

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #'s: 45-002-02-1-5-00115; 45-002-02-1-5-00119; 45-002-02-1-5-00121
Petitioner: Neal E. Dixon
Respondent: Department of Local Government Finance
Parcel #: 002-02-03-0177-0009; 002-02-03-0177-0010; 002-02-03-0177-0011
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment was \$16,600 for each of the parcels listed above and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L petition with regard to each parcel on April 12, 2004.
3. On October 7, 2004, the Board issued to the parties a notice of hearing with regard to each above referenced Form 139L petitions.
4. On November 10, 2004, in Crown Point, Indiana Special Master Peter Salvesson held hearings concerning each of the above referenced Form 139 L petitions. Based upon the similarity between issues raised and evidence presented with regard to those three petitions, the Board has consolidated the petitions for purposes of this Final Determination.

Facts

6. Parcel # 002-02-03-0177-0009 (0009) is an unimproved residential lot consisting of .174 acres of land. Parcel # 002-02-03-0177-0010 (0010) is an unimproved lot consisting of .172 acres of land. Parcel # 002-02-03-0177-0011 (0011) is an unimproved lot consisting of .162 acres of land. All three parcels have a street address of 3860 Main Street, Lowell Indiana. The Board will refer to the three parcels collectively as "the subject parcels" unless otherwise indicated.
7. The Special Master did not conduct an on-site visit of the subject parcels.

8. Assessed Values of the subject parcels as determined by the DLGF:

Parcel # 0009	Land	\$16,600	Improvements	\$ 0	Total	\$16,600
Parcel # 0010	Land	\$16,600	Improvements	\$0	Total	\$ 16,600
Parcel # 0011	Land	\$16,600	Improvements	\$0	Total	\$16,600

9. Assessed Value requested by the Petitioner during hearing:

Parcel # 0009	Land	\$8,333	Improvements	\$ 0	Total	\$8,333
Parcel # 0010	Land	\$8,333	Improvements	\$0	Total	\$8,333
Parcel # 0011	Land	\$8,333	Improvements	\$0	Total	\$8,333

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Neal E. Dixon, Owner

For Respondent: John Toumey, Representing the DLGF

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:

- a. The Petitioner bought six parcels, including the subject parcels, from his parents in December of 1998. The Petitioner paid a total of \$110,000 for all six parcels including a residence located on one of the parcels. *Dixon testimony.*
- b. The subject parcels are over-assessed because they are not level. A topography map shows a slope from 690 feet to 700 feet across the subject parcels. This would be a factor when constructing improvements. *Dixon testimony; Petitioner Exhibit 4*
- c. The subject parcels front a farmer's field and are landlocked. A street named Lake View Drive was proposed and appears on the topography map, but it was never built. The Petitioner's neighbor at 3900 Main Street has tried to see that this road will never be built. *Dixon testimony; Petitioner Exhibits 6 and 7.*
- d. The property record cards for the subject parcels incorrectly reflect that they have a lake view. The Petitioner submitted topography maps and pictures to demonstrate

that the parcels do not have a view of the lake. *Dixon testimony; Petitioner Exhibits 7-8.*

- e. The property record cards incorrectly list the subject parcels as having utilities, gas, electric, sewer and water service. *Dixon testimony; Petitioner Exhibit 5.*
 - f. The total area of all parcels is 45,000 square feet, which amounts to just over an acre. The market value of an acre of land in the area in which the subject parcels are located is approximately \$50,000. The value for each parcel therefore should be \$8,333. *Dixon testimony.*
 - g. The Petitioner contends that all six parcels should be valued as one unit. Since the assessment, he has had all the parcels combined on one parcel number. *Dixon testimony.*
13. Summary of Respondent's contentions in support of assessment:
- a. The Respondent contends that the subject parcels are properly assessed as vacant, unimproved land. *Toumey testimony; Respondent Exhibit 2.*
 - b. The subject parcels each received a 20% reduction in value for being unimproved and another 20% reduction for undetermined reasons. *Toumey testimony; Respondent Exhibit 2.*
 - c. The Respondent contends that the Petitioner bought the subject property from a relative, which is not an arms-length transaction. *Toumey testimony.*

Record

14. The official record for this matter is made up of the following:
- a. The Petition.
 - b. The tape recording of the hearing labeled Lake Co. #680.
 - c. Exhibits:

Petitioner Exhibit 1: Form 139L Petitions

Petitioner Exhibit 2: Summary of the Petitioner's Arguments

Petitioner Exhibit 3: Written outline of evidence explaining its relevance

Petitioner Exhibit 4: Topography maps

Petitioner Exhibit 5: Pictures to show lack of improvements and utilities

Petitioner Exhibit 6: Pictures to show no paved road, frontage, or access to back lots

Petitioner Exhibit 7: Maps to show no lake view

Petitioner Exhibit 8: Pictures to show no lake view¹

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject property record cards²

Board Exhibit A: Form 139 L Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases, laws, and regulations 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.

16. The Petitioner provided sufficient evidence to support his contention for a reduction in assessed value. This conclusion was arrived at because:

¹ The Petitioner actually submitted three separate sets of Exhibits - one for each Form 139L petition. The Exhibits are numbered in the same manner and bear the same descriptions. Exhibits 1, 5, 6 and 8 in each packet are specific to the parcels at issue. The Petitioner, however, submitted those exhibits to show the same things with regard to each parcel, such as the absence of a lake view. The Board therefore refers to the Exhibits collectively. A reference to Petitioner's Exhibit 6, for example, collectively refers to the photographs labeled as Exhibit 6 in the packet submitted for each Form 139L petition.

² The Respondent also submitted separate Exhibits for each petition. As with the Petitioner's Exhibits, the Board treats the Respondent's Exhibits collectively for purposes of this Final Determination. Thus, a citation to Respondent's Exhibit 2 refers collectively to the property record cards for each of the parcels under appeal.

- a. The subject parcels are adjacent to each other as well as to three additional parcels that the Petitioner also owns. Those additional parcels, including the parcel upon which the Petitioner's residence is located, are the subject of separate appeals.³
- b. The Petitioner based his claim for a reduction in assessment, in part, on the following grounds: (1) the Petitioner bought all six parcels, including the parcel containing his residence, from his parents for \$110,000 in December 1998; (2) the subject parcels are not level; (3) the subject parcels do not have a lake view; (4) the subject parcels have not been developed with utilities; and (5) the subject parcels each should be assessed for one-sixth of \$50,000, which is the approximate value of an acre of land in the area in which the parcels are located.
- c. While the sale of a subject property often presents the most compelling evidence of that property's market value, there are two facts that render the December 1998 sale in this case devoid of probative value. First, the Petitioner testified that he bought the property from his parents. This casts serious doubt upon whether the sale was an arms length transaction and consequently upon whether the sale price is probative of the property's market value. Second, although the Petitioner originally appealed the assessment of the parcel containing the residence, the parties stipulated to that parcel's value, and that appeal is no longer before the Board. The Petitioner did not provide any means by which to decide what portion of the sale price should be attributed to the parcels that remain under appeal.
- d. The Petitioner submitted a topography map showing a decrease in elevation from 700 feet to 690 feet across the subject parcels. *Petitioner Exhibit 4*. The Petitioner, however, did not provide any evidence by which to quantify the effect of that slope on the market value of the subject parcels.
- e. The Petitioner did present evidence that the subject parcels are not developed for utilities. The property record cards, however, indicate that each parcel received a negative influence factor totaling forty percent (40%). *Respondent Exhibit 2*. The cards, on their faces, do not specify the basis for the negative influence factor. Nonetheless, the Respondent's representative testified that of that forty percent (40%) factor, twenty percent (20%) was designed to account for the parcels not being developed. *Toumey testimony*. The Board finds this testimony to be credible. The Petitioner did not present any evidence to demonstrate that the twenty percent (20%) negative influence factor does not adequately account for the effect of the lack of development upon the parcels' market value. The Petitioner therefore failed to demonstrate an entitlement to a reduction in assessment due to the subject parcels not being developed.

³ Those appeals were filed under Petition Nos.: 45-002-02-1-5-00116; 45-002-02-1-5-00117; 45-002-02-1-5-00118. The parties stipulated to an agreement with regard to Petition No. 45-002-02-1-5-00117. The Board is issuing a separate Final Determination regarding the other two petitions.

- f. The Petitioner presented evidence demonstrating that the subject parcels do not have a view of the lake despite the fact that the notation “lake view” appears in the memorandum section of the property record card for each parcel. *Dixon testimony; Petitioner Exhibits 7-8*. The Petitioner, however, did not explain how the reference to the parcels as having a lake view affected the Respondent’s valuation of the parcels. The Petitioner did not present any evidence to show that the characterization of the parcels as having a lake view affected the base rate used to calculate their land values, and there is no indication on the property record cards that any influence factor was applied to adjust the values upward to account for a lake view.
- g. The Petitioner similarly failed to present any evidence to support his requested value of \$8,333 for each parcel. The Petitioner based this valuation on his testimony that property in the area was worth approximately \$50,000 per acre. The Petitioner, however, did not provide any evidence regarding how he determined the market value of land in the area. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- h. The Petitioner failed to establish an error in assessment based upon any of the above discussed contentions.
- i. The Petitioner, however, also contended that the subject parcels were improperly assessed as fronting a street that does not exist. In support of his position, the Petitioner submitted a topography map showing that the subject parcels abut “Lake View Drive.” *Petitioner Exhibit 7*. The Petitioner testified that Lake View Drive does not actually exist; it is a planned street, but it has not been built. *Dixon testimony*. The parcels actually abut a farmer’s field. *Id*.
- j. It is not true, as the Petitioner alleges, that the subject parcels lack street access entirely. The Petitioner owns adjacent lots that front Main Street. *Dixon testimony; Petitioner’s Exhibit 7*. Because of the unity of ownership, the subject parcels may access Main Street *via* the Petitioner’s other parcels. Nonetheless, the six parcels owned by the Petitioner were assessed separately for the assessment year under appeal. The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) provide for parcels that lack street frontage, but are located behind parcels having street frontage, to be assessed as “rear lots.” *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, ch. 2 at 50 (incorporated by reference at 50 IAC 2.3-1-2). Each of the subject parcels is located behind another parcel fronting Main Street. *Dixon testimony; Petitioner’s Exhibit 7*.
- k. The Petitioner therefore established a *prima facie* that the current assessment is incorrect and that the subject parcels should be assessed as rear lots.
- l. The Respondent did not directly address the Petitioner’s claims regarding the subject parcels’ lack of street frontage. The Respondent indicated that the subject parcels already receive a negative influence factor of forty percent (40%). While the

Respondent's representative speculated that a portion of that influence factor may have been attributable to the lack of street frontage, he confirmed that he did not actually know the basis for any portion of the negative influence factor beyond the twenty percent (20%) attributable to the parcels being unimproved. *Toumey testimony.*

- m. Based on the foregoing, the preponderance of the evidence demonstrates that there was an error in the assessment and that the subject parcels should be valued as rear lots.

Conclusion

- 17. The Petitioner established a prima facie case that the subject parcels should be assessed as rear lots. The Respondent did not sufficiently rebut the Petitioner's evidence in that regard, and the Board finds for the Petitioner. The Petitioner, however, did not establish a prima facie case for any further reduction in assessment.

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. 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>.