

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01129
Petitioners: Anthony & Luane DiNovo
Respondent: The Department of Local Government Finance
Parcel #: 007-26-36-0180-0009
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 3, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$65,200 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 2:30 P. M. on April 28, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 430 176th Court, Hammond. The location is in North Township.
6. The subject property consists of a one story, frame, single-family residence.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$22,400 Improvements \$42,800 Total: \$65,200.
9. Assessed value requested by Petitioners is:
Land \$7,800 Improvements \$42,800 Total \$50,600

10. Persons sworn in as witnesses at the hearing:
Luane DiNovo, Owner,
Charlotte Melton, Owner's witness,
Phillip E. Raskosky, II, Assessor/Auditor, Department of Local Government Finance.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The subject property is assessed as having an alley according to the property record card. No alley exists so the Petitioners must access their garage from a driveway coming from the street. This means the subject lot has limited access and should be given a negative influence for restrictions as per the 2002 REAL PROPERTY ASSESSMENT GUIDELINES. *Petitioner Exhibits 5 and 8; DiNovo testimony.*
 - b. A neighbor on the other side of the street has an alley at the rear of his property so he can access his garage from the alley and he is only assessed \$7,800 for his lot. *Petitioner Exhibits 5 and 9, pg 3 bottom photo; DiNovo testimony.*
 - c. The subject lot is located in a flood plain and suffers from poor drainage. The land in the rear constantly retains water that runs off the high slope coming from the highway. *Petitioner Exhibit 12, pgs 2-4 and pg 8; DiNovo testimony.*
 - d. No consideration is being given for a water easement that exists on the subject lot. This would be considered a restriction according to the 2002 REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, chapter 2, page 61. The Petitioners had to relocate their garage five feet due to this easement. *Petitioner Exhibits 6 and 8; DiNovo testimony.*
 - e. There is also no consideration being given for the 10' state highway easement at the rear of the lot. *Petitioner Exhibits 6 and 8; DiNovo testimony.*
 - f. A noise-abatement wall was installed along the rear of the property by the state highway department in 1994-1995. It affects the view, promotes poor drainage at the rear of the property, has an access door that is used by people coming from the highway onto the subject lot, and does not effectively abate the traffic noise. *Petitioner Exhibit 13; DiNovo testimony.* The state has sent letters stating that they will be replacing this wall in 2006 and moving it five feet onto the ten foot easement. *Petitioner Exhibit 14; DiNovo testimony.*
 - g. The subject lot should receive reductions for poor access, flood plain location, and water and highway easements. *DiNovo and Melton testimony.*
12. Summary of Respondent's contentions:
 - a. While the traffic noise abatement wall was not built until 1994-1995, the highway existed when the Petitioners purchased the subject property in 1992. *Raskosky testimony.*
 - b. Again, the Petitioner was aware the subject property is located in a flood plain when it was purchased in 1992 and, according to the Petitioner, they do not carry flood insurance. *DiNovo testimony; Raskosky testimony.*
 - c. The neighboring property the Petitioner has referred to as being assessed at \$7,800 for land actually has a land assessment of \$27,300. *Respondent Exhibit 5; Raskosky testimony.*

- d. The Petitioner has not shown that any of the neighboring properties also located next to the highway have been assessed differently than the subject. *Raskosky testimony.*
- e. The Respondent testified that the subject lot should receive some negative land influences due to the existence of the water easement and the highway easement. The amount of the discount would be determined by procedures used throughout Lake County. *Raskosky testimony.*
- f. Though there were no sales on the subject's particular street, sales found within the subject's neighborhood show a market range between \$83.19 and \$95.25. The subject's current per square foot value of \$90.56 falls within this market range. *Respondent Exhibits 3 and 4; Raskosky testimony.*

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 1581,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L,
 - Petitioner Exhibit 2: Notice of Final Determination,
 - Petitioner Exhibit 3: Summary of Petitioner Arguments,
 - Petitioner Exhibit 4: Outline of Evidence,
 - Petitioner Exhibit 5: Plat survey,
 - Petitioner Exhibit 6: Lot survey,
 - Petitioner Exhibit 7: Property record card,
 - Petitioner Exhibit 8: Documents from 2002 Real Property Assessment Guidelines, Version A,
 - Petitioner Exhibit 9: Photographs showing shape of property,
 - Petitioner Exhibit 10: Photographs showing restrictions,
 - Petitioner Exhibit 11: Photographs showing view,
 - Petitioner Exhibit 12: Drainage map and photographs,
 - Petitioner Exhibit 13: Limited access photographs,
 - Petitioner Exhibit 14: Noise nuisance,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Top 20 comparables and statistics,
 - Respondent Exhibit 4: Property record cards and photographs of comparables,
 - Respondent Exhibit 5: Property record of property presented by Petitioners as comparable,
 - 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 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.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case in the areas of garage access, flood plain influence, or negative impact due to proximity of highway. This conclusion was arrived at because:
While the evidence presented by the Petitioners verified that no alley exists behind the subject lot, that the subject property is located in a flood plain, and that the subject property is negatively affected by being next to the highway, the Petitioners failed to explain how these facts would affect the current 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”). The Board finds for the Respondent.
16. While the Petitioners also failed to quantify the negative effect two easements might have on the subject property, the Respondent supported the Petitioners’ claim that they would negatively impact the assessed value of the subject property.

Conclusion

17. The Petitioners did not provide sufficient evidence to establish a prima facie case on any of the issues. However, based on the Respondent’s testimony, the Board finds that a negative influence factor should be applied in consideration of both the water easement and the highway easement using current Lake County procedures as noted by the Respondent.

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>.