

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00811
45-001-02-1-5-00812
Petitioners: J. Edward & Monica A. Johnston
Respondent: The Department of Local Government Finance
Parcel #s: 001-25-43-0410-0021
001-25-43-0410-0020
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 February 23, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties are \$2,500 and \$15,000 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 10, 2005.
4. Special Master Ellen Yuhan held the hearing on March 14, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 3242 Carolina Street and 3252 Carolina Street, Gary in Calumet Township.
6. The subject properties consist of a vacant 40' by 137' lot and a single-family dwelling on a 40' by 137' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject properties to be \$2,500 for the land for parcel number 001-25-43-0410-0021 and \$3,100 for the land and \$11,900 for the improvements for a total of \$15,000 for parcel number 001-25-43-0410-0020.

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9. The Petitioners requested an assessed value of \$300 for the land for parcel number 001-25-43-0410-0021 and \$400 for the land and \$10,000 for the improvements for a total assessed value of \$10,400 for parcel number 001-25-43-0410-0020.
10. Monica A. Johnston, one of the owners of the properties, and Stephen H. Yohler, with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the property is over-assessed due to its isolated location and its proximity to a gang clubhouse. The properties are on an unlit, unpaved street; there are no curbs or sidewalks. *Petitioner Exhibits 1-6, 7; Johnston testimony.*
 - b. The Petitioners bought a property three blocks away from the subject for \$11,000 in 2001. *Petitioner Exhibit 8; Johnston testimony.*
 - c. The Respondent's comparables are not comparable to the subject because they are located in subdivisions. *Johnston testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent testified that the house with the attached garage is 54' wide. The lots are 40' lots, so the house is situated on both lots. According to the Respondent, the lots should have been combined when they were assessed. *Respondent Exhibit 2; Yohler testimony.* If the lots were combined, Lot 21 would have a 12% influence factor for excess frontage, not a 20% factor for vacancy. Thus, Lot 21 should be \$2,700, rather than \$2,500. However, the lot with the house would be assessed in the same manner. It was assessed at \$3,100 and we feel that it should be \$2,700. *Yohler testimony*
 - b. The Respondent testified that the improvements were assessed correctly and a 65% obsolescence factor was applied in consideration for the neighborhood. *Respondent Exhibits 2 and 5; Yohler testimony.*
 - c. The comparables show the subject properties are assessed equitably. *Respondent Exhibit 5; Yohler 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 1205,
- c. Exhibits:

- Petitioner Exhibit 1 - Map,¹
- Petitioner Exhibits 2-6 - Photographs of the appealed properties,
- Petitioner Exhibits 6a-6b - Flowage Easement for 3249 Carolina Street,²
- Petitioner Exhibit 7 - Photograph,
- Petitioner Exhibit 8 - Quitclaim deed for 3314 Delaware,
For petition 45-001-02-1-5-00811
- Respondent Exhibit 1 - Form 139L petition,
- Respondent Exhibit 2 - Subject property record card,
- Respondent Exhibit 3 - Plat map,
For petition 45-001-02-1-5-00812
- Respondent Exhibit 1 - Form 139L petition,
- Respondent Exhibit 2 - Subject property record card,
- Respondent Exhibit 3 - Subject photograph,
- Respondent Exhibit 4 - Top 20 comparable sheet with photographs and property
record cards
- Respondent Exhibit 5 - Plat map,
- Board Exhibit A - Form 139L petitions,
- Board Exhibit B - Notices of Hearing,
- Board Exhibit C - 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”).

¹ Petitioner Exhibits 1, 2-6, 7 and 8 are for petitions 45-001-02-1-5-00811, 45-001-02-1-5-00812, 45-001-02-1-5-00813, 45-001-02-1-5-00814, and 45-001-02-1-5-00815.

² This exhibit is for petition 45-001-02-1-5-00813 only.

- 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 did not provide sufficient evidence to establish a prima facie case for a reduction in the value of their properties. However, the Petitioners and Respondent reached agreement on the value of the land. This conclusion was arrived at because:
- a. The Petitioners contend the properties are over-valued because of the location of the properties and because they purchased another property near the subject for \$11,000 in 2001. *Johnston testimony*. The Petitioners did not submit any evidence to show how the property purchased in 2001 was comparable to the subject properties or how that value was relevant to the subject properties' value as of January 1, 1999. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890 (Ind. Tax 1995). The Petitioners have not met their burden to raise a prima facie case that their properties were assessed incorrectly.
 - b. The Petitioners also contend that the value of their properties is affected because the neighborhood is undesirable, the parcels are on an unpaved street and there are no sidewalks or curbs. *Johnston testimony*. Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The DLGF testified that a 65% obsolescence factor was applied to the property to reflect the character of the neighborhood. The Petitioner failed to show that a further reduction is warranted. *See Talesnick*, 756 N.E.2d at 1108.
 - c. 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).

- d. Finally, however, the Respondent testified that the parcels should have been combined when they were assessed. If the parcels were combined, Lot 21 would be assessed for \$2,700, rather than \$2,500 and Lot 20 would be assessed for \$2,700 instead of \$3,100. *Yohler testimony*. The Petitioner accepted this valuation. Thus the parties reached agreement on the valuation of the land for parcel numbers 001-25-43-0410-0021 and 001-25-43-0410-0020.

Conclusion

16. The Petitioners did not provide sufficient evidence to establish a prima facie case. However, the parties reached agreement on the valuation of the land for both parcels. Thus, the Board finds that the current assessment for the land should be changed to reflect this agreement.

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>.