

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 1) 45-026-02-1-5-01184
2) 45-026-02-1-5-01185
Petitioner: Aaron L. Berry, Sr.
Respondent: Department of Local Government Finance
Parcels: 1) 001-41-49-0399-0006
2) 001-41-49-0399-0005
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 each assessment for the subject properties is \$2,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L for each property on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 8, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 9, 2004.

Facts

5. The subject properties are located at 2730 and 2734 Hendricks, Gary. The location is in Calumet Township.
6. The subject properties consist of two contiguous residential lots, each measuring 70 feet by 180 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of each lot as determined by the DLGF is \$2,000 (land only).
9. Petitioner requested a total assessed value of \$800 for each lot.

10. Persons sworn in at hearing:
Aaron L. Berry, Sr., owner,
Stephen H. Yohler, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) The lots are located in a platted subdivision that is inaccessible. The subdivision was never developed. There are no streets or utilities. The area is bordered by 25th Avenue, Highway 80/94 and 29th Avenue. *Petitioner Exhibit 1, 2, 3; Berry testimony.*
 - b) The lots are located next to Lake Sandy Jo/M & M Landfill, which is a Superfund Site and a hazardous waste area. *Petitioner Exhibit 4.* This circumstance alone would greatly affect the market value of these lots. *Berry testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent stated that he had not participated in setting land rates in Lake County, but that he believed that State Guidelines were followed and that the subjects' assessments are correct. *Yohler testimony.*
 - b) Both lots have a 20 percent negative land influence for being undeveloped and a 30 percent negative land influence for being located on a paper street. *Respondent Exhibits 2, 3.* These influences are standard across Lake County. A standard 90 percent negative land influence is given when lots are determined to be unbuildable in Lake County. *Id; Yohler 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 992,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Photograph of approximate location of lots,
 - Petitioner Exhibit 2-4 – Photographs showing area surrounding subject lots,
 - Respondent Exhibit 1 – Form 139L petitions,
 - Respondent Exhibit 2 – Subject property record cards,
 - Respondent Exhibit 3 – Plat/aerial maps,
 - Board Exhibit A – Form 139L petitions,
 - Board Exhibit B – Notice of Hearings,
 - Board Exhibit C – 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 Board 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. Petitioner provided sufficient evidence to establish a prima facie case. Respondent failed to rebut Petitioner’s evidence. This conclusion was arrived at because:
- a) There is no access to the lots and the streets shown on the Respondent’s map do not actually exist.
 - b) The lots are located next to a hazardous waste area, which would have a detrimental effect on the value.
 - c) The subject lots are located in neighborhood 02555, which encompasses a larger area than just this undeveloped subdivision. Respondent was unable to provide any evidence that would prove there is any market for the lots within this specific subdivision.
 - d) The evidence presented by both parties demonstrates that the subject lots are completely inaccessible. Rather than suffering minor inutility by being located on a “paper street”, they are in fact completely landlocked and unbuildable. They have little or no value-in-use. Both lots should receive a total negative land influence factor of 90 percent, which is the standard reduction used in Lake County for non-buildable lots.

Conclusion

16. Petitioner provided sufficient evidence to establish a prima facie case. Respondent did not rebut Petitioner's case with substantial evidence. The Board finds in favor of Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment of each lot be changed by applying a negative 90 percent influence factor.

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>.