

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01185
Petitioners: Tom Zintl & Christian Van Enkhuizen
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0246-0064
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 on February 14, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$8,900.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties on October 8, 2004.
4. A hearing was held on November 16, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1100 Warrick Street Front, Gary, in Calumet Township.
6. The subject property is a vacant residential lot consisting of 0.041 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land \$8,900 Improvements \$ 0 Total \$8,900
9. Assessed Value requested by the Petitioner during hearing:
Land \$ 750 Improvements \$ 0 Total \$ 750
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: Tom Zintl, Owner
For Respondent: Diane Spenos, Representing the DLGF

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the subject property was purchased at a Commissioner's Sale in June of 2001 for \$952. *Zintl Testimony and Petitioner's Exhibit 1*
 - b. The Petitioner contends that the subject property is unbuildable per the City of Gary Zoning Code. *Zintl Testimony and Petitioner's Exhibit 7*
 - c. The Petitioner contends that an independent, limited appraisal by a licensed appraiser estimated the value of the subject property to be \$750. *Zintl Testimony and Petitioner's Exhibit 8*
 - d. The Petitioner contends that the subject property is assessed higher than comparable unbuildable lots. *Zintl Testimony*
 - e. The Petitioner contends that the subject property is located on a "paper street". *Zintl Testimony and Petitioner's Exhibit 7*
 - f. The Petitioner contends that the subject property does not have access to some utilities. *Zintl Testimony*

13. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent contends that the subject property was allowed a 50% adjustment for being on a paper street. *Spenos Testimony*
 - b. The Respondent contends that the subject property was valued on a front foot basis and adjusted for depth. *Spenos Testimony*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #705.
 - c. Exhibits:
 - Petitioner's Exhibit 1: Form 139L Petition & Proof of Purchase for Key #001-25-45-0245-0064
 - Petitioner's Exhibit 2: Form 139L Petition & Proof of Purchase for Key #001-25-45-0245-0066
 - Petitioner's Exhibit 3: Form 139L Petition & Proof of Purchase for Key #001-25-45-0245-0067
 - Petitioner's Exhibit 4: Summary Sheet of Lot Descriptions, Sizes, Purchased Cost, Assessed Value, etc.
 - Petitioner's Exhibit 5: Copy of Plat Book Indicating Petitioned Lots
 - Petitioner's Exhibit 6: Enlargement of Plat Indicating Petitioned Lots with Key Numbers
 - Petitioner's Exhibit 7: Copy of City of Gary Zoning Code
 - Petitioner's Exhibit 8: Limited Summary Appraisal Report
 - Petitioner's Exhibit 9: Arial Map with Contours of Land and Elevations
 - Petitioner's Exhibit 10: Plat of Survey for House Owned by Petitioner
 - Petitioner's Exhibit 11: Lake County-Real Property Maintenance Report dated 12/17/00 for Lot 33

Petitioner's Exhibit 12: Closing Statement & Plat of Surveys for Lots on Locust and Rush

Petitioner's Exhibit 13: Photos of Lots and Terrain

Petitioner's Exhibit 14: Photos of Lots and Terrain

Petitioner's Exhibit 15: Photos of Lots and Terrain

Respondent's Exhibit 1: Form 139L Petition

Respondent's Exhibit 2: Subject Property Record Card

Respondent's Exhibit 3: City of Gary Zoning Code

Respondent's Exhibit 4: Arial Map

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, 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 at 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. The petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *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. The petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); *see also Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
 - d. 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 the Petitioner’s contention for a reduction in assessed value. This conclusion was arrived at because:

- a. The Petitioner provided sufficient evidence that the subject property was not buildable per City of Gary Zoning Code. *Petitioner's Exhibit 7*
- b. The Petitioner provided sufficient evidence that the purchase of the subject property, through a "commissioner's sale", was representative of the market for this type of property by showing the purchase price of the subject property and two similar parcels from \$952 to \$1,500. *Zintl Testimony and Petitioner's Exhibits 1, 2 and 3*
- c. The Petitioner provided a limited appraisal report from a licensed appraiser that showed an estimated value of \$750 for the subject property. *Petitioner's Exhibit 8*
- d. The Respondent did not rebut the evidence or testimony presented by the Petitioner.
- e. The Petitioner, therefore, has made a prima facie case that the assessment is in error.

Conclusion

- 17. The Petitioner did make a prima facie case for a reduction in the assessed value of the property. The Respondent did not rebut the Petitioner's evidence satisfactorily. The Board finds in favor of the Petitioner. The assessment should be changed \$952.

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.