

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00070
Petitioner: Nancy J. Webb
Respondent: Department of Local Government Finance
Parcel #: 002020301000008
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 15, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$12,800 and notified 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 24, 2004, at 2:30 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 1029 North Lakeview Drive, Lowell, Cedar Creek Township in Lake County.
6. The subject property is an undeveloped lot that measures 50' x 100' x 35' x 100' (4250 sq. ft.).
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of the subject property as determined by the DLGF:
Land: \$12,800 Improvements: -0- Total: \$12,800
9. The assessed value of the subject property as requested by the Petitioner:
Land: \$1,000 Improvements: -0- Total: \$1,000
10. The following persons were present and sworn in at the hearing:
For the Petitioner: Nancy J. Webb, Owner
For the Respondent: Sharon S. Elliott, Staff Appraiser, CLT for the DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The Petitioner contends that the Lake County zoning ordinance in Lake Dalecarlia Subdivision requires 5,000 square feet to build a structure; therefore the subject lot, which contains 4,250 square feet, cannot be used for a building. *Petitioner Exhibit 2; Webb testimony.*
 - b. A letter submitted as evidence from the Lake County Plan Commission Administrator W.A. Brezil states, according to the county ordinance, property zoned R-2 in the Lake Dalecarlia Subdivision requires at least 5,000 square feet for construction; therefore, the subject lot containing 4,250 square feet is not usable for construction. *Petitioner Exhibit 9.*
 - c. The subject lot has no road access, is not usable and has no lake frontage thereby indicating the subject property is of little value. *Webb testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a. The subject property is valued with the same base land rate as the adjoining lots in the neighborhood and has received a negative influence factor of 40% due to the land being vacant and its location away from the lake. *Elliott testimony.*
 - b. The lots located in Lake County that are deemed to be unusable for construction would receive a negative influence factor of 90%. *Respondent Exhibit 6 and Elliott testimony.*

Record

13. 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. #104.
 - c. Exhibits:
For the Petitioner:
Petitioner Exhibit 1 – A copy of Form 139L petition, dated April 16, 2004

Petitioner Exhibit 2 – A plat map of the subject area, prepared by Torrenge Engineering, dated September 13, 1972.
Petitioner Exhibit 3 – Property card information for Elizabeth Demkowicz, St. Elijah Serbian Church, and Anthony Angelo (comparable properties).
Petitioner Exhibit 4 – Property card information for William Jensen (comparable property).
Petitioner Exhibit 5 – Property card information for Terry Vaidik, Lake Dalecarlia property owners, David Ossello, and Mark Talbot (comparable properties).
Petitioner Exhibit 6 – A copy of the zoning districts for the subject area provided by the Lake County Zoning Commission.
Petitioner Exhibit 7 – A copy of the Notice of Hearing on Petition, dated July 16, 2004.
Petitioner Exhibit 8 – A copy of the Notice of Final Assessment, dated March 19, 2004.
Petitioner Exhibit 9 – A letter from the Lake County Plan Commission, prepared by W.A. Brezil, Zoning Administrator.

For the Respondent:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004.
Respondent Exhibit 2 – Nancy Webb’s 2002 property record card.
Respondent Exhibit 3 – A plat map and aerial map of the subject area.
Respondent Exhibit 4 – An aerial map and two property record cards for Terry Vaidik.
Respondent Exhibit 5 – An aerial map and three property record cards for Elizabeth Demkowicz.
Respondent Exhibit 6 – A copy of land influence factors for Lake County.

d. These Findings & Conclusions.

Analysis

14. The most applicable governing cases and regulations 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 Petitioner provided sufficient evidence to support her contentions. This conclusion was arrived at because:
- a. The Petitioner's sole argument is that due to the Lake County zoning ordinance in the Lake Dalecarlia Subdivision the subject lot is unusable for construction; therefore the \$12,800 assessed value is excessive. *Webb testimony*. The lot is simply too small to build on and lacks road access. *Webb testimony*.
 - b. The Petitioner submitted a letter from W.A. Brezil, Zoning Administrator, that states the subject area requires 5,000 square feet in order to build in that area. The Petitioner has established that it requires 5,000 square feet to build and that the subject property only contains 4,250 square feet. *Petitioner Exhibit 9; Webb testimony*.
 - c. The Respondent testified that if any lot within Lake County is determined to be unusable it receives a negative influence factor of 90%. *Respondent Exhibit 6; Elliott testimony*.
 - d. The Board finds the Petitioner has sufficiently established that a building cannot be constructed on the lot; therefore it should receive a negative 90% influence factor. *See Petitioner Exhibit 9; Webb testimony*. The Petitioner has made a prima facie case regarding the assessed value being overstated. Respondent did not rebut Petitioner's case.

Conclusion

16. The Petitioner made a prima facie case that the lot is unable to be built upon. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and determines that a negative influence factor of 90% should be applied consistent with Respondent's testimony.

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.