

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00026
45-001-02-1-5-00027
45-001-02-1-5-00028
Petitioner: Norman Purdue
Respondent: Department of Local Government Finance
Parcel #'s: 001-25-42-0044-0014
001-25-42-0044-0015
001-25-42-0044-0016
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$3,300 each for parcels 001-25-42-0044-0014 and 001-25-42-0044-0015. The assessment was \$6,600 for parcel 001-25-42-0044-0016.
2. The Petitioner filed a Form 139L for each parcel on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing covering all three parcels was held on July 9, 2004, in Crown Point, Indiana before Special Master Michael R. Schultz.

Facts

5. The subject properties are located at 120, 126, and 130 North Lake Street, Gary in Calumet Township.
6. Parcel 001-25-42-0044-0014 constitutes .072 acres. Parcel 001-25-42-0044-0015 constitutes .072 acres. Parcel 001-25-42-0044-0016 constitutes .143 acres. These parcels are contiguous properties and all are vacant.
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:
- | | | |
|-----------------------------|---------------|-----------------|
| Parcel #001-25-42-0044-0014 | Land: \$3,300 | Total: \$3,300. |
| Parcel #001-25-42-0044-0015 | Land: \$3,300 | Total: \$3,300. |
| Parcel #001-25-42-0044-0016 | Land: \$6,600 | Total: \$6,600. |
9. Assessed Value requested by Petitioner:
- | | | |
|-----------------------------|-------------|---------------|
| Parcel #001-25-42-0044-0014 | Land: \$133 | Total: \$133. |
| Parcel #001-25-42-0044-0015 | Land: \$133 | Total: \$133. |
| Parcel #001-25-42-0044-0016 | Land: \$222 | Total: \$222. |
10. The following persons were present and sworn as witnesses at the hearing:
- | | |
|-----------------|-------------------------------------|
| For Petitioner: | Norman Purdue |
| For Respondent: | Cathi Gould from Cole-Layer-Trumble |

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The subject property is at the base of a hillside and it floods. *Purdue testimony.*
 - b) The subject property is wooded and vacant. *Purdue testimony; Petitioner Exhibit 3.*
 - c) The subject property has a topography issue and is unbuildable because it is on a hill. *Purdue testimony; Petitioner Exhibit 3.*
 - d) The property could not be sold for as much as it is assessed. *Purdue testimony.*
 - e) Petitioner bought parcel 001-25-42-0044-0014 at tax sale on January 19, 2002, for \$1,200. *Purdue testimony; Exhibit 2.*
 - f) Petitioner bought parcel 001-25-42-0044-0015 at tax sale on May 18, 2002, for \$650. *Purdue testimony; Exhibit 2.*
 - g) Petitioner bought parcel 001-25-42-0044-0016 at tax sale on November 23, 2002, for \$600. *Purdue testimony; Exhibit 2.*
13. Summary of Respondent's contentions in support of assessment:
- a) A negative influence factor was given for flooding and vacancy. *Respondent Exhibit 2; Gould testimony.*
 - b) The tax sale value is not a fair indicator of market value. *Gould testimony.*
 - c) No evidence submitted to state lots are unbuildable. *Gould testimony; Respondent Exhibit 9.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake County #221.
 - c) Exhibits:
 - Petitioner Exhibit 1: List of lot sizes with the old and new tax assessments.
 - Petitioner Exhibit 2: Receipt for purchase of properties.
 - Petitioner Exhibit 3: Photos of subject properties.

 - Respondent Exhibit 1: 139L Petition.
 - Respondent Exhibit 2: Subject property record card.
 - Respondent Exhibit 3: Photos of subject property.
 - Respondent Exhibit 4: Photos of subject property.
 - Respondent Exhibit 5: Photos of subject property.
 - Respondent Exhibit 6: Photos of subject property.
 - Respondent Exhibit 7: Photos of subject property.
 - Respondent Exhibit 8: Photos of subject property
 - Respondent Exhibit 9: Sales receipt and photo.
 - d) These Findings and Conclusions.

Analysis

15. The most applicable governing statutes/rules/cases are:
- a. A Petitioner seeking review of a determination of the DLGF 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 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. 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.

- d. 2002 REAL PROPERTY ASSESSMENT MANUAL—“Market Value” defined:
The most probable price (in terms of Money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
- The buyer and seller are typically motivated;
 - Both parties are well informed or advised and act in what they consider their best interests;
 - A reasonable time is allowed for exposure in the open market;
 - Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
 - The price is unaffected by special financing or concessions.

16. The Petitioner did not provide probative evidence to support his contention that the assessments should be lowered. This conclusion was arrived at because:

- a) The Petitioner established that he purchased these three parcels at tax sales in 2002 for \$600, \$650, and \$1200. *Purdue testimony ; Exhibit 2*. Tax sales, however, are not reliable indicators of true market value. *See* 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 sales by their very nature are not indicative of a competitive and open market. Such evidence is not indicative that the current assessments are wrong and provides no substantial indication of what correct assessments should be.
- b) The Petitioner opined that he could not sell the property for as much as it is currently assessed, but he did not present any probative facts to back up that opinion. Such testimony does not constitute probative evidence of market value. *Sterling Mgmt. v. State Bd. of Tax Comm’rs*, 730 N.E.2d 828, 838 (Ind. Tax Ct. 2000) (taxpayer’s conclusory statements do not constitute probative evidence).
- c) The Petitioner testified that he could not build on this property because of topography and flooding issues. As proof, Petitioner primarily relied upon photographs of the property that he claimed, “speak for themselves.” Those photographs alone, however, are not sufficient proof of whether the property is unbuildable. *See Hamstra Builders v. Dep’t of Local Gov’t Fin.*, 783 N.E.2d 387, 392 (Ind. Tax Ct. 2003); *Quality Farm and Fleet, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 88, 93 (Ind. Tax Ct. 2001) (rejecting photographic evidence alone as sufficient proof of whether an improvement qualified for a kit adjustment). There is no documentation that the property is unbuildable.
- d) There is no dispute that this property is a wooded, vacant property that is located on a hillside and that there are flooding problems. *Purdue testimony; Gould testimony*. A

forty-five percent influence factor was allowed on each parcel to account for those conditions. *Gould testimony; Respondent Exhibit 2*. The Petitioner did not present any documentation or testimony to support his claim that the amount of this negative influence factor is wrong or what a proper influence factor might be. *See Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- e) The Petitioner did not submit any probative evidence to support his opinion that the current assessments are incorrect or what those assessments should be. Therefore, Petitioner failed to meet his initial burden of proof as recognized in *Meridian Towers*, 805 N.E.2d at 478.

Conclusion

- 17. The Petitioner failed to make a prima facie case. 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 no change should be made to the assessment.

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.