

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00425
Petitioners: Joseph F. & Bernice J. Belovich
Respondent: Department of Local Government Finance
Parcel #: 007-26-34-0285-0036
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 assessment for the subject property was \$11,800. The DLGF notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L on April 28, 2004.
3. Special Master Kathy J. Clark held the hearing in Crown Point on October 13, 2004.

Facts

4. The subject property is located at 5945 Wallace Road, Hammond. The location is in North Township.
5. Subject property is a vacant residential lot with an effective frontage of 60 feet and a depth of 99 feet for a total of 5,940 square feet.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed value as determined by the DLGF is \$11,800 (land only).
8. Assessed value requested by the Petitioner is \$3,000 (land only).
9. 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

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. Because of its size, the lot is unbuildable and unusable. *Belovich testimony.*
 - b. A neighbor refused to purchase the property for \$3,000 because when she checked with the City of Hammond she was told it was too small to build either a duplex or a single family residence on the property. *Id.*
 - c. The Petitioners tried to donate it to the city so they could get a tax write off, but the city refused to take it. City representatives stated that these types of properties are worthless and have no value. *Id.*
 - d. All of the other properties on the subject's block have duplex buildings. It would not make sense to build a single family dwelling here. *Id.*

11. Summary of Respondent's contentions in support of the assessment:
 - a. The North Township Assessor has provided a list of the minimum lot sizes permissible for building purposes in North Township. That list states that, in the City of Hammond, a lot must have at least 40 feet of frontage and/or at least 4,800 square feet. *Respondent Exhibit 3; Elliott testimony.*
 - b. The subject parcel has an effective frontage of 60 feet and a total square footage of 5,940. *Respondent Exhibit 2; Elliott testimony.*

Record

12. 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. 474,
 - c. Exhibits:
 - Petitioner submitted no exhibits,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: North Township list of minimum lot sizes permissible for building purposes,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Hearing Sign-In Sheet,
 - d. These Findings and Conclusions.

Analysis

13. 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).
14. The Petitioners failed to establish a prima facie case. This conclusion was arrived at because:
 - a. Petitioners admitted that they were uncertain about the exact size of this lot. The property record card shows the size is 60 feet by 99 feet. Petitioners did not dispute those numbers. Respondent introduced evidence that the minimum size for a buildable lot in Hammond is 40 feet frontage and/or 4800 square feet. Again, Petitioners did not offer probative evidence to contradict that requirement. The testimony that the lot is unbuildable and unusable is conclusory. Petitioners did not back up that opinion with probative fact evidence. Such conclusory statements 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 the subject lot for \$3,000 because it was too small to build either a duplex unit or a single-family residence does not provide probative evidence that the land has no market value. Even if it is true that the neighbor refused to pay \$3,000 for this lot, one refusal to purchase at \$3,000 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 subject property. 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.
- d. The testimony that it would not make sense to build a single family dwelling on this lot because all other properties on the block are duplexes is again merely an unsubstantiated conclusion that has no weight toward establishing a prima facie case. *Whitley Products*, 704 N.E.2d at 1119. Furthermore, even if that is true, Petitioners failed to offer meaningful explanation or analysis of what that situation does to market value. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

Conclusion

- 15. The Petitioners failed 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 assessment 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.