

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00200
Petitioners: Ronald T. & Cathie S. Knestrict
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0384-0015
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. The Department of Local Government Finance (the "DLGF") determined that the property tax assessment for the subject property is \$18,400 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated August 9, 2004.
4. Special Master Michael Schultz held the hearing in Crown Point on September 22, 2004.

Facts

5. The subject property is located at 5590 Marshall Place, Merrillville.
6. The subject property is an unimproved residential lot consisting of .394 acres.
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:
Land \$18,400 Improvements \$0.
9. Assessed value requested by Petitioners:
Land \$5,000 Improvements \$0.

10. The persons sworn as witnesses at the hearing:
For Petitioners — Ron Knestrict, property owner,
For Respondent — Sharon Elliott, staff appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) Subject property (lot 15) has encroachments and a septic field located on it that makes it unbuildable. Subject property cannot be sold separately because about 100' of the septic system is attached to the Petitioners' home on lot 16. *Knestrict testimony; Petitioners Exhibit 1.*
 - b) Lot 15 can only be used for recreational purposes. *Knestrict testimony.*
 - c) This lot is not large enough to build on and is being used for a septic system field. When the property was annexed by the Town of Merrillville in 1996 or 1997 the lot sizes had to be over ½ acre to build. Under the new guidelines set by Merrillville the homes had to be at least 50' from a septic. This distance is not possible under the old subdivision standards for lot size. *Knestrict testimony.*
 - d) Lot 8 sold for \$6,000 (Sale was in August of 2004). It is less than ½ acre and is non-buildable. *Knestrict testimony.*
 - e) Petitioners Exhibit 9 shows a comparable at 3000 W. 57th Place with 2 lots, the second lot is not buildable for the same reasons and is assessed at \$2,700. This comparable is located behind the Petitioner's home and 2nd lot. *Knestrict testimony; Petitioners Exhibit 9.*
12. Summary of Respondent's contentions in support of assessment:
- a) Lot 8 has a value of \$17,300. Lot 11 has a value of \$23,800. Lot 12 has a value of \$21,000. Lot 13 has a value of \$29,200. Lot 17 has a value of \$22,600. Vacant lot 18 has a value of \$16,500. *Elliott testimony; Respondent Exhibit 4.*
 - b) Petitioner's Lot 15 has a negative 20 percent influence factor for vacant property. *Elliott testimony; Respondent Exhibit 2.*
 - c) Respondent agreed that lot is unbuildable because of the septic field on it. *Elliott testimony.*
 - d) Respondent asked what the Petitioners felt the value of this parcel was. Mr. Knestrict responded \$5,000 when he purchased the property in 2002. *Knestrict testimony; Elliott testimony.*

Record

12. 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. 300,
 - c) Exhibits:
 - Petitioners Exhibit 1: Surveyor Location Report,
 - Petitioners Exhibit 2: Reports from Lake County web site,
 - Petitioners Exhibit 3: Multiple listing pages and reassessment papers,
 - Petitioners Exhibit 4: Market data on comparable property (5500 Marshall Pl.),
 - Petitioners Exhibit 5: Market data on comparable property (5522 Marshall Pl),
 - Petitioners Exhibit 6: Market data on comparable property (5499 Marshall Pl),
 - Petitioners Exhibit 7: Market data on comparable property (2700 W. 57th Ave),
 - Petitioners Exhibit 8: Market data on comparable property (2800 W. 57th Ave),
 - Petitioners Exhibit 9: Market data on comparable property (3000 W. 57th Ave),
 - Petitioners Exhibit 10: Form 139 L,
 - Petitioners Exhibit 11: Appraisal of subject property,
 - Petitioners Exhibit 12: Current assessed value of comp used in appraisal,
 - Petitioners Exhibit 13: Current assessed value (from web site),
 - Petitioners Exhibit 14: Petitioners' supporting statement,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Petitioners' Property Record Card ("PRC"),
 - Respondent Exhibit 3: Subject photo,
 - Respondent Exhibit 4: Comparable PRC and photo,
 - Respondent Exhibit 5: Plat map,
 - Respondent Exhibit 6: Neighbor's PRC,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Hearing sign-in sheet,
 - d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases:
- 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.
14. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners presented evidence regarding two comparable lots that were not buildable. The first comparable was located behind the Petitioners' home. This lot is of similar size and is assessed at \$2,700. *Petitioners Exhibit 9*. The second comparable was located in the same subdivision. That one, lot 8, sold for \$6,000 in August of 2004 and is less than ½ acre. (*Knestrict testimony*).
- b) An assessment based on a comparable sale from 2004 would be problematic without any evidence or explanation of how that value relates to the established valuation date, January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Petitioners' other comparable provides a link to the proper valuation date. The \$2,700 assessment for the comparable neighboring lot that is unbuildable provides an indication of value as of January 1, 1999. Thus, Petitioners made a prima facie case for their claim.
15. The Respondent did not provide probative evidence to rebut the evidence concerning the two unbuildable lots. The Respondent admitted that the lot would be unbuildable with the septic field on it. Respondent was not prepared to argue about the value of an unbuildable lot.

Conclusion

16. The Petitioners made a prima facie case. The Respondent did not rebut Petitioners' evidence. The Board finds in favor of the claim for an assessed value of \$5,000.

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.