

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00905
Petitioner: Patricia B. Hussey
Respondent: Department of Local Government Finance
Parcel: 001-25-41-0247-0054
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 on February 24, 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$22,600 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Ellen Yuhan held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is a vacant parcel of land located at 7839 Juniper Avenue, Gary. The location is in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed value of the subject property as determined by the DLGF:
Land \$22,600 Improvements \$0 Total \$22,600.
8. Assessed value requested by the Petitioner during the hearing:
Land \$10,000 Improvements \$0 Total \$10,000.
9. The following persons were present and sworn as witnesses at the hearing:
For Petitioner –Jon A. Hussey, taxpayer’s husband,
For Respondent –Sharon Elliott, assessor/auditor.

Issues

10. The Petitioner's contention for a lower value is based on the disparity between actual sales of vacant parcels and their assessed values. *Hussey testimony; Petitioner Exhibit 7.*
11. In support of the assessment Respondent testified that a negative influence factor was applied to the parcel for vacancy and excessive frontage. *Elliott testimony; Respondent Exhibit 2.*

Record

12. 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. 986,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Notice of Hearing,
 - Petitioner Exhibit 2 – Form 139L,
 - Petitioner Exhibit 3 – Power of Attorney,
 - Petitioner Exhibit 4 – Notice of Final Assessment,
 - Petitioner Exhibit 5 – Map of Lot 171,
 - Petitioner Exhibit 6 – Map of comparables,
 - Petitioner Exhibit 7 – Summary of sales and assessments,
 - Petitioner Exhibit 8 – Conclusion,
 - Petitioner Exhibit 9 – Property record cards for comparables,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign in Sheet,
 - d. These Findings and Conclusions.

Analysis

13. The most applicable governing cases 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, by preponderance of the evidence, 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.
14. The Petitioner provided sufficient evidence to support the contention for a reduction in assessed value. This conclusion was arrived at because:
- a. Petitioner presented a list of six vacant parcels in the same neighborhood that sold between July 1999 and March 2003. The sale prices range from \$6,250 to \$10,500 for lots that are from .313 acres to .541 acres.¹ The assessment of the same lots ranges from \$21,400 to \$25,000. The evidence in this case indicates that assessment of the subject property and the vacant lot comparables is two or more times the market value.
 - b. Respondent had no documentation on vacant land sales in the neighborhood.
 - c. The property has negative influence factors applied for vacancy and excess frontage, but this testimony does not effectively rebut or impeach Petitioner's comparable sales evidence.
 - d. Of the comparables presented, the most similar is the property at 682 Tippecanoe, which has .433 acres, while the subject has .42 acres. It is noted that the frontage of the properties is not the same; the subject property has an effective frontage of 144 feet, while 682 Tippecanoe has a frontage of 113 feet. However, excess frontage does not necessarily engender a higher value.
 - e. Excessive frontage is an amount of frontage that is greater than the established front footage standard for a particular area. 2002 REAL PROPERTY ASSESSMENT GUIDELINE- VERSION A. The value adjustment is expressed as a *negative* influence factor. *Id.* Respondent failed to prove any reason that the subject property would be more valuable because of its excess front footage. Therefore, while the front footage of the subject and 682 Tippecanoe may not be identical, the area is very similar and the market value of the subject property would be similar, if not something less.

¹ Pursuant to Ind. Code § 4-21.5-3-26, hearsay evidence may be admitted. "If not objected to, the hearsay evidence may form the basis of an order." In this case Respondent asked a few questions and made a few comments speculating that the sales might not have been arms-length transactions, but Respondent did not object to what appears to be hearsay testimony regarding the sales of other vacant lots in the same area.

- f. The Petitioner established disparity between the assessment of vacant land and the market value of vacant land in this area that was not rebutted by the evidence in this case.
- g. The Board finds that the subject property should be valued at \$10,500, which was the market value of the comparable lot at 682 Tippecanoe.

Conclusion

- 15. The Petitioner established a prima facie case. The Respondent did not rebut the Petitioner's case with substantial evidence. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to \$10,500.

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>>.