

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-026-02-1-5-00423
45-026-02-1-5-00424
45-026-02-1-5-00428
Parcels: 007-26-34-0260-0029
007-26-34-0260-0030
007-26-34-0260-0028
Petitioners: Joseph F. & Bernice J. Belovich
Respondent: Department of Local Government Finance
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 March 3, 2004. The Department of Local Government Finance (the "DLGF") determined that the assessments for the subject properties were \$4,800 each and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L Petitions on April 28, 2004.
3. The Board issued notices of hearings to the parties dated September 9, 2004.
4. Special Master Kathy J. Clark held a consolidated hearing in Crown Point on October 13, 2004.

Facts

5. The subject properties consist of three contiguous lots located at 1006, 1008 and 1010 Moss Street, Hammond. The location is in North Township.
6. The subject properties are vacant residential lots. Each lot has 25 feet of frontage and 125 feet of depth for a combined frontage of 75 feet and a combined square footage of 9,375.
7. The Special Master did not conduct an on-site visit of the properties.

8. Assessed value of each parcel as determined by the DLGF is \$4,800 (land only).
9. Assessed value requested by the Petitioners for each parcel is \$1,000 (land only).
10. The following persons were present and sworn as witnesses at the hearing:
For Petitioners — Joseph F. Belovich, owner,
For Respondent — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble,
John Toumey and Gary Brown, DLGF observers.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessments:
 - a. Each individual lot has only 25 feet of frontage and that makes them unbuildable and unusable. *Belovich testimony.*
 - b. The lots are issued individual tax bills. Therefore, they should be considered as individual lots, not contiguous lots. *Id.*
 - c. A neighbor refused to purchase the Petitioners' lot that is immediately adjacent to the neighbor's lot for \$1,000. *Id.*
 - d. The Petitioners tried to donate them to the city, but the city refused to take them saying "these types of properties are worthless and of no value". *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The lots are contiguous and the total frontage of 75 feet with total square footage of 9,375 exceeds the City of Hammond's minimum lot size specifications of 40 feet of frontage and/or 4,800 square feet. *Elliott testimony; Respondent Exhibits 2, 3.*
 - b. The lots could be legally combined into one parcel or sold as a group. *Elliott testimony.*
 - c. All three lots are currently receiving a 20 percent discount for being vacant. *Elliott testimony; Respondent Exhibit 2.*

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. 472,

- c. Exhibits:
 - Petitioner submitted no exhibits,
 - Respondent Exhibit 1: Form 139L Petitions for each parcel,
 - Respondent Exhibit 2: Subject property record cards,
 - Respondent Exhibit 3: Plat maps,
 - Board Exhibit A: Form 139 L Petitions,
 - Board Exhibit B: Notices of Hearings,
 - 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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. There is no real dispute that the subject property consists of three adjoining lots that together have 75 feet of frontage. Petitioners own all three. There also is no dispute that because each lot is only 25 feet wide, building on a single lot would not be permitted. For that reason, Petitioners testified that the lots are unbuildable and unusable and they have a much lower market value. That opinion, however, is not supported by the facts that are in evidence. It would be unrealistic to ignore the fact that Petitioners own all three lots in determining what the market value might be. Petitioners' conclusory statements that the property is unbuildable and unusable do not qualify as probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- b. The testimony that a neighbor refused to purchase an adjacent lot for \$1,000 does not provide probative evidence that the land has no market value. Even if it is true that a neighbor refused to purchase the other lot, one refusal to purchase a comparable lot is not enough evidence to form any legitimate opinion of market value. There is no evidence of a typically motivated buyer and seller. There is no evidence of a reasonable time of exposure on the market. In other words, the attempted sale described by Petitioners does not conform to several requirements to be a true indication of market value. 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (incorporated by reference at 50 IAC 2.3-1-2). The evidence does not establish that the current assessment is wrong or what the correct assessment should be. Consequently, it does not make a prima facie case. *Meridian Towers*, 805 N.E.2d at 478.

- c. Testimony that the City of Hammond refused to accept the property as a gift was not challenged or rebutted, but Petitioners failed to explain how that fact indicates a market value for the property. Again, the proposed gift transaction lacks several necessary elements to be a true indication of market value. MANUAL at 10. Without meaningful explanation and analysis, this fact provides no weight to Petitioners' claim that the assessed value of the property is too high. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

Conclusion

- 16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments 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.