

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01184
Petitioners: Tom Zintl & Christian Van Enkhuizen
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0245-0070
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 14, 2004. The Department of Local Government Finance (the "DLGF") determined that the Petitioners' property tax assessment for the subject property is \$9,700 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties on October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1124 Warrick Street-Front, Gary. The location is in Calumet Township.
6. The subject property is a vacant residential lot consisting of 0.046 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$9,700 Improvements \$ 0 Total \$9,700.
9. Assessed value requested by the Petitioners during hearing:
Land \$750 Improvements \$ 0 Total \$750.

10. Persons sworn as witnesses at the hearing:
For Petitioners — Tom Zintl, Owner,
For Respondent — Diane Spenos, Assessor/Auditor.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The assessment of the subject property is grossly over-stated when compared with the purchase price and the actual appraised value.
 - b. The subject property was purchased at a Commissioners' Sale in August of 2001 for \$1,070. *Zintl Testimony; Petitioner Exhibits 1A.*
 - c. The subject property is unbuildable according to the City of Gary Zoning Code. *Zintl Testimony; Petitioner Exhibit 7.*
 - d. There are no utilities and the terrain is very steep in the area. *Zintl Testimony; Petitioner Exhibit 9.*
 - e. An independent, limited appraisal by a licensed appraiser estimated the value of the subject property to be \$750. *Zintl Testimony; Petitioner Exhibit 8.*
 - f. The subject property is assessed higher than comparable unbuildable lots. *Zintl Testimony.*
 - g. A comparison with a lot sold on Locust indicates the buildable property on Locust sold for \$1.80 per square foot; the subject lot is assessed at \$4.41 per square foot. *Zintl testimony; Petitioner Exhibits 4, 12.*
12. In support of the current assessment Respondent contends:
- a. The subject property was valued according to the land order and allowed a 50 percent adjustment for terrain. *Spenos Testimony; Respondent Exhibit 2*
 - b. The property record card indicates the subject property is on a paved street and utilities are available. *Id.*

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. 706,

c. Exhibits:

- Petitioner Exhibit 1A: Form 139L Petition & Proof of Purchase for Key #001-25-45-0245-0068
- Petitioner Exhibit 2A: Form 139L Petition & Proof of Purchase for Key #001-25-45-0245-0070
- Petitioner Exhibit 3: None,
- Petitioner Exhibit 4A: Summary Sheet about the lot,
- Petitioner Exhibit 5: Copy of Plat Book indicating petitioned lots,
- Petitioner Exhibit 6: Enlargement of Plat with key numbers,
- Petitioner Exhibit 7: Copy of City of Gary Zoning Code,
- Petitioner Exhibit 8: Limited Summary Appraisal,
- Petitioner Exhibit 9: Map with contours of land and elevations,
- Petitioner Exhibit 10: Plat for house owned by Petitioner,
- Petitioner Exhibit 11: None,
- Petitioner Exhibit 12: Closing Statement and Plat for lots,
- Petitioner Exhibit 13A: Photos of lots,
- Petitioner Exhibit 14A: Photos of lots,
- Respondent Exhibit 1: Form 139L,
- Respondent Exhibit 2: Subject property record card,
- Respondent Exhibit 3: City of Gary Zoning Code,
- Respondent Exhibit 4: Map,
- Board Exhibit A: Form 139L,
- Board Exhibit B: Notice of Hearing,
- Board Exhibit C: Sign in Sheet,

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, by 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 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 a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the 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.

15. The Petitioners provided sufficient evidence to support their contention for a reduction in assessed value. This conclusion was arrived at because:
 - a. The subject property is not buildable according to the City of Gary Zoning Code.
 - b. The Petitioners submitted proof that the subject property was purchased for \$1,070 at a commissioners' sale. Petitioners failed, however, to prove that such sales should be considered as evidence of market value.
 - c. Those kinds of purchases generally are not considered to fit the definition of market value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). In a tax sale, the seller is not typically motivated. The sale of the property is for non-payment of taxes. The seller is attempting to sell the property in order to return the property to the county tax rolls. The required price for a tax sale property is a minimum bid. A minimum acceptable bid is the amount of delinquent taxes and special assessments on each tract, the taxes and special assessments that are due and payable in the year of the sale, all penalties due on delinquencies, and an amount prescribed by the county auditor that includes \$25 for postage and publication costs, plus any costs incurred by the county that are directly attributable to the tax sale. Ind. Code § 6-1.1-24-2. When a tract of real property has been offered for two consecutive tax sales and an amount is not received that is at least the minimum bid, the county acquires a lien in the amount of the minimum sale price. The county commissioners may then offer to sell such property for even less. Ind. Code § 6-1.1-24-2.
 - d. The limited appraisal report from a licensed appraiser that showed an estimated value of \$750 for the subject property. The appraisal encompassed a period of time that includes January 1, 1999, the assessment valuation date. Therefore, the appraisal is probative evidence of value for the 2002 reassessment. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The appraisal also supports the fact that the lot is unbuildable because of its size and terrain and that no utilities serve this lot. The value established by the appraisal, however, has taken those issues into account. Because the Board has accepted the appraisal opinion of value, it is unnecessary to separately address those other issues in assessing this property.
 - e. Petitioners made a prima facie case that the assessment is in error. Respondent did not rebut or impeach the evidence presented by the Petitioners.

Conclusion

- 16. The Petitioners made a prima facie case for a reduction in the assessed value of the property. The Respondent did not rebut the Petitioners’ case with substantial evidence. The Board finds in favor of the Petitioners. The assessment should be changed to \$750.

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.