

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00699
45-001-02-1-5-00700
Petitioners: Jeanette C. Fage & Peter Giannini
Respondent: The Department of Local Government Finance
Parcel #s: 001-25-43-0148-0032
001-25-43-0148-0033
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 February 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$3,200 each and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated January 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 11:15 A.M. on March 3, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 1141 Hovey Street and 1137 Hovey Street, Gary. The location is in Calumet Township.
6. The subject properties are two, contiguous, vacant residential lots, each measuring 30' by 125'.
7. The Special Master did not conduct an on-site visit of the properties
8. Assessed values of subject properties as determined by the DLGF:
Land \$3,200,
Land \$3,200.

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9. Assessed values requested by Petitioners are:
Land \$300,
Land \$300.
10. Persons sworn in as witnesses at the hearing:
Peter Giannini, Owner,
Diane Spenos, Assessor/Auditor, Department of Local Government Finance.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessments:
 - a. The DeRolf appraisal for a property down the street, done for estate purposes on March 24, 1994, states that the area is in decline and reflects substantial external depreciation due to high unemployment and an outward migration to the surrounding suburbs. The appraisal for 1124 Porter sets a value of \$1,000 for this lot. *Petitioner Exhibit 3, page 2; Giannini testimony.*
 - b. Bart Sikich also appraised the 1124 Porter property, again for estate purposes, on November 21, 1994. It also states that the neighborhood is in decline and reflects substantial external depreciation. It further states that there were no recent sales of similar sites. *Petitioner Exhibit 4, page 5.* This appraisal also indicates a value of \$1,000 for this lot. *Id; Giannini testimony.*
 - c. The area is in further decline since the closing of nearby Edison High School. *Giannini testimony.*
 - d. The subject lots are "unbuildable" due to size according to Building Ordinances for the City of Gary. *Giannini testimony.*
 - e. Sales disclosures for vacant lots were not available. The one sale found was for an improved lot with a dwelling. That property located on the same block as the subject sold for \$4,000 on January 3, 2001. *Petitioner Exhibit 5; Giannini testimony.*
 - f. The City of Gary continues to market lots in the area to this day for as little as \$150. These types of sales do not allow for a competitive market within the neighborhood. *Petitioner Exhibit 6; Giannini testimony.*
 - g. A recent newspaper article states that the County is selling lots for as little as \$50 and is concerned that they are being assessed for as much as \$3,800. *Petitioner Exhibit 7; Giannini testimony.*
12. Summary of Respondent's contentions:
 - a. While individually the lots would be "unbuildable" due to size according to the City of Gary building ordinance, these lots are contiguous to each other and therefore assessed as a single economic unit. It would be most likely they would be sold together. *Spenos testimony.*
 - b. Because they are assessed as a single economic unit, they should be considered to have a total of 60' of frontage, which is above the standard for the neighborhood. Along with the negative 20% land factor given for being unimproved, according to the Lake County Land Order both lots should also receive a negative 4%

influence factor for having excess frontage as compared to the neighborhood standard. *Spenos testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petitions,
 - b. The tape recording of the hearing labeled Lake County 1242,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Notice of Final Assessment,
 - Petitioner Exhibit 2 - Form 139L Appeal,
 - Petitioner Exhibit 3 - Appraisal by DeRolf & Associates,
 - Petitioner Exhibit 4 - Appraisal by Bart Sikich,
 - Petitioner Exhibit 5 - Sales Disclosure 1038 Hovey Street,
 - Petitioner Exhibit 6 - Legal Notice City of Gary for lot sales,
 - Petitioner Exhibit 7 - *Times* newspaper article regarding lot sales,
 - Respondent Exhibit 1 - Form 139L Petition,
 - Respondent Exhibit 2 - Subject property record card,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Hearing Sign In Sheet.
 - d. These Findings and Conclusions.

Analysis

14. 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 Commis's*, 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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

- a. The Petitioners offered one sale of a vacant lot within close proximity to the subjects. One sale is insufficient to establish a market and is therefore of no value to the Board in making its determination. *Petitioner Exhibit 5; Giannini testimony.*
- b. The appraisals offered by the Petitioners as Exhibits 3 and 4 are from 1994. The Petitioner did not establish a relationship as to how this information would relate to the valuation date of January 1, 1999. *Id.*
- c. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL, at 12 (incorporated by reference at 50 IAC 2.3-1-2.).
- d. Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
- e. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- f. The Respondent testified that because the subject lots are contiguous they should have been assessed as one economic unit. By the standards set forth in the Lake County Land Order the combined frontage of the two lots is 60', which is in excess of the 50' standard frontage set for this neighborhood. The Respondent testified that the subject lots should have an additional 4% negative influence factor applied to correct the error. *Spenos testimony.*

Conclusion

16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Respondent, however, testified that an error had been made due to the omission of a negative influence. The Board finds for the Respondent and determines a negative 4% influence factor be applied to both parcels.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments 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. 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.