

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00252
Petitioner: Warden & Lois V. Cutshall
Respondent: Department of Local Government Finance
Parcel #: 006-14-19-0009-0040
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 November 22, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$17,000, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 15, 2004
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 19, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 2350 Morgan Street, Lake Station, Hobart Township, Lake County.
6. The subject property is a vacant residential lot consisting of 0.500 acres of land.
7. The Special Master did not conduct an on-site visit of the subject property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$17,000
 - b) Assessed Value requested by Petitioner:
Land \$1,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Ronald L. Cutshall, Son of Owner

For Respondent: Diane Spenos, DLGF Hearing Officer

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) Petitioner purchased the subject property in the late 1940s or early 1950s. *Cutshall testimony*. It was first used to store LP gas tanks, and then used as a garden after the Petitioner retired. *Id.* There are "a couple of modest houses" in the area. *Id.*
 - b) The Petitioner has attempted to sell the subject property since 1981, but has received no offers. *Id; Pet'r Ex. 3-4*. The parcel is not large enough for water and septic services, so it is not able to be built upon. *Cutshall testimony*.
 - c) An appraisal places the value of the property at \$3,000 – \$5,000. *Cutshall testimony; Pet'r Ex. 5*. Comparable properties all have access to water and septic service. *Id.*
 - d) The subject property only has value to adjacent property owners, who could possibly use the property as a garden. *Cutshall argument*.
11. Summary of Respondent's contentions in support of the assessment:
 - a) A 20% negative influence factor has been applied to the assessment of the lot because it is vacant. *Spenos testimony; Resp't Ex. 2*. An additional 30% negative influence factor has been applied to the assessment for excess frontage. *Id.* The assessment does not reflect the fact that the lot cannot be built upon. *Id.*
 - b) The Respondent doesn't know what the value of the parcel should be. *Spenos testimony*.

Record

12. The official record for this matter is made up of the following:
 - a) The Petition and all subsequent submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co - 794.
 - c) Exhibits:
Petitioner Exhibit 1: Form 139L Petition

Petitioner Exhibit 2:	Summary of Petitioner’s Arguments
Petitioner Exhibit 3:	Correspondence from Bill Gland Regarding Attempts to Sell Land Since 1981
Petitioner Exhibit 4:	Correspondence from Frank Ennis Realty Regarding Attempts to Sell Property
Petitioner Exhibit 5:	Appraisal from Ennis & Moore Realty with Recent Sale Information of Nearby Comparable Property
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. 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 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) 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 Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment of the subject property is too high.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL

PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.

- c) In support of his position, the Petitioner submitted an appraisal completed by a local real estate broker, which states that the value of the property is \$3,000-\$5,000. *Pet'r Ex. 5.*
- d) The Respondent did not rebut the Petitioner's evidence, and offered no evidence in defense of the current assessment of \$17,000.
- e) Therefore, the Board hereby determines that the assessment of the subject property should be lowered to \$5,000.

Conclusion

15. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of 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 \$5,000.

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>.