

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 16-016-03-1-4-00001
16-016-03-1-4-00004
Petitioners: Larry D. & Shirley M. Sowders
Respondent: Washington Township Assessor (Decatur County)
Parcel #: 095-11-09-36.23-100
Assessment Year: 2003

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Decatur County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 16, 2003.
2. The Petitioners received their first notice of the decision of the PTABOA on September 30, 2004. On April 25, 2005, the Petitioners received a second notice of the final decision of the PTABOA.
3. The Petitioners filed their first appeal to the Board by filing a Form 131 with the county assessor on October 10, 2004. The Petitioners filed their second appeal to the Board by filing a Form 131 with the county assessor on May 16, 2005. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 29, 2005.
5. The Board held an administrative hearing on August 23, 2005, before the duly appointed Administrative Law Judge Brian McKinney.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo E. Smith, Tax Representative
 - b) For Respondent: Helen R. Wagener, on behalf of Washington Township

Facts

7. The property is classified as commercial lot with a restaurant, as is shown on the property record card for parcel # 095-11-09-36.23-100.
8. The Petitioners filed two (2) separate form 131s due to the two (2) separate notices from the PTABOA. Both notices from the PTABOA and both Form 131s are for the same parcel. The second notice sent is the one that is at issue in this hearing. The parties agreed that the values listed on it (\$401,100 for land and \$128,700 for improvements) are the values under appeal.
9. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
10. The assessed value of subject property as determined by the Decatur County PTABOA is \$401,100 for the land and \$128,700 for the improvements for a total assessed value of \$529,800.
11. The assessed value requested by Petitioners is \$262,500 for the land and \$128,700 for the improvements for a total assessed value of \$391,200.

Issues

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The 0.4000 acres assessed as Undeveloped Usable Commercial/Industrial Land should be assessed as a drainage ditch. *Smith argument.*
 - b) Even if the 0.4000 acres is assessed as Undeveloped Usable Commercial/Industrial Land, the adjusted rate should not be higher than the base rate. *Id.*
13. Summary of Respondent's contentions in support of the assessment:
 - a) There is no classification of "drainage ditch" in the commercial land section. *Wagener testimony.* Only the agricultural sections contain a section for a legal ditch. *Id.*
 - b) Respondent agrees that the adjusted rate of the 0.4000 acres should not be higher than the base rate. *Id.*

Record

14. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.

b) The digital recording of the hearing.

c) Exhibits:

- Petitioner Exhibit 1: Ind. Code § 6-1.1-4-14;
- Petitioner Exhibit 2: Site drawing by Jim Gordon;
- Petitioner Exhibit 3: Site drawing by The Schneider Corporation;
- Petitioner Exhibit 4: Cut out of the subject parcel, from Pet'r Ex. 3;
- Petitioner Exhibit 5: Picture of the subject ditch area;
- Petitioner Exhibit 6: Page 71, Real Property Assessment Guideline, Determining Size Adjustment Factors for Acreage;
- Petitioner Exhibit 7: Table 2-11, Acreage Size Adjustment Table;
- Petitioner Exhibit 8: Page 89, Real Property Assessment Guideline, Determining Influence Factors for Commercial and Industrial Land;
- Petitioner Exhibit 9: Table 2-17, Influence Factor Codes for Commercial and Industrial Property;
- Petitioner Exhibit 10: Map of area of subject property with subject property and four (4) other properties marked. Property Record Cards for four (4) properties attached;
- Petitioner Exhibit 11: Proposed Property Record Card, with a negative 76% influence factor;
- Petitioner Exhibit 12: Proposed Property Record Card, with a negative 71% influence factor;
- Petitioner Exhibit 13: Proposed Property Record Card, with 63% influence factor to primary land, secondary land priced as a ditch with no value;
- Petitioner Exhibit 14: Proposed Property Record Card, secondary land priced with an adjusted rate of \$280,000;
- Petitioner Exhibit 15: Land pricing information from Decatur County; and
- Petitioner Exhibit 16: Summary of presentation.

Respondent Exhibit 1: Statement regarding discussion with City Engineer;

Respondent Exhibit 2: Page 88-90, Real Property Assessment Guideline, Table 2-16 and Table 2-17;

Respondent Exhibit 3: Page 101, Real Property Assessment Guideline, Table 2-23;

Respondent Exhibit 4: Decatur County Commissioners minutes from March 7, 2005;

Respondent Exhibit 5: Aerial photograph of subject property;

Respondent Exhibit 6: Letter to Robin Nobbe, Decatur County Assessor, regarding cost to perform survey of subject property; and

Respondent Exhibit 7: Authorization of Helen Wagener to represent Washington Township.

d) These Findings and Conclusions.

Analysis

15. 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. Wash. 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.
16. The Petitioners did provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that a 0.400 section of land currently assessed as useable undeveloped land should be assessed as a drainage ditch. Petitioner contends this land should have a reduced value.
 - b) First, the Petitioner argues that under Ind. Code § 6-1.1-4-14 the value of the 0.400 acres should not be assessed. The Petitioner contends that the area is used and occupied as part of a drainage ditch. *Smith testimony, Pet’r Ex. 1, 16*.
 - c) According to Ind. Code § 6-1.1-4-14, land may not be assessed if it is “used and occupied as part of a public drainage ditch... that cannot be used for farmland or any other purpose because of a need for access to the ditch.” In the present case, the Petitioner did not provide any information concerning whether the land is part of a public drainage ditch. The statute does not exempt all land used as a ditch from property taxes, merely those used as a *public* drainage ditch.
 - d) The Petitioner did not provide any evidence indicating the property is a public access ditch, or that the section cannot be used for any other purpose because of a need for access to the ditch. Evidence presented by the Respondent indicates that the land can be used for other purposes should the owner choose to do so. *Resp’t Ex. 1; Wagener testimony*.

- e) Second, the Petitioner argues that the property is currently assessed at a 3:1 Land Value Ratio while neighboring properties are valued at less than 1:1 Land Value Ratios. *Smith testimony; Pet'r Ex. 16*. Petitioner contends the land value should be reduced to approximate the value of the improvements for it to be similar to the neighboring properties 1:1 Land Value Ratio. *Id.*
- f) The Petitioner presented property record cards for four (4) surrounding properties. *Pet'r Ex. 10*. The Petitioner also presented the Neighborhood Valuation Form for the neighborhood of the subject property and the four (4) other properties Petitioner used for comparison. *Pet'r. Ex. 15*.
- g) According to the Neighborhood Valuation Form, primary land should be assessed between \$300,000 and \$400,000 per acre. The recommended value is \$350,000. A negative 25% influence factor is recommended for tracts of three to five acres, and a negative 50% influence factor is recommended for tracts of five to 10 acres. *Id.*
- h) Two of the properties submitted by the Petitioner are over five acres. These two properties have a base rate of \$300,000 per acre and a negative 50% influence factor for their primary land. *Pet'r Ex. 10*. One property submitted has a base rate of \$350,000 and a negative influence factor of 25%. *Id.* The final property submitted has a base rate of \$350,000 with no influence factor. *Id.* The subject property is assessed at \$350,000 with a negative 25% influence factor. *Id.*
- i) The Petitioner did not argue that the base rate used for any parcel was incorrect. The Petitioner did not present any sales information to indicate property in the neighborhood was selling for a lower value. The Petitioner is arguing that the subject property deserves a negative influence factor greater than 25%.
- j) In order to prevail in an argument for an influence factor, the Petitioner must present "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level." *Phelps Dodge v. State Board of Tax Comm'r*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).
- k) The parties agree the subject property is entitled to some influence factor. Therefore, the first prong of the Petitioner's burden is met. The Petitioner must quantify the amount of the negative influence factor.
- l) The Petitioner failed to quantify the amount of the negative influence factor. The Petitioner attempts to show the Land Value Ratio of the subject property is different from neighboring parcels. The Petitioner failed to show how Land Value Ratios indicate an error in value. No evidence was presented to explain why the Land Value Ratios must be similar.

- m) The properties submitted by the Petitioner have Land Value Ratios ranging from 1:1 to 1:4. It appears, even from the properties submitted, that the Land Value Ratio has no bearing on the actual market value of the land. The evidence submitted regarding the Land Value Ratio is not probative.
- n) The Petitioner did not meet the second prong of the burden to receive an increase in the influence factor. The influence factor will remain at negative 25%.
- o) Both parties do agree that the adjusted rate for the 0.4000 acres of land should not exceed the base rate. Accordingly, based on the agreement of the parties, the adjusted rate should be changed to \$280,000, and the land value should be calculated accordingly.

Conclusions

- 17. The Petitioners failed to make a prima facie case indicating the secondary land should be priced as a drainage ditch or receive a negative influence factor. The Board finds in favor of Respondent.
- 18. The parties agreed that the adjusted rate of the secondary land should be \$280,000. The Board finds that the adjusted rate of the secondary land should be \$280,000.

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. 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>.