

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00788
Petitioner: Solomon Haymon
Respondent: Department of Local Government Finance
Parcel #: 001-25-47-0317-0021
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 \$14,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated August 26, 2005.
4. Special Master Dalene McMillen held a hearing on October 4, 2005, at 11:15 A.M. in Crown Point, Indiana.

5. Facts

5. The subject property is located on 2145 Taney Street, Gary. The location is in Calumet Township.
6. The subject property is a 50' x 125' vacant residential lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land: \$14,700.

9. The assessed value as requested by the Petitioner:
Land: \$2000.
10. The following persons were sworn in as witnesses at the hearing:
Solomon Haymon, Owner,
Sharon S. Elliott, Assessor/Auditor, DLGF.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The assessment is overstated. The subject property is an unimproved lot and not considered buildable due to the lot size. *Haymon testimony.*
 - b. An appraisal for a property located at 2366 Ellsworth Street, Gary, with an effective date of December 9, 1998, concluded in the cost approach the value of the land is estimated at \$12,000. *Petitioner Exhibit 6.* This property is also owned by Solomon Haymon and is located 3 ½ blocks southeast and is 4 times the size of the subject. *Id.*
 - c. The Petitioner submitted a notification of final assessment determination issued by Booker Blumenberg, Calumet Township Assessor, for a property located at 2201-11 West 23rd Avenue for the March 1, 2003, assessment, whereby the Township Assessor reduced the assessed value of the property to \$6,000 based on comparable properties and settlement statement from Department of Redevelopment, City of Gary (Gary Redevelopment). *Petitioner Exhibit 5; Haymon testimony.*
 - d. The Petitioner presented sales data on nineteen (19) properties from the subject area. The properties are listed for sale or have sold from February 1998 to March 2005 for \$3,000 to \$12,500. *Petitioner Exhibit 1; Haymon testimony.*
 - e. The subject property was purchased from Gary Redevelopment. Gary Redevelopment advertises the properties for sale at least twice a year and the minimum bid required to purchase the properties offered for sale. The Petitioner purchased the subject property because it is adjacent to his home. The subject property was transferred to the Petitioner on July 2, 2002. *Petitioner Exhibits 2, 3 & 4; Haymon testimony.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property record card shows a negative 20% influence factor is applied to the land for being undeveloped. *Respondent Exhibit 1.*

- b. The zoning regulations for Calumet Township show that the minimum building lot size is 6000 square feet and/or 50 foot width. *Respondent Exhibit 4; Elliott testimony.*
- c. The subject property is valued fair and consistent for the subject area. *Elliott testimony.*

Record

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The recording of the hearing labeled Lake Co. 1670.
- c. Exhibits:

Petitioner Exhibit 1 – CMA Report, dated March 21, 2005,
Petitioner Exhibit 2 – Bank One official check issued to Gary Redevelopment Commission,
Petitioner Exhibit 3 – Temporary Receipt issued to Solomon Haymon,
Petitioner Exhibit 4 – Closing statement from Department of Redevelopment, City of Gary to Solomon Haymon,
Petitioner Exhibit 5 – Notification of Final Assessment Determination (Form 115) for Liberty Baptist Church, Inc. for March 1, 2003,
Petitioner Exhibit 6 – Appraisal Report (One page) for 2366 Ellsworth Street, Gary prepared by Thomas R. Crump, III,
Petitioner Exhibit 7 – Sales Disclosure from City of Gary, Department of Redevelopment to Solomon Haymon, dated July 3, 2002,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Plat map of the subject area,
Respondent Exhibit 3 – Property record card for 2137 Taney Street and exterior photograph,
Respondent Exhibit 4 – Zoning Regulations from Cole, Layer, Trumble to Lake County Township Assessors,

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
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. *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 did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
 - a. The Petitioner contends the assessment of the subject property is overstated. In support of this contention the Petitioner presented listings and sales of vacant land, documents showing the purchase price of the subject, and an appraisal of an improved parcel owned by the Petitioner. The Petitioner also contends the subject parcel is unbuildable according to the zoning requirements of the City of Gary.
 - b. The Petitioner testified that based on the Calumet Township zoning regulations that the subject property is too small to build upon. *Haymon testimony*. However, the subject property is adjacent to other property owned by the Petitioner. The Petitioner purchased the property for the purpose of having a yard extension. The Respondent's evidence shows that the subject property does meet the Calumet Township's minimum requirement of 50 feet frontage and therefore would be a buildable lot. *Respondent Exhibit 4*. The Petitioner failed to show the subject property is unbuildable.
 - c. The Petitioner provided an appraisal report for 2366 Ellsworth Street, Gary, a final assessment determination issued by Booker Blumenberg, Calumet Township Assessor on 2201-11 West 23rd Avenue, Gary and sales data for nineteen (19) properties from the subject area. The sales prices ranged from \$3,000 to \$12,500 and took place from February 1998 to March 2005. *Petitioner Exhibit 1 & 6*.

- d. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 3 (incorporated by reference at 50 IAC 2.3-1-2) (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”) *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- e. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market value-in-use. *Id.*
- f. The Petitioner has merely pointed to the fact that lots are the same size or larger than the subject and are located in the same area. The Petitioner’s statements that the properties are comparable are not probative evidence of comparability. *Long*, 821 N.E.2d at 470.
- g. The Petitioner purchased the subject property from the Gary Redevelopment on July 2, 2002. Based on the evidence the Petitioner paid the minimum bid price. *Petitioner 2, 3, & 4; Haymon testimony.*
- h. The Gary Redevelopment sale is not a reliable indicator of the true market value. *See* MANUAL at 10 (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). A sale conducted by Gary Redevelopment by its very nature is not indicative of a competitive and open market. In this type sale, the seller is not typically motivated. The seller is attempting to sell the property in order to return the property to the county tax rolls. The purchase price from Gary Redevelopment is not probative evidence of the market value-in-use of the subject property.
- i. Furthermore, the MANUAL provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, the Petitioner was required to provide some explanation as to how the sales data, the appraisal, and a 2003 Form 115 for another property demonstrated or was relevant to the subject property’s value as of January 1, 1999. Because the Petitioner provided no such explanation, these documents do

not carry any probative value. *See Long*, 821 N.E.2d 466, 471 (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).

- j. 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 make a prima facie case regarding the valuation of the subject property. The Board finds in favor of 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>.