

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01025
Parcel #: 001254502530005
Petitioners: Richard N. & Cheryl L. Hagelberg
Respondent: Department of Local Government Finance
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 February 4, 2004, in Crown Point, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$138,100 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed the Form 139L on April 27, 2004.
3. The Board issued the notice of hearing to the parties dated October 8, 2004.
4. The hearing was held on November 15, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is a two story dwelling located at 1075 N. Warrick Street, Gary, Indiana, Calumet Township. The subject property is a single parcel consisting of nine lots.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed value of subject property as determined by the DLGF:
Land: \$46,700 Improvements: \$91,400 Total: \$138,100
8. Assessed value requested by the Petitioners on the Form 139L:
Land: \$15,000 Improvements: \$79,000 Total: \$94,000

9. Persons sworn in at hearing:

For Petitioners: Richard Hagelberg, Taxpayer

For Respondent: Steve McKinney, DLGF
Lori Harmon, DLGF

Issue

10. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The crux of the appeal has to do with the value of the lots. The final value of the nine lots is \$46,700. The Petitioners contend this value is excessive. *Hagelberg testimony; Petitioner Exhibit 1.*
- b) There are nine lots. The house sits on three lots (Lots 4, 5, & 6). The three lots are accessible via an alley. The remaining six lots (Lots 7 - 12) are in the gully and have no street access or city utilities. The three lots were purchased in 1984 and the additional six lots were purchased in 1988. The lots were combined for tax purposes. *Hagelberg testimony.*
- c) The Petitioners used the selling prices of lots in the area to determine the value requested for the subject lots. *Hagelberg testimony.*
- d) Comparable #1 consists of six lots that sold for a total of \$12,000 in 2003. This is an average sale price of \$2,000 per lot. The lots are steeply sloped like the subject property. Comparable #1 has access to city water and total access to the street. Comparable #1 can be built on if desired. *Hagelberg testimony; Petitioner Exhibit 2, 7.*
- e) Comparable #2 consists of four lots, located on a corner, which sold for \$15,000 in 1999. This is an average sale price of \$3,750 per lot. Comparable #2 is closer to the lake than the subject property and located on a corner. Comparable #2 has city water and sewers. *Hagelberg testimony; Petitioner Exhibit 3, 8.*
- f) The comparables are more valuable than the subject lots. *Hagelberg testimony.*
- g) The Petitioners are requesting a value of \$1,000 for each of the six lots and \$3,000 for each of the three lots the house sits on. The total for all nine lots would be \$15,000. *Hagelberg testimony*
- h) The improvement value increased after the informal hearing, and the Petitioners don't know why. The Petitioners are comfortable with the assessment of the improvement value. *Hagelberg testimony.*

11. Summary of Respondent's contentions in support of assessment:
- a) The Respondent presented three comparables. The total value of the subject property and the comparables are very close, even though the subject land is considerably larger than the comparables. *McKinney testimony; Respondent Exhibits 4 & 5*
 - b) Respondent's Comparable #1 is the best comparable for the subject property. The value of the dwelling is about the same. *McKinney testimony; Respondent Exhibit 4 & 5*
 - c) The change in assessment as a result of the informal hearing was due to a change in the neighborhood factor from 1.02 to 1.08. An influence factor of negative 45% was applied to the land for excess frontage. As a result of the changes, the improvement value increased and the land value decreased. The total value of the subject property went from \$196,000 down to \$138,100. *McKinney testimony.*
 - d) With regard to Petitioners' Comparable #1 which consists of 18,150 square feet and was sold for \$12,000. The property sold for 66¢ per square foot. There are topography issues and no sewer, which means Petitioners' Comparable #1 is not as good as the subject property. *Harmon testimony.*
 - e) With regard to Petitioners' Comparable #2 which consists of 11,215 square feet and was sold for \$15,000. The property sold for \$1.33 per square foot. This is double the value of Comparable #1. Sewers are available. In her years of experience, Ms. Harmon finds that the corner lots tend to sell for less. There is less privacy and corner lots are inferior to other lots in a subdivision. Petitioners' Comparable #2 lots would not be as good as the subject property. *Harmon testimony.*
 - f) The Petitioners' comparables are raw land sales. *Harmon testimony.*
 - g) The subject property is all one tract and has not been considered as separate lots. The subject property is 28,125 square foot. The value per square foot of the subject property is \$1.66. It is slightly more than Petitioners' Comparable #2 which sold for \$1.33 per square foot. *Harmon testimony.*
 - h) If you used the \$1.33 per square foot value of Comparable #2 multiplied by the 28,125 square foot of the subject property, the value would be \$37,400 ($\$1.33 \times 28,125$). Once the costs for hook-ups, landscaping, and driveway are added to go from raw land to an improved site, the sale supports the current land value. *Harmon testimony.*
 - i) The assessment as a whole is fair. The Respondent's comparables (*Respondent Exhibit 4*) prove the subject property is assessed consistent with other properties in the neighborhood. *McKinney testimony.*

Record

12. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing and requested post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR # Lake - 1033.
 - c) Exhibits:
 - Petitioner Exhibit 1: Copy attachment from the Form 139L Petition.
 - Petitioner Exhibit 2: Copy of comparable sale #1.
 - Petitioner Exhibit 3: Copy of comparable sale #2.
 - Petitioner Exhibit 4: Photographs of subject lots.
 - Petitioner Exhibit 5: Additional Photographs of subject lots.
 - Petitioner Exhibit 6: Photographs of access area to subject lots.
 - Petitioner Exhibit 7: Photographs of comparable sale #1.
 - Petitioner Exhibit 8: Photographs of comparable sale #2.
 - Petitioner Exhibit 9: Copy of Notice of Final Assessment.

 - Respondent Exhibit 1: Copy of Form 139L Petition.
 - Respondent Exhibit 2: Copy of subject property record card.
 - Respondent Exhibit 3: Photograph of subject property.
 - Respondent Exhibit 4: Comparable analysis sheet from CLT.
 - Respondent Exhibit 5: Comparable property record cards and photographs.

 - Board Exhibit A: Form 139L Petition.
 - Board Exhibit B: Notice of Hearing on Petition.
 - d) These Findings and Conclusions.

Analysis

13. 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 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. 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.
14. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the land value is incorrect and base their argument on the sale of two properties. Comparable #1 sold for an average of \$2,000 per lot. Comparable #2 sold for an average of \$3,750 per lot. The Petitioners request \$3,000 per lot for the three lots the house sits on and \$1,000 each for the remaining six lots.
- b) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Ct. corrected original opinion dated January 28, 2005). Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *See Long*, at 471.
- c) The Petitioners did not explain how the two property sales were comparable to the subject property. The Petitioners computed a price per lot based on the two property sales. The Petitioners did not explain how the lot sizes were comparable to the lots that make up the subject property. There was no discussion about the location of the property sales in relation to the location subject property. The Petitioners did not establish comparability.
- d) The Petitioners contend that a portion of the subject property (six lots) is not accessible. The Petitioners did not present any evidence to show how the value of the subject property was affected by the alleged lack of access.
- e) The Petitioners have failed to show the subject property is incorrectly assessed. Furthermore, the Petitioners have failed to support the requested value of \$15,000 for the subject property land.

Conclusion

15. The Petitioner failed to make a prima facie case. The Board finds in favor of 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/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.