

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

Petition #: 71-025-02-1-5-00007
Petitioners: Gerald R. & Irene Darling
Respondent: Portage Township Assessor (St. Joseph County)
Parcel #: 17-1041-1297
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 Petitioners initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130.
2. The Petitioners received notice of the decision of the PTABOA on March 26, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition) with the County Assessor on April 12, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 15, 2004.
5. The Board held an administrative hearing on March 9, 2005, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at the hearing:¹
 - a. For Petitioners: Gerald Darling, Owner
Irene Darling, Owner
 - b. For Respondent: Ralph J. Wolfe, PTABOA Member
Ross A. Portolese, PTABOA Member
Terrance F. Wozniak, Deputy County Attorney
Rosemary Mandrici, Portage Township Assessor

¹ Mr. Wozniak was present during the administrative proceedings on behalf of the Respondent but was not sworn.

Facts

7. The property is classified as a vacant lot located at 55138 Butternut Road, South Bend, Portage Township, St. Joseph County, as is shown on the property record card for parcel #17-1041-1297.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the St. Joseph County PTABOA:

Land: \$5,500	Improvements: \$-0-	Total: \$5,500.
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10. Assessed Value requested by Petitioners:

Land: \$1,200	Improvements: \$-0-	Total: \$1,200.
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Issue

11. Summary of Petitioners' contentions in support of the alleged error in the assessment:
 - a. The Petitioners contend that the subject property's assessment is too high. *G. Darling testimony.*
 - b. The Petitioners unsuccessfully tried to sell the subject property for \$1,000 in 1962. *Board Exhibit A; G. Darling testimony.* The Petitioners therefore contend that the subject property should be valued at no more than \$1,200. *Id.*
 - c. Petitioners also submitted photographs of neighboring properties to demonstrate that the neighborhood has declined. *Board Exhibit A; G. Darling testimony.* The Petitioners contend that the condition of the neighborhood renders the subject property less desirable on the market. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The subject land is valued with the same base rate as the adjoining lots in the neighborhood and has received negative influence factor of seventy-five percent (75%). *Respondent Exhibit 1.*
 - b. The subject property is correctly assessed at \$5,500. *Mandrici 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 STB #5169.
- c. Exhibits:

Petitioners' Exhibits

The Petitioners did not submit separately labeled exhibits. The Petitioners instead relied upon documents attached to the Form 131 petition and labeled as Board Exhibit A.

Respondent's Exhibits

Respondent Exhibit 1: A copy of the Petitioners' 2002 property record card.

Board's Exhibits

- Board Exhibit A: Form 131 petition with the following attachments: Form 130, Form 115, Supplement to Form 131, and five (5) photographs of comparable properties.
- Board Exhibit B: Notice of Hearing on Petition, dated December 15, 2004.
- 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 Insurance Company 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 support their contentions. This conclusion was arrived at because:
- a. Gerald Darling testified that the Petitioners attempted to sell the parcel 37 years ago, in 1962, for \$1,000. *G. Darling testimony*. They were unable to sell the property at that time. *Id.* Thus, the Petitioners contend that the subject lot should not be assessed for more than \$1,200.
 - b. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on evidence from years substantially removed from the relevant valuation date must explain how such evidence demonstrates, or is relevant to, the subject property's market value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)(holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
 - c. The Petitioners failed to establish the required link between their 1962 ask price for the subject property and its value as of January 1, 1999. Accordingly, Gerald Darling's testimony regarding the Petitioners' ask price for the subject property in 1962 is not probative of error.
 - d. The Petitioners also submitted photographs of neighboring properties to demonstrate that the subject neighborhood has declined. The Petitioners, however, did not present any evidence to quantify the effect of the condition of the neighboring properties on the market value of the subject property.
 - e. Based on the foregoing, the Petitioners failed to establish a prima facie case of error in assessment.

Conclusions

16. The Petitioners failed to present probative evidence sufficient to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>>.