

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00677
Petitioners: Kermit & Paula Bryan
Respondent: Department of Local Government Finance
Parcel #: 001254600980022
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 Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$7,500. The Petitioners did not receive the Notice of Assessment.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 23, 2005 in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The parcel number of the subject property was incorrectly identified on the Form 139L petition. A brief recess was taken. The correct parcel number and property record card were located and the hearing resumed.
6. The subject property consists of two unimproved residential lots located at 7809-15 Maple Avenue, Gary, Calumet Township.
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 \$7,500
9. Assessed Value requested by Petitioners on the Form 139L petition:
Land \$500

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Kermit Bryan, owner
Paula Bryan, owner

For Respondent: Joseph Lukomski, Jr., Assessor/Auditor, DLGF

Issue

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The subject lots are valued too high. The Petitioners purchased the 2 lots at a tax sale in 1992 for \$393. At that time the lots were appraised at \$250. *K. Bryan testimony; Pet'r Ex. 3.*
- b) The Petitioners presented a letter from the City of Gary, the bid for subject lots, and a Quit-Claim Deed. The bid includes a description of the subject lots including the parcel number, street address, legal description, lot size, zoning information, and appraised value of \$250. The Quit-Claim deed shows the subject lots deeded to the Petitioners for \$393 on February 11, 1993. *K. Bryan testimony; Pet'r Ex. 3.*
- c) The subject lots are unbuildable. There are no roads to the lots; Maple Avenue ends and there is an easement from a street that has been vacated. There are no utilities or sewer hookups. The lots are low and have standing water. The lots will have to be filled before building on them. *K. Bryan testimony; Pet'r Exs. 4, 5, 6.*
- d) If these lots are ever developed you will be able to walk to the beach. The Petitioners are just waiting for the street and utilities to be brought in. *P. Bryan testimony.*

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

- a) The subject property record card shows a negative 20% influence factor applied to the land. *Lukomski testimony; Resp't Ex. 2.*
- b) Based on the Petitioners' testimony, the Respondent agrees the lots are unbuildable. There were no streets and no utilities at the March 1, 2002 assessment date. An influence factor of negative 90% should be applied because the lots are unbuildable. *Lukomski testimony.*

Record

14. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1288.
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Summary of Petitioners' arguments
 - Petitioner Exhibit 3: Tax Sale Receipt – Appraisal
 - Petitioner Exhibit 4: Pictures – low water
 - Petitioner Exhibit 5: Map – no streets – no sewers
 - Petitioner Exhibit 6: Map – sewer tap

 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject PRC

 - Board Exhibit A: Form 139L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
- d) These Findings and Conclusions.

Analysis

- 15. 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 Township 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 Township 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.
- 16. The Petitioners did provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners contend the subject lots are valued too high. The Petitioners purchased the lots at a tax sale for \$393. The Quit-Claim deed shows the subject lots were deeded to the Petitioners in February 1993.
- b) Tax and Commissioners' sales are not reliable indicators of true market value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). Tax and Commissioners' sales are by their very nature not indicative of a competitive and open market. In this type of sale, the seller is not typically motivated. The seller is attempting to sell the property in order to return the property to the county tax rolls. The purchase price from the Commissioners Sale is not probative evidence of the market value-in-use of the subject property.
- c) The property description on the bid shows the appraised value of the subject lots to be \$250. It is not known who appraised the lots or how the appraised value was determined. The appraised value is not probative evidence of the market value-in-use.
- d) The Petitioners contend the lots are unbuildable; there are no streets or utilities. The lots are low and have standing water. The lots will have to have extensive fill in order to build on them.
- e) Based on the Petitioners' testimony, the Respondent agreed that the lots were unbuildable as of March 1, 2002.
- f) Based on the undisputed testimony, an influence factor of negative 90% should be applied to the subject property for being unbuildable.
- g) A review of the evidence submitted shows the subject parcel consists of 2 lots combined on a single parcel. The evidence shows each of the subject lots are 25' x 125'; therefore the subject parcel is 50' x 125'. The property record card shows the Petitioners are being assessed for a 25' x 125' lot. The property record card should reflect the correct lot size of 50' x 125' with a negative influence factor of 90% applied.

Conclusion

17. The Petitioners made a prima facie case. The Respondent agreed. The Board finds in favor of the Petitioners.

Final Determination

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