

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00238
Petitioners: Richard & Joann L. Ficek
Respondent: Department of Local Government Finance
Parcel #: 003-31-25-0205-0009
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$29,600 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. A hearing was held on September 16, 2004, in Crown Point, Indiana, before Special Master S. Sue Mayes.

Facts

5. The subject property is located at 14416 Sherman Street, Cedar Lake, in Center Township.
6. The subject property is a parcel of vacant land measuring 325 by 100 feet.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land: \$29,600 Improvements: \$ -0- Total: \$29,600.
9. Assessed Value requested by Petitioners:
Land: \$20,000 Improvements: \$ -0- Total: \$20,000.

10. Persons sworn as witnesses at the hearing:
For Petitioners — Richard L. Ficek, Owner
For Respondent — Cathi Gould, Staff Appraiser, Cole-Layer-Trumble

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The subject property is marsh and has no street frontage. The lot cannot be built upon. *Petitioners Exhibit 2; Ficek testimony.*
 - b. Comparable property "B", a parcel 1,200 feet east of the subject, sold for \$40,000. That parcel consists of 76 lots and sold for \$526 per lot. Those lots are not swampy and have road access. *Petitioners Exhibit 4; Ficek testimony.*
 - c. Comparable property "A" (parcel # 31-25-0206-0001) is the parcel 100 feet west of the Petitioners' property. This comparable parcel consists of 19 lots and is assessed at \$3,600, or at \$189.47 per lot. The subject property is assessed at \$2,276.99 per lot. The subject parcel has low, swampy lots. It has been unfairly assessed. *Petitioners Exhibit 3; Ficek testimony.*
 - d. The value of the subject property should be adjusted to reflect a value per lot similar to or lower than comparable property "A." *Ficek testimony.*
 - e. The Petitioner testified that the proposed 90 percent negative influence factor would result in a fair assessment. *Ficek testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Comparable property "B" is not a good comparable as it is an estate sale and not an arm's-length transaction. *Petitioners Exhibit 4; Gould testimony.*
 - b. Comparable property "A" lists 19 lots in the legal description, but the measurement is incorrect and only half of it assessed. *Petitioners Exhibit 3; Gould testimony.*
 - c. The Petitioners have shown that the streets are just paper streets. They do not actually exist. *Petitioners Exhibit 2; Gould testimony.*
 - d. The Respondent agreed that there is an inconsistency in the way the subject property and comparable properties have been assessed. They received different influence factors. *Respondent Exhibits 1, 2; Gould testimony.*
 - e. The Respondent agreed that the lots are unbuildable and should be given a negative 90 percent influence factor to reduce the assessed value to \$8,450 (rounded to \$8,500). *Gould testimony.*

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 Lake Co. 404.
 - c. Exhibits:
 - Petitioners Exhibit A: Form 139L.
 - Petitioners Exhibit 1: Map showing location of subject and comparable parcel.
 - Petitioners Exhibit 2: Map showing no through streets.
 - Petitioners Exhibit 3: Comparable parcel “A” appraisal data.
 - Petitioners Exhibit 4: Comparable parcel “B” market data.
 - Petitioners Exhibit 5: Cover Statement.
 - Respondent Exhibit 1: Property Record Card (PRC) for subject parcel #003-31-25-0205-0009.
 - Respondent Exhibit 2: PRCs for comparable parcels #003-31-25-0205-0030 and 003-31-25-0205-0022.
 - 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 laws 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 Petitioners provided sufficient evidence to support their contentions that the land value was erroneous. This conclusion was arrived at because:
- a. The Respondent agreed with the Petitioners that there is inconsistency in the assessments for the Petitioners' parcel and comparable properties.
 - b. The Respondent testified that the parcel should receive a negative 90 percent influence factor to reduce the value to \$8,500 because it is unbuildable. The Petitioner agreed that adjustment would result in a fair assessment of the parcel.

Conclusion

16. Undisputed testimony indicated that the land was unbuildable and the value of the land should be changed to reflect a 90 percent negative influence factor.

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 \$8,500.

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.