

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-01624
Petitioner: Martin Oil Marketing, LTD
Respondent: The Department of Local Government Finance
Parcel #: 001-25-40-0048-0013
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 Petitioner's property tax assessment for the subject property was \$124,800.
2. The Petitioner filed a Form 139L on July 26, 2004.
3. The Board issued a notice of hearing to the parties dated June 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 8:15 A. M. on July 28, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 900 Virginia, Gary. The location is in Calumet Township.
6. The subject property consists of a four acre commercial lot with some asphalt paving.
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 \$123,200 Improvements \$1,600 Total \$124,800.
9. Assessed value requested by Petitioner is:
Land \$20,000 Improvements \$0 Total \$20,000.

10. Persons sworn in as witnesses at the hearing:

Donald E. Waterlander, General Manager of Engineering and Construction for
Owner,
James S. Hemming, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:

- a. The subject property has been vacant for over twenty years. It is overgrown and unattractive. The Petitioner has been trying to sell the property for a very long time but the location is no longer desirable. *Petitioner Exhibit 3; Waterlander testimony.*
- b. A sign advertising the property for sale has been posted for years. One offer was received September 23, 1998, for \$15,000, which the Petitioner seriously considered but the parties could not agree on the contract language. *Petitioner Exhibit 2; Waterlander testimony.*
- c. The property was offered at auction in 2000 but there were few interested parties and no qualified bid was received. The Petitioner has sought assistance from both the Gary Economic Development Commission and the Gary Urban Enterprise Association to either sell or develop the subject. *Petitioner Exhibit 1; Waterlander testimony.*
- d. Contract language revolving around possible environmental concerns, because the site was formerly a gas service station, has caused problems when dealing with the 1998 offer and the City of Gary. *Waterlander testimony.*
- e. A similar vacant gas station site two blocks further north from the subject has had the same problem finding buyers. *Petitioner Exhibit 4; Waterlander testimony.*
- f. The Petitioner tried to find comparable properties in the subject neighborhood but was unable to do so. Those few sites in the area that were identified were owned by either the City of Gary or Lake County. The area surrounding the subject property is primarily residential and those properties are at least 50% vacant or boarded up. *Waterlander testimony.*
- g. Sites in Calumet Township even four or five miles away from the subject's area are nicer and more attractive to commercial/industrial users and those areas have a completely different neighborhood tone. *Waterlander testimony.*

12. Summary of Respondent's contentions:

- a. The Respondent identified four sales of industrially assessed land located throughout Calumet Township. These sales show that industrial land in certain areas of Calumet

Township is selling with a range of \$24,000 to \$32,800 per acre. *Respondent Exhibits 4 and 5; Hemming testimony.*

- b. After adjustments made for the incremental/decremental land pricing methodology used in Lake County, the subject's land is assessed as follows: One half acre is considered to be Secondary Industrial land (code 12) with an adjusted base rate of \$30,492 per acre, three and one half acres are considered to be Usable/Undeveloped Industrial land (code 13) with an adjusted base rate of \$30,797 per acre. These per acre rates appear to fall within the range of the industrial lots that have sold in other areas of Calumet Township. *Respondent Exhibits 1 and 6; Hemming testimony.*
- c. The subject site does appear to be overgrown and wooded. *Petitioner Exhibit 3; 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 1842,
 - c. Exhibits:
 - Petitioner Exhibit 1: May 14, 2001 letter to Gary Urban Enterprise Ass'n.,
 - Petitioner Exhibit 2: Purchase Agreement offer dated September 23, 1998, for the amount of \$15,000,
 - Petitioner Exhibit 3: Five photographs of subject property,
 - Petitioner Exhibit 4: Photograph of similar vacant property two blocks away,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Plat map,
 - Respondent Exhibit 3: Aerial maps,
 - Respondent Exhibit 4: Sales of industrial land,
 - Respondent Exhibit 5: Map of sales locations,
 - Respondent Exhibit 6: Commercial/industrial neighborhood valuation form,
 - 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 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 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 Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner’s evidence. This conclusion was arrived at because:
- a. While each individual piece of evidence submitted by the Petitioner may not by itself be probative to establishing a prima facie case, the Board finds that the testimony and other evidence submitted by both parties, when taken as a whole, establishes an error in the assessment.
 - b. The Petitioner had a written offer to purchase the subject property submitted on September 23, 1998, less than three months prior to the valuation date of January 1, 1999, for the amount of \$15,000. *Petitioner Exhibit 2*. According to the sworn testimony of the Petitioner, this offer was not accepted due to the buyer and seller being unable to agree to terms that would “hold harmless” the seller from any possible future environmental issues that may arise stemming from the fact that the site had previously been operated as a gasoline station. *Waterlander testimony*.
 - c. According to both the Petitioner and the Respondent, the subject property is heavily wooded and overgrown and contains only a small amount of asphalt paving that is assessed in poor condition. The trees are tall and well established providing probative evidence that the subject property has been essentially vacant and unused for many years. *Petitioner Exhibit 3; Respondent Exhibits 1 and 3; Waterlander testimony; Hemming testimony*.
 - d. Petitioner Exhibits 1 and 2 support the fact that the property has not only been vacant and not used for commercial or industrial purposes in over twenty years but that the Petitioner has been actively attempting to sell the property since 1998. The May 14, 2001, letter to the Gary Urban Enterprise Association references a For Sale sign, an auction, and an earlier attempt to work with the Gary Economic Development Commission. The Petitioner also testified that the nearby Indiana Sugar Company

- had been approached as a possible buyer but that party had no interest for even a minimal price. *Waterlander testimony*.
- e. The Petitioner testified that he was unable to find any sales of comparable sites within the subject's area. The Petitioner's research found that within this predominately residential area a majority of sites were either owned by the Gary Economic Development Commission or were vacant and boarded up. *Waterlander testimony*.
 - f. The Respondent submitted evidence of four industrial sales found in Calumet Township that are located at least four or five miles from the subject in areas considered to be better industrial locations and/or have truck access that is superior to the subject. *Respondent Exhibits 4 and 5; Hemming testimony*.
 - g. The sales in Respondent Exhibit 4 are dated from April 2000 to October 2003 and range from \$24,000 to \$32,800. The Respondent failed to show how these sales related to the valuation date of January 1, 1999, or how they substantiated the land values shown in Respondent Exhibit 6.
 - h. The Board determines that the sales offered by the Respondent are not comparable to the subject and therefore are of no use to the Board in making its determination.
 - i. 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.
 - j. The Board determines the subject property to be in a residential area that is less desirable to potential commercial/industrial users than the areas from which the Respondent drew sales of industrial land. Both the Petitioner and the Respondent testified to this economic situation. *Respondent Exhibit 4; Waterlander testimony; Hemming testimony*.
 - k. The strongest evidence of value for the subject property as of the valuation date of January 1, 1999, is the written purchase offer submitted by a potential arms-length buyer for \$15,000. *Petitioner Exhibit 2*.

Conclusion

16. The Petitioner was successful in establishing a prima facie case. The Respondent failed to rebut the Petitioner's case with substantial evidence. The Board determines that the assessment should be changed to \$15,000.

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. 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>.