

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00116; 45-002-02-1-5-00118
Petitioner: Neal E. Dixon
Respondent: Department of Local Government Finance
Parcel #: 002-02-03-0177-0019; 002-02-03-0177-0021
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. Informal hearings as described in Ind. Code § 6-1.1-4-33 were held between the Petitioner and the Respondent with regard to each of the above listed parcels. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessments for the above listed parcels were \$16,600 each and notified the Petitioner on March 19, 2004.
2. The Petitioner filed Form 139L petitions with regard to the above listed parcels on April 12, 2004.
3. The Board issued notices of hearing to the parties on October 7, 2004.
4. On November 10, 2004, in Crown Point, Indiana Special Master Peter Salveson held a hearing concerning both of the above referenced Form 139 L petitions. Based upon the similarity between issues raised and evidence presented with regard to those two petitions, the Board has consolidated the petitions for purposes of this Final Determination.

Facts

5. Both of the above listed parcels are located at 3860 Main Street, Lowell, in Cedar Creek Township.
6. Parcel No. 002-02-03-0177-0019 (0019) is an unimproved residential lot consisting of 0.171 acres of land. Parcel No. 002-02-03-0177-0019 is an unimproved residential lot consisting of .171 acres of land. The Board will refer to the two parcels collectively as "the subject parcels" unless otherwise indicated

7. The Special Master did not conduct an on-site visit of the subject parcels.

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

Parcel # 0019	Land	\$16,600	Improvements	\$0	Total	\$16,600
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Parcel # 0021	Land	\$16,600	Improvements	\$0	Total	\$16,600
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9. Assessed Value requested by the Petitioner during hearing:

Parcel # 0019	Land	\$8,333	Improvements	\$0	Total	\$ 8,333
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Parcel # 0019	Land	\$8,333	Improvements	\$0	Total	\$ 8,333
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10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Neal E. Dixon, Owner

For Respondent: John Toumey, Representing the DLGF

Issue

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

- a. The Petitioner bought six parcels, including the subject parcels, from his parents in December of 1998. The Petitioner paid a total of \$110,000 for all six parcels including a residence located on one of the parcels. *Dixon testimony.*
- b. The subject parcels are over-assessed because they are not level. A topography map shows a slope from 690 feet to 700 feet across the subject parcels. This would be a factor when constructing improvements. *Dixon testimony; Petitioner Exhibit 4*
- c. The property record cards incorrectly list the subject parcels as having utilities, gas, electric, sewer and water service. *Dixon testimony; Petitioner Exhibit 5.*
- d. The property record card for parcel 0021 describes that parcel as having a lake view, but the parcel does not have an appreciable view of the lake. *Dixon testimony; Petitioner Exhibits 6-7.*
- e. The total area of all parcels is 45,000 square feet, which amounts to just over an acre. The market value of an acre of land in the area in which the subject parcels are located is approximately \$50,000. The value for each parcel therefore should be \$8,333. *Dixon testimony.*

- f. The Petitioner contends that all six parcels should be valued as one unit. Since the assessment, he has had all the parcels combined on one parcel number. *Dixon testimony.*
13. Summary of Respondent’s contentions in support of assessment:
- a. The Respondent contends that it properly assessed the subject parcels as being vacant, unimproved land. *Toumey Testimony and Respondent Exhibit 2.*
 - b. The subject parcels received a 20% reduction in value for being unimproved and another 20% reduction for undetermined reasons. *Toumey Testimony; Respondent Exhibit 2.*
 - c. The Respondent contends that the Petitioner purchased the subject property from a relative, which is not an arms-length transaction. *Toumey 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 Lake Co. #681.
 - c. Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Summary of the Petitioner’s arguments
- Petitioner Exhibit 3: Written outline of evidence explaining its relevance
- Petitioner Exhibit 4: Topography map
- Petitioner Exhibit 5: Pictures to show lack of improvements and utilities
- Petitioner Exhibit 6: Maps to show no lake view (parcel # 0021 only)
- Petitioner Exhibit 7: Pictures to show no lake view (parcel # 0021 only)¹

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject property record card²

- Board Exhibit A: Form 139 L Petition
- Board Exhibit B: Notice of Hearing

¹ The Petitioner actually submitted two separate sets of Exhibits - one for each Form 139L petition. The Exhibits are numbered in the same manner and bear the same descriptions, except that there are two additional Exhibits (6 & 7) pertaining only to parcel # 0021. The Board therefore refers to the Exhibits collectively 1-5 collectively. A reference to Petitioner’s Exhibit 1, for example, collectively refers to both Form 139 L Petitions.

² The Respondent also submitted separate Exhibits for each petition. As with the Petitioner’s Exhibits, the Board treats the Respondent’s Exhibits collectively for purposes of this Final Determination. Thus, a citation to Respondent’s Exhibit 2 refers collectively to the property record cards for each of the parcels under appeal

Board Exhibit C: Sign in Sheet

- d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases, laws, 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, by a preponderance of the evidence, 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 Board of Tax Commissioners*, 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. Wash. 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.
16. The Petitioner did not provide sufficient evidence to support his contention for a reduction in assessed value. This conclusion was arrived at because:
- a. The subject parcels are adjacent to each other as well as to three additional parcels that the Petitioner also owns. Those additional parcels, including the parcel upon which the Petitioner's residence is located, are the subject of separate appeals.³
 - b. The Petitioner based his claim for a reduction in assessment of the subject parcels on the following grounds: (1) the Petitioner bought all six parcels, including the parcel containing his residence, from his parents for \$110,000 in December 1998; (2) the subject parcels are not level; (3) the subject parcels lack utilities; and (4) the subject parcels each should be assessed for one-sixth of \$50,000, which is the approximate value of an acre of land in the area in which the parcels are located. The Petitioner further contended that the assessment of parcel 0021 should be reduced because it does not have a lake view and because a portion of his residence sits on that parcel.

³ Those appeals were filed under Petition Nos.: 45-002-02-1-5-00116; 45-002-02-1-5-00117; 45-002-02-1-5-00118. The parties stipulated to an agreement with regard to Petition No. 45-002-02-1-5-00117. The Board is issuing a separate Final Determination regarding the other two petitions.

- c. While the sale of a subject property often presents the most compelling evidence of that property's market value, there are two facts that render the December 1998 sale in this case devoid of probative value. First, the Petitioner testified that he bought the property from his parents. This casts serious doubt upon whether the sale was an arms length transaction and consequently upon whether the sale price is probative of the property's market value. Second, although the Petitioner originally appealed the assessment of the parcel containing the residence, the parties stipulated to that parcel's value, and that appeal is no longer before the Board. The Petitioner did not provide any means by which the Board might determine what portion of the sale price to attribute to the parcels that remain under appeal.
- d. The Petitioner submitted a topography map showing a decrease in elevation from 700 feet to 690 feet across the subject parcels. *Petitioner Exhibit 4*. The Petitioner, however, did not provide any evidence by which to quantify the effect of that slope on the market value of the subject parcels.
- e. The Petitioner did present evidence that the subject parcels lack utilities. The property record cards, however, indicate that each parcel received a negative influence factor totaling forty percent (40%). *Respondent Exhibit 2*. The cards, on their faces, do not specify the basis for the negative influence factor. Nonetheless, the Respondent's representative testified that of that forty percent (40%) factor, twenty percent (20%) was designed to account for the parcels not being developed. *Toumey testimony*. The Board finds this testimony to be credible. The Petitioner did not present any evidence to demonstrate that the twenty percent (20%) negative influence factor does not adequately account for the effect of the lack of development upon the parcels' market value. The Petitioner therefore failed to demonstrate an entitlement to a reduction in assessment due to the subject parcels not being developed.
- f. The Petitioner similarly failed to present any evidence to support his requested value of \$8,333 for each parcel. The Petitioner based this valuation on his testimony that property in the area was worth approximately \$50,000 per acre. The Petitioner, however, did not provide any evidence regarding how he determined the market value of land in the area. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- g. The Petitioner presented evidence arguably demonstrating that parcel 0021 does not have a view of the lake despite the fact that the notation "lake view" appears in the memorandum section of its property record card. *Dixon testimony; Petitioner Exhibits 7-8*. The Petitioner, however, did not explain how the reference to the lake view affected the Respondent's valuation of the parcel. The Petitioner did not present any evidence to show that the characterization of the parcel as having a lake view affected the base rate used to calculate its land value, and there is no indication on the property record card that any influence factor was applied to adjust the value upward to account for a lake view.

- h. Finally, the Petitioner testified that a portion of his house sits upon parcel 0021. *Dixon testimony.* According to the Petitioner, that fact reduces the value of the parcel because it cannot be sold separately. The Petitioner may be correct in that regard; however, he presented no evidence from which to quantify the effect that the encroachment of the house had upon the market value of the parcel.
- i. Based on the foregoing, the Petitioner failed to establish an error in assessment

Conclusion

- 17. The Petitioner failed to establish a prima facie case for a reduction in the assessed value of the property. The Board finds in favor of 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: 8-18-05

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>.