

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00018
Petitioner: Darlene J. Rice
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0301-0035
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 on February 5, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$7,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 9, 2004, in Crown Point, Indiana, before Special Master Michael R. Schultz.

Facts

5. The subject property is located at 2215 W. 48th Place, Gary, in Calumet Township.
6. The subject property consists of two vacant lots.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land: \$7,800 Total: \$7,800.
9. Assessed Value requested by Petitioner:
Land: \$1,100 Total: \$1,100.

10. The following persons were present and sworn as witnesses at the hearing:
For Petitioner — Darlene J. Rice, property owner;
For Respondent — Cathi Gould, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The assessed value on these two lots is much too high because the market value is less than \$7800. *Rice testimony.*
 - b) The subject property was bought at the Lake County Commissioners' surplus land auction for \$1,100 in 2002. *Petitioner Exhibits 3, 4; Rice testimony.*
 - c) The subject property is located in unincorporated Calumet Township. *Rice testimony.*
 - d) The property has no sidewalks or sewer and it only has well water. The property record card incorrectly indicates the property has sidewalks and service from all public utilities. *Rice testimony.*
 - e) The subject property and four other lots owned by Plaintiff are contiguous. *Respondent Exhibit 3.*
 - f) The two lots of the subject property are assessed as one parcel. *Petitioner Exhibits 5, 6.*
 - g) Petitioner's home sits on two of those adjacent lots that are assessed at \$7,800. *Rice testimony.*
 - h) Petitioner's garage sits on the other two lots. They are also assessed at \$7,800. *Rice testimony.*
 - i) Petitioner acknowledged improvements could be built on the lots under appeal because they are large enough. In fact, Petitioner has thought about putting a modular home for her mother on these lots, but has not done so. *Rice testimony.*
 - j) Petitioner bought the two lots to keep them empty. *Rice testimony.*
 - k) A neighbor across the alley has two lots that are the same size as the Petitioner's vacant lots. That neighbor told Petitioner those are being assessed at \$1,700 total for both of those lots together. *Rice testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a) Respondent introduced a property record card indicating the lot size is 60 x 128 feet. *Gould testimony; Respondent Exhibit 2.*
 - b) The property was given a negative influence factor of 20 percent for being unimproved, which was standard for Lake County properties. Additional negative influence factors might be allowed if these lots were unbuildable, but there has been no claim that these two lots are unbuildable. *Gould testimony; Respondent Exhibits 2, 4.*
 - c) The subject property was purchased at a Commissioners' sale. The price at such a sale is not a true indicator of what the market value would be. *Gould testimony.*
 - d) The DLGF based its land values on sales between a willing buyer and seller. *Gould testimony.*
 - e) The Respondent contended the Rice property is assessed in line with other properties in the area and the Petitioner's evidence did not prove to the contrary. Accordingly, no change in the assessment is warranted. *Gould testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition and all subsequent pre-hearing submissions by either party;
 - b) The tape recording of the hearing labeled Lake County #241;
 - c) The exhibits:
 - Petitioner Exhibit 1 — Photograph of subject property;
 - Petitioner Exhibit 2 — Photograph of subject property;
 - Petitioner Exhibit 3 — Auctioneer worksheet;
 - Petitioner Exhibit 4 — Receipt for payment of property;
 - Petitioner Exhibit 5 — Quit Claim Deed;
 - Petitioner Exhibit 6 — Property record card;
 - Petitioner Exhibit 7 — Notice of Final Assessment;

 - Respondent Exhibit 1 — 139L Petition;
 - Respondent Exhibit 2 — Subject property record card;
 - Respondent Exhibit 3 — Photograph and map of property;
 - Respondent Exhibit 4 — Land influence factors sheet;
 - Respondent Exhibit 5 — Property record card for the adjacent property, parcel 001-01-39-0301-0031;
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases:
- 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. Petitioner provided insufficient evidence to support her contention that the assessment for her two unimproved lots should be lower than \$7,800. This conclusion was arrived at because:
- a) Petitioner testified that she paid \$1,100 for the property at a Commissioners’ auction. She contended this purchase price should be the assessed value of the property.

- b) As Respondent correctly contended, the Commissioners' auction does not represent a transaction in which the buyer and seller are typically motivated and the price paid does not indicate market value in such a sale.¹ Therefore, although Petitioner only paid \$1,100 for the subject property, that fact does not establish its market value.
- c) Petitioner further testified that two lots of a neighbor across the alley are the same size as hers, but they were assessed at only \$1,700. Petitioner, however, furnished no property record card, photographs, or analysis of features other than size and proximity to establish the purported comparability to the Petitioner's parcel. Her conclusory statements based on the neighbor's assessment do not constitute probative evidence. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
- d) In addition to not establishing comparability of the neighbor's property, the Board cannot make any valid value comparison or draw any conclusion about market value that would be favorable to Plaintiff based upon comparing the subject property to the assessment of one neighboring property. Where all Plaintiff's contiguous lots have been assessed with the same land value, the fact that one other property across the alley is assessed at a much lower value does not prove that the assessment on the subject property is wrong and by itself this fact does not prove what the correct assessment should be.
- e) The Petitioner further contended the property has no utilities, such as water or sewer connections, and also lacks sidewalks. However, the Petitioner again failed to demonstrate with any market evidence the impact (if any) of these alleged deficiencies. As indicated, the Petitioner acknowledged improvements could be constructed on the parcel.

Conclusion

- 16. The PRC should be corrected to reflect the lack of sidewalks, lack of city water, and lack of sewers for the subject property. The Board finds in favor of Petitioners on this issue. This correction, however, does not lead to any change in assessment.
- 17. Petitioner failed to establish a prima facie case regarding any change of the land value. Therefore, the Board finds in favor of Respondent and affirms the total assessed value of \$7800 for the subject property.

¹ "Market value" is "[t]he most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- o The buyer and seller are typically motivated;
- o Both parties are well informed or advised and act in what they consider their best interests;
- o A reasonable time is allowed for exposure in the open market
- o Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- o The price is unaffected by special financing or concessions."

2002 Real Property Assessment Manual at 10.

Final Determination

Petitioner failed to establish a prima facie case of error regarding the assessment of the subject property. In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed. Nevertheless, the PRC should be changed to show the lack of sidewalks, and no water or sewer utilities.

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.