

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-026-02-1-5-01076
45-026-02-1-5-01077
Petitioner: John Loxas
Respondent: Department of Local Government Finance
Parcels: 007-26-34-0130-0046
007-26-34-0130-0045
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 January 27, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$8,200 for parcel 007-26-34-0130-0046 and \$5,900 for parcel 007-26-34-0130-0045. It notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L for each parcel on April 30, 2004.
3. The Board issued a notice of hearing for each parcel to the parties dated September 09, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 13, 2004.

Facts

5. The subject property is located at 4350 and 4348 Ash Street in Hammond.
6. Parcel 007-26-34-0130-0046 is an undeveloped lot measuring 35 feet by 127 feet. Parcel 007-26-34-0130-0045 is an undeveloped lot measuring 25 feet by 127 feet. These lots are contiguous and both are classified as vacant residential property.
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of subject property as determined by the DLGF is:
Parcel 007-26-34-0130-0046—land \$8,200,
Parcel 007-26-34-0130-0045—land \$5,900.
9. The assessed value requested by Petitioner for each parcel is \$550 (land only).
10. Persons sworn as witnesses at the hearing:
George J. Loxas, owner's son with Power of Attorney attached to Form 139L,
Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) There are larger parcels of land around the City of Hammond which are valued at a much lower value. These lots were approximately 0.309 acres and they are assessed for \$1,100. *Loxas testimony, Petitioner's Exhibits 2, 3.*
 - b) A similar parcel at 253 Condit Street in Hammond sold at a commissioners sale for \$2,100. That price is much closer to the value of these empty lots than the current assessments; however, the price paid at a commissioners sale is not market value. *Loxas testimony; Petitioner's Exhibit 4.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) Tax and commissioners sales are not considered to be arms-length transactions. Therefore, they are not recognized as representative of the market value. *Elliott testimony.*
 - b) The subject parcel is receiving a Code 7 discount of 20 percent that in Lake County represents a deduction for being undeveloped. *Id.*
 - c) The comparables offered by Petitioner are not really comparable. The value of land varies with location. *Id.*

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 480,
 - c) Exhibits:
Petitioner Exhibit 1—Form 139L,
Petitioner Exhibit 2—Property record card for similar parcel,

Petitioner Exhibit 3–Property record card for similar parcel,
Petitioner Exhibit 4–Deed for similar parcel,
Petitioner Exhibit 5–Property record card for subject parcel,
Respondent Exhibit 1–Form 139L,
Respondent Exhibit 2–Subject property record card,
Respondent Exhibit 3–Map,
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 cases and rules 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. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) Petitioner offered the assessments on two other properties that are both larger than his lots as proof that the subject assessments are too high. Petitioner did not explain how these properties are comparable to the subject property. They are not identified with the same neighborhood as the subject. There is no comparison of lot shapes, no comparison of topography or geographical features, no comparison of lot accessibility or uses. Rather, Petitioner merely asserted that the land is comparable. Such conclusions are not probative evidence and they do not contribute to making a prima facie case. *Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002); *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- b) Similarly, Petitioner opined that the purchase price for a property at 253 Condit Street in Hammond (\$2,100) should be considered an indication of value for the subject vacant lots. Again, Petitioner did not explain how this property is similar to the subject property. It is not identified with the same neighborhood. There is no comparison of size or shape, no comparison of topography or geographical features, no comparison of accessibility or uses. There is simply a conclusion that the price paid for one is an indication of value for the other. That conclusion is not relevant and has no evidentiary value. *Id.*
- c) Furthermore, Petitioner admitted that the price paid for property sold at a commissioners sale was not market value. Petitioner failed to explain how that evidence can be used to determine the market value of the subject property. Such evidence does not support Petitioner's claim. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- d) Petitioner failed to make a prima facie case. The burden never shifted to Respondent to rebut the evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

16. 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>.