

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition #: 45-026-02-1-4-00175
Petitioner: Bruce Dust
Respondent: Department of Local Government Finance
Parcel #: 007-26-32-0041-0026
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 the tax assessment for the property is \$9,900 and notified Petitioner on March 31, 2004.
2. Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated January 24, 2005.
4. Special Master Barbara Wiggins held the hearing in Crown Point on March 2, 2005.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner - Bruce Dust, property owner,
For Respondent - John Toumy, assessor/auditor.

Facts

6. Subject property is vacant residential land measuring 30 x 127 feet located at 4246 Henry Avenue, Hammond.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF:
Land \$9,900 Improvements \$0 Total \$9,900
9. Assessed value requested by Petitioner on the Form 139L:
Land \$2,000¹ Improvements \$0 Total \$2,000¹

¹ During the hearing, Petitioner requested a value of \$1,600 for the subject property.

Issues

10. Petitioner contends the subject property is unbuildable and over assessed when compared to the selling price of other vacant lots in the area. *Dust testimony.*
11. Respondent contends the subject property is correctly assessed because Petitioner owns the neighboring lot and his home sits partially on both lots. Thus, the lot is not unbuildable. *Toumey testimony.*

Record

12. 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 1149,
 - c) Exhibits:
 - Petitioner Exhibit 3 – Vacant land sale, 1104 Moss, Hammond,²
 - Petitioner Exhibit 4 – Vacant land sale, 4743 Sheffield, Hammond,
 - Petitioner Exhibit 5 – Vacant land sale, 4740 Hickory, Hammond,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Property record card of home next door,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

13. 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”).

² The Petitioner did not present an exhibit 1 or 2.

- 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.

14. Petitioner did not provide sufficient evidence to support his contentions because:

- a) Petitioner is attempting to prove the subject property is over assessed based on sales of similar property. Petitioner presented three sales of vacant lots near the subject property. The first sale was a property measuring 50 x 125 feet located approximately 8 blocks from the subject. The sale price of this lot was \$1,500. The second sale was a property measuring 25 x 125 feet located 3 blocks south and 4 blocks west of the subject. The sale price of this lot was \$1,600. The third sale was a property measuring 25 x 125 feet located 3 blocks south and 2 or 3 blocks "over." The sale price of this lot was \$900. Petitioner contends that the subject lot should be valued no more than those three lots.
- b) A taxpayer's statements that another property is similar or is comparable are nothing more than conclusions. Conclusory statements do not constitute probative evidence. *Whitley Prods., Inc. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Specific reasons must be provided as to why a taxpayer believes a property is comparable. *Lacy Diversified Indus., Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
- c) Petitioner failed to present evidence establishing the comparability of the subject lot to the three purported comparable lots. The evidence does not establish whether the properties are in the same neighborhood. No evidence establishes the topography, access, or other features of the lots. No evidence establishes how any differences affected the values of the properties. Thus, the purported comparables have no probative value for this case. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d) Furthermore, the evidence indicates this lot is not vacant. Petitioner owns a neighboring lot that also measures 30 x 127. This neighboring lot also contains part of Petitioner's home. The home, according to the Property Record Card, measures 34 feet at its widest point. This measurement indicates that the improvement must be located on both lots. Thus, the subject property is not similar to the three vacant properties submitted by Petitioner. Furthermore, this lot is not unbuildable because part of the Petitioner's house is located on it.
- e) There will be no change in the assessment of the subject property.

Conclusion

15. Petitioner failed to make a prima facie case to support a lower assessment of the property. Respondent successfully rebutted Petitioner's evidence. The Board finds in favor of 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>.