

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-5-00006
Petitioner: Albert Yurkus
Respondent: Department of Local Government Finance
Parcel #: 003312500260022
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 is \$11,300 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on April 5, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 9, 2004.

Facts

5. The subject property is located at 7707 W. 134th Place, Cedar Lake. The location is in Center Township.
6. The subject property is a vacant residential lot of irregular shape with an actual frontage measuring 44 feet and an effective frontage calculated at 29 feet and with a calculated depth of 130 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF is \$11,300 for the land.
9. Assessed value requested on the Petition is \$1,500 for the land.

10. Persons sworn as witnesses at the hearing:
For Petitioner — Albert and Nancy L. Yurkus, Owners,
For Respondent — Diane Spenos, Auditor/Assessor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The subject lot has an irregular shape. Due to the irregular shape, the lot is not a buildable lot according to the Town of Cedar Lake Ordinance No 719, Section four of Section Two as amended May 26, 1998. *Petitioner Exhibits 4, 5; Yurkus testimony.*
 - b) The Petitioner does not own either lot that is adjacent to the subject lot. *Yurkus testimony.*
 - d) The Petitioner purchased the subject lot on July 27, 2000, from Mr. Thomas J. Zic for the total amount of \$1,500. *Petitioner Exhibits 6, 7; Yurkus testimony.*
 - e) The subject lot is used solely for overflow parking by the Petitioner whose residence is located across W. 134th Place and approximately three lots west. *Petitioner Exhibit 5; Yurkus testimony.*
 - f) Petitioner testified that a Mr. Jim Hall from Cole-Layer-Trumble told him at the informal hearing that the lot would be changed to reflect an unbuildable discount of 90 percent. Petitioner was confused to find that this correction had not been finalized. *Yurkus testimony.*
12. Respondent contended that if the Petitioner did not own either adjacent lot, a value change to \$1,500 (what Petitioner paid for the lot) is agreeable. *Respondent Exhibit 5; Spenos 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 622,
 - c) Exhibits:
 - Petitioner Exhibit 1: Notice of Final Assessment,
 - Petitioner Exhibit 2: Building code and restrictions,
 - Petitioner Exhibit 3: Building code and restrictions continued,
 - Petitioner Exhibit 4: Plat of mortgage inspection,
 - Petitioner Exhibit 5: Overview of lot location,

Petitioner Exhibit 6: Copy of Sales Disclosure for subject property,
Petitioner Exhibit 7: Copy of front of check used to purchase property 7/27/2000,
Petitioner Exhibit 8: Property profile for Petitioner's residence,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Plat map,
Respondent Exhibit 4: Aerial map,
Respondent Exhibit 5: Copy of DLGF stipulation worksheet offer of \$1,500,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
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 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.
15. There is sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) Petitioner proved that the lot is irregular in shape and it does not meet the requirements of the Town of Cedar Lake to be a buildable lot. Respondent did not dispute the fact that this lot is unbuildable.
 - b) Petitioner provided sufficient probative evidence that he purchased the lot for \$1,500 on July 27, 2000.

- c) Respondent failed to offer any probative rebuttal or impeachment to Petitioner's testimony that he does not own any lot that is adjacent to the subject lot. Therefore, based on the evidence in this case, that fact clearly has been established. Respondent agreed that the current assessment is incorrect if Petitioner does not own any land adjacent to the subject parcel.
- d) Respondent did not impeach or rebut the evidence that a 90 percent negative influence factor would be appropriate because the lot is unbuildable. The property record card indicates the property was already valued with a 40 percent negative influence factor. If that factor were changed to 90 percent, the assessed value of the lot would be \$1,900 (\$1,880 rounded to nearest hundred). Respondent testified, however, that the value of \$1,500 is acceptable because that was what Petitioner paid for the property.

Conclusions

- 16. The Board finds that the Petitioner's evidence is sufficient to establish that the lot is non-buildable. A discount of 90 percent would be applicable to the current assessed value of the subject parcel because it is unbuildable. Based on Respondent's testimony, the value should be changed to \$1,500.

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.