

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00093
Petitioner: Joseph Busovsky
Respondent: Department of Local Government Finance
Parcel #: 002020301950008
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 December 9, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$36,800. The Notice of Final Assessment was sent to the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated July 16, 2004.
4. A hearing was held on August 26, 2004, at 1:10 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at: 15336 Ralston Place, Lowell, Cedar Creek Township, Lake County.
6. The subject property was assessed as a vacant lot, 148 feet by 100 feet (approx. 14,800 square feet), as of the March 1, 2002 assessment date.
7. The Special Master did not conduct an on-site visit of the property.

8. Assessed Values of the subject property as determined by the DLGF are:

Land: \$36,800 Improvements: \$-0- Total: \$36,800

9. Assessed Values requested by the Petitioner per the Form 139L petition are:

Land: \$31,800 Improvements: \$124,600 Total: \$156,400

10. The following persons were present and sworn in at the hearing:

For Petitioner: Joseph Busovsky, Taxpayer
For Respondent: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble (CLT)

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:

- a. The subject lot, 148 feet by 100 feet, is being over-assessed when compared with a neighbor's lot of 114 feet by 140 feet. *Busovsky testimony & Petitioner Exhibit 8.*
- b. There is a \$10,000 swell problem with the land, the property slopes, and it has problems with drainage. *Busovsky testimony.*
- c. The value of the land should be \$31,800. *Busovsky testimony.*
- d. After the informal hearing the dwelling was omitted from the tax rolls for March 1, 2002, and I am requesting the dwelling's assessment be reinstated. *Busovsky testimony.*
- e. The dwelling is experiencing problems with the windows and siding that affects the condition of the dwelling, however the previous assessment of \$124,600 was fair and accurate. *Busovsky testimony.*
- f. The dwelling is located on Parcel #00202030195007 not on Parcel #002020301950008. *Busovsky testimony.*

13. Summary of Respondent's contentions in support of assessment:

- a. The subject lot is valued using the same land base rate as the adjoining lots in this neighborhood. In addition, it is receiving a negative influence factor of 26% due to excessive frontage. *Elliott testimony & Respondent Exhibit 2.*
- b. The subject dwelling faces Ralston Place therefore the land has 148-foot frontage and 100-foot depth. Whereas, the neighbor's lot is smaller in size and has 114-foot frontage and 140-foot depth. *Elliott testimony.*
- c. The dwelling was omitted from the assessment and should be reinstated. The dwelling is an L-shaped ranch style, built in 1969, in average condition with an attached garage. The assessment is \$124,600. *Elliott testimony & Respondent Exhibit 5.*

- d. The aerial map for the subject parcel shows the dwelling is located on Parcel #002020301950008 not on Parcel #00202030195007. *Elliott testimony & Respondent's Exhibit 4.*

Record

14. The official record for this matter is made up of the following:
- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #152.
 - c. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Two (2) comparable property record cards (PRC) for Jeff Shocker

Petitioner Exhibit 2 – Comparable PRC for Florian Brozynski for Parcel #002020301950009

Petitioner Exhibit 3 – Three (3) photographs of the subject property

Petitioner Exhibit 4 – Plat map of the subject area

Petitioner Exhibit 5 – Five (5) photographs of the subject dwelling (located on Parcel #002020301950008)

Petitioner Exhibit 6 – Two (2) estimates from ABC Seamless Siding dated August 22, 2002 and September 11, 2002 for Parcel #002020301950008

Petitioner Exhibit 7 – Joseph Busovsky's original PRC for Parcel #002020301950007

Petitioner Exhibit 8 – Comparable PRC for Florian Brozynski for Parcel #002020301950010

For the Respondent:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004

Respondent Exhibit 2 – Joseph Busovsky's original PRC for Parcel #002020301950008

Respondent Exhibit 3 – Three (3) comparables with photographs for Daniel Rafalski, Timothy Vander and Bradley Miller

Respondent Exhibit 4 – An aerial map for the subject area

Respondent Exhibit 5 – A PRC showing the proposed value on the subject dwelling

For the Board:

Board Exhibit A – Form 139L petition, dated April 16, 2004

Board Exhibit B – Notice of Hearing on Petition, dated July 16, 2004

Board Exhibit C – Sign-in Sheet

Analysis

15. The most applicable governing cases are:
- a. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A – Book 1, ch. 2 at 16. Front Foot Value: Front foot value is a whole dollar amount applied to the most desirable frontage of a parcel. For a residential parcel in a platted subdivision, front footage along the street is of primary importance. In this case, the front foot method is appropriate because the front footage of the parcel has the greatest influence on the land's value.
 - b. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A – Book 1, ch. 2 at 38-58. Valuing Platted Lots: This section describes how to value platted lots. It discusses how to establish base rates, effective frontages, effective depths, how depth factors are used and whether any influence factor is to be applied to a platted lot.
 - c. 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).
 - d. 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”).
 - e. 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.

Land Value

16. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. The Petitioner's contention regarding the land value being overstated was not sufficiently supported with market evidence. The Petitioner's statement that his 148-foot by 100-foot subject lot (approx. 14,800 square feet) be assessed at the same value as the neighbor's 114-foot by 140-foot lot (approx. 14,000 square

feet), was not substantiated with market evidence and does nothing to establish the appropriate market value-in-use for the subject property. *See Pet'r Ex. 8; Busovsky testimony.*

- b. The subject parcel was valued using an actual frontage of 148 feet, an effective frontage of 148 feet with an effective depth of 100 feet. The base rate applied was \$410 per front foot. A negative influence factor of 26% was also applied. The property referred to by the Petitioner as a comparable to the subject (Petitioner Exhibit 8), has an actual frontage of 114 feet, an effective frontage of 108 feet with an effective depth of 140 feet. The base rate applied was \$410 per front foot. A negative influence factor of 26% was also applied. Though the lots differ in size, both lots were valued using the same base rate and each received the same negative influence factor. *C.f., Resp't Ex. 2; Pet'r Ex. 8.*
- c. Based on testimony given at the hearing, the subject structure faces Ralston Place and thus the land value was determined off of this street. The comparable faces 154th Avenue and thus the land value was determined off of this street. Since each lot was valued using front footages off of different streets, there lies another factor in the difference in the assessments. *See ¶15b.*
- d. Petitioner requested that the subject land value be the same as that of the comparable – \$31,800. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in the assessment. However, the Petitioner failed to show that the present assessment of \$36,800 to the land is incorrect and that the subject's land should be \$31,800. Petitioner's evidence establishes neither that the properties are comparable nor that they are assessed differently. The evidence before the Board indicates that they are assessed at the same base rate and with the same influence factor. Any assertion that they are assessed differently is simply incorrect. We are left with only the Petitioner's statement that the value is too high. Unsupported statements as to what the land should be valued are matters of opinion and are conclusory at best. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Improvement Value

17. The Petitioner and Respondent provided sufficient evidence to support their contentions. This conclusion was arrived at because:
 - a. At the hearing, the parties agreed a dwelling was omitted from the assessment records for the March 1, 2002, assessment date and should be reinstated on the tax rolls and assessed to either parcel #002020301950007, or parcel #002020301950008. *Busovsky testimony; Elliott testimony.*
 - b. The parties agreed the dwelling is an L-shape ranch style built in 1969, in average condition, with a detached garage. *Busovsky testimony; Elliott testimony.*
 - c. The Petitioner testified that the dwelling is in need of repairs to the windows and siding, which would affect the condition of the dwelling. *Busovsky testimony.*

However, the Petitioner agreed the assessed value shown on the subject's PRC (Petitioner Exhibit 7) of \$124,600 is fair and accurate.

- d. The Board accepts the uncontested testimony of the parties that the dwelling be reinstated on the tax rolls and assessed at \$124,600.

Dwelling Location

18. The Petitioner did not provide sufficient evidence to support his contention on this issue. This conclusion was arrived at because:
 - a. The Petitioner testified that the Township Assessor had assessed the subject dwelling on Parcel #002020301950007 since 1969 therefore the dwelling should be removed from Parcel #002020301950008 and transferred back to Parcel #002020301950007. *Busovsky testimony.*
 - b. The Respondent submitted an aerial map (Respondent Exhibit 4) prepared by George Van Til, County Surveyor of the parcels in question. The aerial shows the subject dwelling is located on Parcel #002020301950008. *Resp't Ex. 4.* The Board finds that the dwelling should be assessed on Parcel #002020301950008.

Conclusions

Land Value

19. The Petitioner failed to make a prima facie case by failing to effectively establish the appropriate land value of the subject property through documented market evidence. The Board finds in favor of the Respondent.

Improvement Value

20. The Petitioner and the Respondent testified that the dwelling had been omitted from the assessment records for March 1, 2002. The parties also agreed that the assessed value of the dwelling should be \$124,600. The Board will accept this testimony and agreement. The Board finds in favor of the Petitioner.

Improvement Location

21. The Petitioner failed to make a prima facie case through documented evidence to show that the dwelling is located on Parcel #002020301950007. The Respondent presented evidence that proves the dwelling is located on Parcel #002020301950008. The Board determines that the dwelling should be assessed on Parcel #002020301950008.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed as it pertains to (1) reinstating the dwelling on the March 1, 2002, tax rolls, and (2) showing the dwelling on Parcel # 002020301950008 at an assessed value of \$124,600. The assessment not be changed as it pertains to the land value.

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.