

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions On Rehearing Lake County

Petitions: 45-001-02-1-5-00740
45-001-02-1-5-00741
Petitioner: James Skish
Respondent: The Department of Local Government Finance
Parcels: 001-25-45-0253-0034
001-25-45-0253-0035
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 February 25, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties are \$7,500 each and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L for each parcel on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated February 1, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on March 4, 2005.
5. The Board originally issued a determination regarding this matter on August 24, 2005. The Board granted rehearing on September 15, 2005.

Facts

6. The subject properties are located at 1030 and 1034 N. Wayne Street, Gary. The location is in Calumet Township.
7. The subject properties are two vacant residential lots. Each lot measures 25' by 125'.
8. The Special Master did not conduct an on-site visit of the properties.

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9. Assessed values as determined by the DLGF are \$7,500 for each parcel (land only).
10. Petitioner requested the total assessed value be changed to \$1,000 for each parcel.
11. The persons sworn as witnesses at the hearing were Gary Skish¹ and John Toumey.

Issues

12. Summary of Petitioner's contentions in support of errors in the assessments:
 - a. The subject lots are landlocked with no street or alley access. The street/alley exists only on paper. It would be very costly to develop these lots because a street would have to be developed. *Petitioner Exhibit 5; Skish testimony.*
 - b. There are no sewer or water services available to the subject lots. *Skish testimony.*
 - c. The topography of the subject lots is severe, drastically sloping with an elevation drop of approximately 50 feet. *Petitioner Exhibit 6; Skish testimony.*
 - d. The subject properties were purchased March 30, 2001, at a B tax auction for an average price of \$1,150 each. *Petitioner Exhibit 1 at 8.* This background indicates that they were both made available for purchase at the A tax auction and remained unsold. *Skish testimony.*
 - e. A review of all sales in the Multiple Listing Service (MLS) was performed for the period from January 1, 1998 through December 31, 2003. There were no land sales in 1998 and only three sales in each year from 1999 to 2002. *Petitioner Exhibits 7, 8; Skish testimony.*
 - f. In comparison to the MLS sales, from October 2001 through December 2003 there were 27 tax sale and commissioner's sale properties, all with no sewer available. *Petitioner Exhibits 7, 9; Skish testimony.*
 - g. The MLS and tax/commissioner sales data indicates that an overwhelming 77% of sales of vacant parcels with no sewer available in the subjects' submarket were conveyed through tax/commissioner sales. *Petitioner Exhibits 7 -10; Skish testimony.*

¹ The Petitioner did not appear personally. Similarly, no attorney or authorized tax representative appeared for the Petitioner. Gary Skish is not an authorized tax representative, but he appeared for the Petitioner based on the authority of a "Durable Power of Attorney." *Petitioner Exhibit 1.* Such an appearance is not permitted by the Board's procedural rules for Lake County 2002 assessment appeals. Furthermore, representation based on a power of attorney is contrary to the generally applicable rules for tax representatives to practice before the Board. 52 IAC 1-1-4; 52 IAC 1-1-6; 52 IAC 1-2-1; 52 IAC 2-2-16; 52 IAC 2-3-2. The Board has clear, specific rules for tax representatives and would normally insist that they be followed. Nevertheless, the parties have not raised this issue. Absent objection, in this case the Board will consider the merits of the case that was presented.

- h. Petitioner bought these two lots almost two years after the date of assessment. They would have sold for a lower price at that time. *Petitioner Exhibit 1 at 8; Skish testimony.*
13. Summary of Respondent's contentions:
- a. The subject parcels were purchased at a tax sale. The DLGF does not recognize tax or commissioner sales as arms-length transactions. *Toumey testimony.*
 - b. The lots are valued as residential lots and each has a negative 20% land influence factor because of having no improvements or utilities. *Respondent Exhibit 2; Toumey testimony.*
 - c. Respondent concedes that each lot should have a 50% negative influence factor that was not previously allowed for being located on a "paper street." *Toumey testimony.*

Record

14. The official record for this matter is made up of the following:
- a. The Petitions,
 - b. The tape recording of the hearing labeled Lake County 1236,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 139L Petitions,
 - Petitioner Exhibit 2 – Summary of arguments,
 - Petitioner Exhibit 3 – Outline of Evidence,
 - Petitioner Exhibit 4 – Plat map,
 - Petitioner Exhibit 5 – Aerial photograph,
 - Petitioner Exhibit 6 – Photographs of parcels,
 - Petitioner Exhibit 7 – Market overview,
 - Petitioner Exhibit 8 – MLS sales 1/1/98 through 12/31/03,
 - Petitioner Exhibit 9 – Tax and commissioner sales 10/1/01 through 12/31/03,
 - Petitioner Exhibit 10 – Pie charts illustrating sale type market shares,
 - Petitioner Exhibit 11 – Notices of Final Assessment for subject parcels,
 - Petitioner Exhibit 12 – Written appeal from 2/25/04 informal hearing,
 - Respondent Exhibit 1 – Form 139L Petitions,
 - Respondent Exhibit 2 – Subject property record cards,
 - Respondent Exhibit 3 – Plat map/aerial map,
 - Board Exhibit A – Form 139L Petitions,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Analysis

15. 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.
16. There is sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. That evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January

1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c. The Petitioner bought the subject properties for approximately \$1,100 each on March 30, 2001. This evidence lacks weight and relevance unless there is something that establishes how the price relates to value as of January 1, 1999.
- d. The Petitioner also presented sales data from the Multiple Listing Service (MLS) sales, tax sales, and commissioners' sales in the area. In this area, the topography, lack of utilities, and requirement for a septic leach field increase the site preparation costs dramatically.
- e. There have been very few MLS sales of comparable property. The MLS sales data shows 22 sales between 1999 and 2003 in the same area as the subject. Eight of those sales were vacant lots that had no sewer available. Those eight lots were bigger than each of the Petitioner's lots, but the sale price per square foot provides a basis for comparison. The one such sale in 1999 had a price of \$1.09 per square foot. The one sale in 2000 had a price of \$0.48 per square foot. The one sale in 2001 had a price of \$0.50 per square foot. The one sale in 2002 had a price of \$0.47 per square foot. In 2003 there were four such sales with an average price of \$0.75 per square foot. Over this four-year period the average MLS sale price for comparable lots without sewer available was \$0.70 and most of the MLS sales involved purchases by an adjacent property owner. Furthermore, testimony established that during this same period there were 67 owners who attempted to sell through the MLS, but they were unable to do so. These facts indicated a very limited market for such properties.
- f. In this case, there is substantial, un rebutted evidence that tax and commissioners' sales primarily establish the market. Tax and commissioners' sales are the most common method of conveyance of a comparable vacant parcel without sewers. In this area, such sales constituted approximately 77% of the sales for comparable properties. The Petitioner presented sales data of 27 vacant properties in the area that sold by tax and commissioners' sales between 2001 and 2003. These 27 properties also had no sewers available. Although the sizes of the lots also differ, these sales establish a price range between \$0.20 and \$1.02 per square foot. The price the Petitioner paid for the subject property, approximately \$0.38 per square foot, is well within that range. These sales and the MLS sales confirm that the Petitioner paid market value and that the market value would not have been any greater as of January 1, 1999.
- g. The comparable sales provide substantial support for the claim that the market value for each of these two lots was \$1,100 and that the market did not change significantly between 1999 and 2003. The comparable sales provide substantial evidence that the market value of these two lots was no more as of January 1, 1999. The evidence establishes that the assessed value should be changed to \$1,100 each.

Conclusion

17. The Petitioner made a prima facie case. The Respondent failed to present probative evidence to rebut or impeach that case. The Board finds for the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessments 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>.