998 through 2003 indicated only eight sales of properties that lack sewers. Most of these sales were to adjacent homeowners. There were 67 expired listings for this type of property. In contrast, during the period October 2001 through December 2003, there were 27 properties with no sewer that were offered at tax sales or commissioner's sales. Further, the prior transfer of each of these 27 parcels was also through a tax sale or commissioner's sale. Petitioner's data indicated that 77% of all sales of vacant parcels with no sewers resulted from tax sales or commissioner's sales. *Skish testimony; Petitioner Exhibit 2.*
 - e) Petitioner owns an adjoining third parcel that was purchased at the same tax sale in March 2001. *Petitioner Exhibit 11.* The third parcel has a frontage of 18 feet, smaller than the 25-foot frontage of each of the two parcels under appeal. *Petitioner Exhibit 4.* The assessed value of the third parcel was reduced to \$700 through the informal appeal process, but the values of the two subject properties were not changed. *Skish testimony; Petitioner Exhibit 10.*

¹ The Petitioner did not appear personally. Similarly, no attorney or authorized tax representative appeared for the Petitioner. Gary Skish is not an authorized tax representative, but he appeared for the Petitioner based on the authority of a "Durable Power of Attorney." Such an appearance is not permitted by the Board's procedural rules for Lake County 2002 assessment appeals. Furthermore, representation based on a power of attorney is contrary to the generally applicable rules for tax representatives to practice before the Board. 52 IAC 1-1-4; 52 IAC 1-1-6; 52 IAC 1-2-1; 52 IAC 2-2-16; 52 IAC 2-3-2. The Board has clear, specific rules for tax representatives and would normally insist that they be followed. Nevertheless, the parties have not raised this issue. Absent objection, in this case the Board will consider the merits of the case that was presented.

12. Summary of Respondent's contentions in support of the assessment:
- a) Tax sales do not indicate the fair market value of a property. *Elliott testimony.*
 - b) The subject properties are not on a paper street. *Id.*
 - c) The value of the third parcel was reduced because it is unbuildable. The two subject properties are adjacent. If combined, they are wide enough to be developed and can be considered buildable lots. *Id.*

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 Co. 1166,
 - c) Petitioner Exhibit 1 - Form 139L Petition,
Petitioner Exhibit 2 - Summary of Petitioner's arguments,
Petitioner Exhibit 3 - Outline of Evidence,
Petitioner Exhibit 4 - Plat map,
Petitioner Exhibit 5 - Photograph of street,
Petitioner Exhibit 6 - Photograph of parcel,
Petitioner Exhibit 7 - Market overview,
Petitioner Exhibit 8 - List of MLS sales from January 1, 1998, through December 31, 2003,
Petitioner Exhibit 9 - List of tax sale and commissioner sale parcels from October 1, 2001, through December 31, 2003,
Petitioner Exhibit 10 - Notice of Final Assessment for parcel 001-25-45-0255-0025,
Petitioner Exhibit 11 - Appeal from the February 25, 2004, Cole-Layer-Trumble Co. hearing,
Respondent Exhibit 1 - Form 139L Petition,
Respondent Exhibit 2 - Subject property record card,
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 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. Petitioner provided sufficient evidence to support his contentions because:
- a) Typically, tax sales are not reliable indicators of true market value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 10 (incorporated by reference at 50 IAC 2.3-1-2) (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). By their very nature, tax sales usually are not indicative of a competitive and open market. Nevertheless, in this appeal, Petitioner established the tax sale is a reliable indication of the market value of the two parcels.
 - b) Petitioner purchased the parcels the second time they were offered at a tax sale. The parcels did not sell at the first tax sale. The parcels therefore experienced a reasonable exposure time in the open market. County records indicate the prior two transfers of the parcels under appeal were also by tax deeds.
 - c) Local MLS listings for the period 1998 through 2003 indicated only eight sales of properties that lack sewers, while there were 67 expired listings for this type of property. In contrast, during the period October 2001 through December 2003, there were 27 properties with no sewer that were offered at tax sales or commissioner’s sales. Further, the prior transfer of each of those 27 parcels was also through a tax sale or commissioner’s sale. Petitioner’s data indicated that 77% of all sales of vacant parcels with no sewers resulted from tax sales or commissioner’s sales. Petitioner’s evidence demonstrates the limited demand in the market for this type of parcel. The record further indicates that tax sales or commissioner’s sales are the most common means of conveying these properties.

- d) Petitioner purchased the two parcels in March 2001. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, the record must contain some explanation as to how the proposed value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- e) The absence of any significant amount of sales activity suggests market demand and property values did not fluctuate during the period 1998 through 2002, establishing the required link between the March 2001 purchase date and the valuation date of January 1, 1999.
- f) Petitioner's evidence makes a prima facie case that each parcel should be valued at the actual rounded purchase price of \$900.
- g) Respondent failed to introduce any market data, such as an appraisal or evidence of the sales of comparable properties, to support the current assessed values. Similarly, Respondent failed to introduce probative evidence to rebut or impeach the market evidence that Petitioner introduced. Respondent merely opined that tax sales are not an indication of market value. Such conclusory testimony is not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Respondent failed to rebut Petitioner's prima facie case.
- h) Respondent did not dispute the testimony that the property lacks sewer, paved street, sidewalk or alley. Although in this case these informational items will not directly change the assessed value of the property, the property record card must be corrected.

Conclusion

16. Petitioner made a prima facie case. Respondent did not rebut that evidence. The Board finds in favor of Petitioner and concludes that the value of each parcel should be \$900.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed. Furthermore, the property record card must be corrected to indicate that these properties do not have sewer, paved street, sidewalk or alley.

ISSUED: October 25, 2005

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>.