

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00198
Petitioner: Vivian Marencik
Respondent: Department of Local Government Finance
Parcel #: 008-36-15-0102-0002
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 February 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$13,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated January 24, 2005.
4. Special Master Kathy J. Clark held the hearing at 9:00 a.m. on March 1, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 5404 Pennsylvania Street in Merrillville.
6. The subject property consists of a vacant residential lot measuring 75' by 126'.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value subject property is \$13,000.
9. The petitioner requested an assessed value of \$4,000.
10. The property owners, Vivian Marencik and Edward P. Marencik, were sworn as witnesses. James Hemming, an assessor/auditor with the Department DLGF, was also sworn as a witness.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The subject property is located close to the Gary, Indiana border. *E. Marencik testimony.*
 - b. There are no curbs or sidewalks on the property. *Petitioner Exhibit 3; E. Marencik testimony.*
 - c. The subject property likely cannot be improved. Presently, there is no sewer system and whether a septic system could be installed on the subject property is debatable due to city ordinances. *E. Marencik testimony.*
 - d. The subject property and the lot next to it are low spots in the area. *E. Marencik testimony.*
 - e. The alley at the rear of the subject property is not maintained by the city of Merrillville. *E. Marencik testimony.*
 - f. Pennsylvania Street is a dead end street, poorly paved with stone. *E. Marencik testimony.*
 - g. The lot next door sold for taxes. *V. Marencik testimony.*
 - h. A 60' by 110' vacant lot with sewers and curbs located at 5701 Harrison Street, approximately 7 or 8 blocks from the subject property, sold for only \$8,500 according to Mr. Jay Massa, a realtor with McColly Real Estate. *Petitioner Exhibit 2; E. Marencik testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. Many properties have no curbs or sidewalks. *Hemming testimony.*
 - b. The plat maps show an alley at the rear of the subject lot. *Respondent Exhibit 3; Hemming Testimony.*
 - c. The subject property is receiving the standard Lake County deduction of 20% for lack of utilities. *Respondent Exhibit 2; Hemming 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 County #1144;

c. Exhibits:

Petitioner Exhibit 1: Form 139L Petition,
Petitioner Exhibit 2: Search results/comparable lot,
Petitioner Exhibit 3: Photograph of the subject property,
Petitioner Exhibit 4: Summary of arguments,
Petitioner Exhibit 5: Subject property record card,
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Plat maps,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign in Sheet;

d. These Findings and Conclusions.

Analysis

14. 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 Township 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.

Issues

15. The Petitioner failed to provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a. The petitioner contends that the subject property is over-assessed and should be valued at \$4,000. *V. Marencik testimony*. As a comparable, the Petitioner offered

a real estate listing for a lot located at 5707 Harrison Street that was offered for sale for \$8,500 on January 18, 2005. During cross-examination, the Petitioner stated that the lot for sale is located 7 to 8 blocks from the subject property. No evidence established that the lot is located in the subject property's neighborhood. Further, Petitioner offered no evidence as to size, shape, topography or accessibility of the lot alleged to be comparable to the subject property. "Whether or not properties are similar enough to be considered 'comparable' ... depends on a number of factors including (but not limited to) size, shape, topography, accessibility, use and [in the case of establishing a comparable sale] closeness of the time of the sale to the present action." *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972) (as quoted in *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002)). Because Petitioner did not present evidence that the land offered as a comparable was, in fact, comparable to the subject property, Petitioner did not present a prima facie case. *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002); *Petitioner Exhibit 2*; *E. Marencik testimony*.

- b. The petitioner also testified that no sewers served the area and that it would probably not be possible to install a septic system on the subject property. Petitioner merely alleged that the installation of a septic system is "debatable" and provided no evidence of a legal or technical impediment to the installation of a septic system on the subject property. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 890, 893 (Ind. Tax Ct. 1995).
- c. The Petitioner contends there is no alley and the subject property is located on a dead-end, stone street. The Board finds that while a legally platted alley exists on the plat books, it does not physically exist as an alley near the subject lot. However, it is undisputed that the Petitioner has access to the front of the subject property via Pennsylvania Street. The Petitioner failed to establish that not having alley access at the rear of the subject property would reduce the land value or to what degree it might do so. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d at 1018, 1022. ("[I]t is the taxpayer's duty to walk the Indiana Board...through every element of the analysis"). Likewise, the remaining contentions put forth by the Petitioner as to lack of curbs and sidewalks, or being the lowest lot in the area, also fail to meet the burden to prove the assessment is wrong or to establish what the assessment should be. *Id.*
- d. The Petitioner failed to present sufficient evidence that the current assessed value is incorrect. 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 establish a prima facie case. The Board finds for 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/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.