

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-041-02-1-5-00478
45-041-02-1-5-00479
Petitioner: Ruth E. Metsch
Respondent: Department of Local Government Finance
Parcel #s: 003312500630016
003312500630017
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 in Lake County, Indiana. The Petitioner did not receive notice of the Department of Local Government Finance ("DLGF") determination.
2. The Petitioner filed two Form 139L petitions on July 20, 2004.
3. The Board issued notices of hearing to the parties dated March 3, 2005.
4. A hearing was held on April 4, 2005, in Crown Point, Indiana before Special Master Kay Schwade.

Facts

5. The subject properties are adjoining vacant residential lots. The Petitioner stated the subject properties are located on 128th Avenue. The property record cards for the subject properties show the property address of both parcels to be 7129 W. 127th Place in Cedar Lake, Center Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The Assessed Value of subject property as determined by the DLGF:

Petition #	Parcel #	Land
45-041-02-1-5-00478	003312500630016	\$6,800
45-041-02-1-5-00479	003312500630017	\$6,300

8. The Assessed Value requested by the Petitioner on the Form 139L petitions:

Petition #	Parcel #	Land
45-041-02-1-5-00478	003312500630016	\$750
45-041-02-1-5-00479	003312500630017	\$750

9. Persons sworn in at hearing:

For Petitioner: Ruth E. Metsch, Petitioner

For Respondent: John Toumey, DLGF

Issue

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

- a) Each of the subject lots are 25' x 100', for a total width of 50' by 100' deep. The Petitioner called the Cedar Lake Plan Commission and was told that a 75' frontage was needed in order to be able to build. The Petitioner contends that because the subject lots total only a 50' width, the lots cannot be built on. *Metsch testimony; Pet'r Exs. 3, 12, 13.*
- b) There is no water or sewer for the subject lots. The actual paved street ends eight feet before the subject lots. There are support wires for a utility pole that limit access to the subject lots. There is a deep ravine on the subject lots. *Metsch testimony; Pet'r Ex. 8.*
- c) Prior to the reassessment, the subject lots were valued at \$1,600 and \$1,700. After the reassessment, the values jumped to \$6,800 and \$6,300. *Metsch testimony; Pet'r Exs. 4 - 7.*
- d) According to a CMA Report, lots that are 75' x 100' in the same area are on the market for \$9,500. These lots have 1/3 more land and can be built on. Going by this the subject lots would be worth \$3,166 each. The subject lots however are worth less because they are not good for any use other than for weeds to grow on. *Metsch testimony; Pet'r Ex. 9.*
- e) At one time there was a house on the subject lots. The Petitioner was rehabbing the house and a neighbor accidentally burned the house down. The Petitioner had no insurance and now has two lots that she can't do anything with. *Metsch testimony.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent agrees that based on the evidence, the street ends before it reaches the subject lots. *Toumey testimony.*

- b) The Respondent presented zoning information for Cedar Lake Center Township which shows the minimum building lot size per the Cedar Lake Plan Commission to be 50' x 100'. The Respondent obtained the zoning information from the Center Township assessor. The subject lots combined are 50' x 100' and therefore can be built on. *Toumey testimony; Resp't Exs. 2, 4.*
- c) The CMA Report presented by the Petitioner shows a couple of 50' x 100' lots with asking prices of \$9,900 and \$12,500. *Toumey testimony; Pet'r Ex. 9.*
- d) As a result of there being no through street, the Respondent recommends applying a greater influence factor. The subject lots are currently receiving a 20% influence factor for not being improved. The Respondent recommends a total influence factor of 50% be applied to each of the subject lots. This results in a value of \$4,300 for the parcel ending in 0016 and \$3,900 for the parcel ending in 0017. The total value for both of the subject lots would be \$8,200. *Toumey testimony.*
- e) The Petitioner has failed to show what the market value of the subject lots is. The Respondent contends by applying the influence factor, the values reflect the market value of the subject lots as of January 1, 1999. *Toumey testimony.*

Record

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

- a) The Petitions
- b) The tape recording of the hearing labeled Lake Co. # 1424
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L petition for parcel 000312500630016
 - Petitioner Exhibit 2: Form 139L petition for parcel 000312500630017
 - Petitioner Exhibit 3: Summary of Petitioner's arguments
 - Petitioner Exhibit 4: Assessed value before reassessment (000312500630016)
 - Petitioner Exhibit 5: Assessed value after reassessment (000312500630016)
 - Petitioner Exhibit 6: Assessed value before reassessment (000312500630017)
 - Petitioner Exhibit 7: Assessed value after reassessment (000312500630017)
 - Petitioner Exhibit 8: Photographs of subject property
 - Petitioner Exhibit 9: CMA report showing list prices for vacant land
 - Petitioner Exhibit 10: Notice of Assessment for parcel 000312500630016
 - Petitioner Exhibit 11: Notice of Assessment for parcel 000312500630017
 - Petitioner Exhibit 12: Property Record Card (PRC) for parcel 000312500630016
 - Petitioner Exhibit 13: PRC for parcel 000312500630017
 - Respondent Exhibit 1: Form 139L petitions
 - Respondent Exhibit 2: Subject PRCs
 - Respondent Exhibit 3: Map of area

Respondent Exhibit 4: Zoning information

Board Exhibit A: Form 139L petitions

Board Exhibit B: Notices of Hearing

d) These Findings and Conclusions

Analysis

13. 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 Township 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.
14. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner contends the value of the subject lots is overstated. The Petitioner stated the subject lots cannot be built on due to their size. *Metsch testimony*.
 - b) The Petitioner stated she was told in a phone conversation with the Cedar Lake Plan Commission that lots must have 75' frontage in order to build. *Metsch testimony*.
 - c) The Respondent presented a document for Cedar Lake Center Township which shows the minimum lot size per the Cedar Lake Plan Commission is 50' x 100'. The Respondent obtained a copy of the document from the Center Township Assessor's office. *Toumey testimony; Resp't Ex. 4*.
 - d) The Board finds the document presented by the Respondent more persuasive than the Petitioner's statement based on a phone call. The Petitioner has failed to show the subject lots cannot be built on.

- e) The Petitioner contends that other lots in the area have more land and are on the market for less than the subject lots are assessed. 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 2 (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 also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- f) 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 values-in-use. *Id.*
- g) The Petitioner presented a CMA Report of vacant land. The Petitioner’s evidence basically shows the address, lot dimensions, and listing price. *Pet’r Ex. 9*. The Petitioner provided no explanation of how the properties were comparable. Consequently, the Petitioner’s evidence concerning the listings of vacant land lacks probative value.
- h) The Petitioner contends there are various problems with the subject lots including utility support wires, a ravine, and the lack of sewers and water. *Metsch testimony*.
- i) The Petitioner presented testimony and photos to support her contention there are problems with the subject lots making them hard to build on. *Metsch testimony*. However, the Petitioner did not attempt to quantify the effect of these problems on the market value-in-use of the subject lots. Furthermore, the Petitioner testified there had been a house on the subject lots at one time. Thus, the Petitioner’s assertions regarding these problems amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- j) The Petitioner contends the street ends before the subject lots. Based on the evidence presented the Respondent agreed. The Respondent recommended increasing the influence factor to 50% for each of the subject lots. The resulting values would be \$4,300 for the parcel ending in 0016 and \$3,900 for the parcel ending in 0017. *Toumey testimony*.

- k) The Petitioner stated she would accept the Respondent's recommendation. However, the Petitioner stated she would still not be able sell the properties for the new value. *Metsch testimony.*

Conclusion

15. The Petitioner failed to make a prima facie case. The Respondent recommended an influence factor of 50% for each of the subject lots. The Petitioner agreed.

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>.

