

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00094A
Petitioner: Joseph Busovsky
Respondent: Department of Local Government Finance
Parcel #: 002020301950007
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 December 9, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$24,600. The Notice of Final Assessment was sent to the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated July 16, 2004.
4. A hearing was held on August 26, 2004, at 1:10 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at: 15336 Ralston Place, Lowell, Cedar Creek Township, Lake County.
6. The subject property was assessed as a vacant lot, 100 feet by 148 feet (approx. 14,800 square feet), as of the March 1, 2002 assessment date.
7. The Special Master did not conduct an on-site visit of the property.

8. Assessed Values of the subject property as determined by the DLGF are:
 Land: \$24,600 Improvements: \$-0- Total: \$24,600
9. Assessed Values requested by the Petitioner per the Form 139L petition are:
 Land: \$23,900 Improvements: \$-0- Total: \$23,900
10. The following persons were present and sworn-in at the hearing:

 For Petitioner: Joseph Busovsky, Taxpayer
 For Respondent: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble (CLT)

Issues

12. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a. The subject lot, 100-feet by 148-feet, is being over-assessed in comparison with neighbor’s lot of 100-feet by 140-feet. *Busovsky testimony; Petitioner Exs. 2, 7.*
 - b. There is a \$10,000 swell problem with the land, the property slopes, and it has problems with drainage making it difficult to build on. *Busovsky testimony.*
 - c. The value of the property should be \$23,900. *Busovsky testimony.*
13. Summary of Respondent’s contentions in support of assessment:
 - a. The subject lot is valued using the same land base rate as the adjoining lots in this neighborhood. In addition, it is receiving a negative influence factor of 40% due to being undeveloped and located away from the lake. *Elliott testimony; Respondent Ex. 2.*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #152.
 - c. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Two (2) comparable property record cards (PRC) for Jeff Shocker

Petitioner Exhibit 2 – Comparable PRC for Florian Brozynski for Parcel #002020301950009

Petitioner Exhibit 3 – Three (3) photographs of the subject property

Petitioner Exhibit 4 – Plat map of the subject area

Petitioner Exhibit 5 – Five (5) photographs of the subject dwelling (located on

Parcel #002020301950008)

Petitioner Exhibit 6 – Two (2) estimates from ABC Seamless Siding dated August 22, 2002 and September 11, 2002 for Parcel #002020301950008

Petitioner Exhibit 7 – Joseph Busovsky’s original PRC for Parcel #002020301950007

Petitioner Exhibit 8 – Comparable PRC for Florian Brozynski for Parcel #002020301950010

For the Respondent:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004

Respondent Exhibit 2 – Joseph Busovsky’s original PRC for Parcel #002020301950008

Respondent Exhibit 3 – An aerial map for the subject area

For the Board:

Board Exhibit A – Form 139L petition, dated April 16, 2004

Board Exhibit B – Notice of Hearing on Petition, dated July 16, 2004

Board Exhibit C – Sign-in Sheet

Analysis

15. The most applicable governing cases are:
- a. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A – Book 1, ch. 2 at 16. Front Foot Value: Front foot value is a whole dollar amount applied to the most desirable frontage of a parcel. For a residential parcel in a platted subdivision, front footage along the street is of primary importance. In this case, the front foot method is appropriate because the front footage of the parcel has the greatest influence on the land’s value.
 - b. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A – Book 1, ch. 2 at 38-58. Valuing Platted Lots: This section describes how to value platted lots. It discusses how to establish base rates, effective frontages, effective depths, how depth factors are used and whether any influence factor is to be applied to a platted lot.
 - c. 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).

- d. 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”).
- e. 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.

Land Value

16. The Petitioner did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
 - a. The Petitioner’s contention regarding the land value being overstated was not sufficiently supported with market evidence. The Petitioner’s statement that the 100-foot by 148-foot subject lot (approx. 14,800 square feet) be valued in the same as the neighbor’s 100-foot by 140-foot lot (approx. 14,000 square feet), was not substantiated with market evidence and does not establish the appropriate market value-in-use for the subject property. *See Pet’r Ex. 2; Busovsky testimony.*
 - b. The subject parcel was valued using an actual frontage of 100-feet, an effective frontage of 100-feet with an effective depth of 148-feet. The base rate applied to the subject was \$410 per front foot. A negative influence factor of 40% was also applied to the subject. The property referred to by the Petitioner as a comparable to the subject, Petitioner Ex. 2, has an actual frontage of 100-feet, an effective frontage of 100-feet with an effective depth of 140-feet. The base rate applied was \$410 per front foot. A negative influence factor of 40% was also applied. Though the lots differ in size, both lots were valued using the same base rate and each received the same negative influence factor. It is due to the differences in lot size that the properties have different values. *See ¶15b, supra.*
 - c. Petitioner requested that the subject land be valued the same as the comparable - \$23,900. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in the assessment. However, the Petitioner failed to show that the present assessment of \$24,600 for the land is incorrect and that the subject’s land should be \$23,900. Petitioner’s evidence establishes neither that the properties are comparable nor that they are assessed differently. The evidence before the Board indicates that they are assessed at the same base rate and with the same influence factor. Any assertion that they are assessed differently is simply incorrect. We are left with only the Petitioner’s statement that the value is too high. Unsupported statements as to what the land should be valued are matters of opinion and are conclusory at best. Conclusory statements do not constitute

probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

17. The Petitioner failed to make a prima facie case by failing to effectively establish that the assessment is in error. The Board finds in favor of the 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.