

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-041-02-1-5-00380
45-041-02-1-5-00381
45-041-02-1-5-00382
45-041-02-1-5-00383
45-041-02-1-5-00384
Parcels: 003-31-25-0200-0015
003-31-25-0200-0016
003-31-25-0200-0017
003-31-25-0200-0018
003-31-25-0200-0019
Petitioner: Patricia Polus
Respondent: Department of Local Government Finance
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 October 27, 2003. The Department of Local Government Finance (the "DLGF") determined that the property tax assessments for the subject properties are \$6,200 per parcel and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L petitions on April 1, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 9, 2004.

Facts

5. The subject properties are vacant lots located at 14314 Sherman Street, Cedar Lake. They are located in Center Township. Each lot measures 25 feet by 100 feet.
6. The Special Master did not conduct an on-site visit of the property.

7. Assessed value for each of the subject properties as determined by the DLGF:

Land \$6,200	Improvements \$0	Total \$6,200.
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8. Assessed value for each of the subject properties requested on each petition:

Land \$2,400	Improvements \$0	Total \$2,400.
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9. Persons sworn as witnesses at the hearing:
 - For Petitioner — Patricia A. Polus, Owner,
Louis J. Polus, Jr.,
 - For Respondent — Terry Knee, Assessor/Auditor.

Issue

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
 - a. The subject properties are valued at \$6,200 per lot. Comparable properties sold for \$704 and \$750 per lot. *Petitioner Exhibit 4; P. Polus testimony.*
 - b. Statements from three local realtors provide market values for the subject property. Alice Wright of Cedar Lake stated that the lots would probably sell for \$2,000 a lot. McColly Real Estate stated \$12,000 as the market value of the property. Sims Realty stated that a fair asking price for the five lots combined would be \$12,000. *Petitioner Exhibit 5.*
 - c. The subject properties are unbuildable due to the terrain. Furthermore, the combined area of the lots is insufficient to meet the minimum requirements for a building permit. *Petitioner Exhibit 2, 3, 6; P. Polus testimony.*
 - d. The photographs show that access to the property is a gravel road that dead-ends before reaching the property. *Petitioner Exhibit 6; P. Polus testimony.*

11. Summary of Respondent’s contentions in support of the assessment:
 - a. The locations of the comparable properties were not established and location is very important to value. *Knee testimony.*
 - b. The Respondent agreed that the lots are located on a street that exists only on paper. The Respondent also agreed that the combined area of the lots is 12,500 square feet, while the Cedar Lake building code requires 15,000 square feet for building. The Respondent stated that influence factors might need to be applied. *Petitioner Exhibits 3, 6; Knee testimony.*

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. 551,
 - c. Exhibits:
 - Petitioner Exhibit 1 — Form 139L,
 - Petitioner Exhibit 2 — Property record cards for lots 15, 16, 17, 18, 19,
 - Petitioner Exhibit 3 — Cedar Lake building code,
 - Petitioner Exhibit 4 — Sales Disclosures for two properties,
Vacant Land 3-Up Summary Report,
Vacant Land Client Detail Reports for two sales, and
listings for four parcels,
 - Petitioner Exhibit 5 — Statements with opinions of value from local realtors
Alice Wright, Joan Kamminga-Majerik, and Jeffrey Sims,
 - Petitioner Exhibit 6 — Photographs of subject property,
 - Respondent Exhibit 1 — Form 139L,
 - Respondent Exhibit 2 — Subject property record card,
 - Respondent Exhibit 3 — Land influence factors chart,
 - 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 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”).

14. There is sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a. Petitioner presented sales disclosure forms to show that allegedly similar properties sold for much less than the assessed value of the subject property (\$6,200 per lot). A parcel with twenty-two lots sold December 22, 1998, for \$704 per lot. A parcel with fifteen lots sold June 28, 2001, for \$750 per lot. *Petitioner Exhibit 4; P. Polus testimony.*
 - b. Petitioner failed to provide evidence to establish the comparability of those properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).
 - c. In support of her argument that the property is unbuildable, Petitioner presented photographs to show a sharp drop-off at the rear of the lots. The Cedar Lake residential building code requires a lot to be at least 15,000 square feet for every structure erected. The combined area of all five of the lots is 12,500 square feet. The building code and total size of all these lots are probative evidence that this property is unbuildable. Respondent agreed that the property is unbuildable and offered evidence that such property have a negative 90 percent influence factor.
 - d. The current assessed value of \$6,200 per lot is based on an estimated value of \$7,750 with a negative 20 percent adjustment for the influence factor for an unimproved lot.
 - e. Unbuildable lots receive an influence factor of negative 90 percent. With the proper 90 percent negative influence factor, the assessed value of each lot should be \$800.

Conclusion

15. The Petitioner proved that the lots are unbuildable. Therefore, the lots were improperly assessed and they should receive a 90 percent negative influence factor. 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 assessments should be changed to \$800 per lot.

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.