

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00226
Petitioner: Nova Homes, Inc.
Respondent: Department of Local Government Finance
Parcel #: 006-14-19-0011-0021
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. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$26,300 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L petition on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. Special Master Dalene McMillen held the hearing April 5, 2005, at 10:25 a.m. in Crown Point, Indiana.

Facts

5. The subject property is located at 2433 Old Hobart Road, Lake Station. The location is Hobart Township.
6. The subject property is 9.75 acres of vacant land.
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: \$26,300 Improvements: -0- Total: \$26,300

9. The assessed value of the subject property as requested by the Petitioner:
Land: \$9,750 Improvements: -0- Total: \$9,750
10. The following persons were present and sworn in at the hearing:
Roland L. Moore, Vice President for Nova Homes Inc.
Steve McKinney, Assessor/Auditor, DLGF.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The Petitioner contends the assessed value is overstated because the property is below street level, is swampy and marshy. *Moore testimony.*
 - b. The Petitioner presented photographs to show the property is overgrown with brush and trees and is below street level. *Petitioner Exhibit 2.*
 - c. The subject property is overvalued in comparison to a comparable property in the neighborhood. The comparable property is 26 acres located across the street from the subject and it sold June 3, 2002, for \$28,750. The comparable property has 1,400 feet of river frontage and is superior to the subject property. *Petitioner Exhibit 1; Moore testimony.*
 - d. The Petitioner requests the subject land be assessed for \$9,750. *Moore testimony.*
12. Summary of Respondent's contentions in support of assessment:
The subject property is correctly assessed as residential excess acreage at \$26,300.
The assessed value is fair and consistent with other properties in the neighborhood.
Respondent Exhibit 2; McKinney testimony.

Record

13. 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. 1439,
 - c. Exhibits:
 - Petitioner Exhibit 1 - A copy of the Ticor Title Insurance settlement statement on the comparable property, dated June 3, 2002,
 - Petitioner Exhibit 2 - Seven photographs of the subject property,
 - Petitioner Exhibit 3 - A copy of a stipulation agreement between Nova Homes Inc. and the DLGF on the comparable property, dated March 29, 2005,
 - Respondent Exhibit 1 - Form 139L petition,
 - Respondent Exhibit 2 - Subject's 2002 property record card,
 - Board Exhibit A - Form 139L petition,
 - Board Exhibit B - Notice of Hearing on Petition,
 - Board Exhibit C - Hearing sign-in sheet,
 - Board Exhibit D - Waiver of Notice
 - d. These Findings and Conclusions.

Analysis

14. 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 Insurance Company 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 did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
 - a. The Petitioner contends the subject property is over valued because the land is undesirable.
 - b. The Petitioner submitted photographs to support his contentions. The photographs of the subject property show the property is overgrown with brush, and trees and the land is below street level. There is no probative evidence, however, that establishes the extent of any negative impact these conditions might have on the market value-in-use of the subject property.
 - c. Petitioner is required to show an error in the assessment and what the correct assessment should be. *See Meridian Towers*, 805N.E. 2d at 478.
 - d. The Ticor Title Insurance settlement statement shows 26 acres located at 29th Avenue and Montgomery Street sold for \$28,750. The sale was June 3, 2002. The DLGF stipulated to a time adjusted sale price for 1999 of \$23,800. *Petitioner Exhibit 3*. Although the sale price for the 26 acres was an average of \$1,000 per acre, the Petitioner has not established how or why this 26 acres is comparable to the subject 9 acres. The Petitioner merely pointed to the fact that the comparable land is superior to the subject land therefore the subject land should be reduced to \$1,000 per acre or \$9,750. Lacking any evidence establishing comparability, the Petitioner’s claim of comparability is an unsubstantiated conclusion that does not constitute probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005) (requiring specific reasons for comparison).
 - e. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not

triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make a prima facie case regarding the valuation of the subject 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: _____

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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.