

INDIANA BOARD OF TAX REVIEW

Small Claims

Final Determination

Findings and Conclusions

Petition: 64-006-06-1-1-00004
Petitioner: Martha Slont Schrader
Respondent: Porter County Assessor
Parcel: 6-06-14-200-004.000-006
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (PTABOA) on May 30, 2007.
2. The PTABOA mailed the notice of its decision to the Petitioner on January 16, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on February 19, 2008. The Petitioner elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 24, 2008.
5. Administrative Law Judge Ellen Yuhan held the hearing in Valparaiso on July 29, 2008.
6. The following persons were present and sworn as witnesses at the hearing:

For the Petitioner – J. F. Schrader, taxpayer,

For the Respondent – John R. Scott, Porter County Assessor.¹

¹ Peggy Hendron was present as an observer for the PTABOA.

Facts

7. The subject property is an improved, agricultural parcel of 18.88 acres located at 978 N. Meridian Road, Chesterton, Indiana.
8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined the assessed value to be \$42,300 for land and \$67,200 for improvements, for a total assessed value of \$109,500.
10. The Petitioner contends the assessment should be \$500 for the land and \$10,000 for improvements, for a total assessed value of \$10,500.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends the land is damaged because the Porter County Court awarded the Toll Road Commission the entire frontage of the property in fee simple title in 1955, when it should only have awarded an easement. *Schrader testimony*. The Petitioner believes this was fraud. *Id.*
 - b. The Petitioner argues that the property's assessed value does not reflect the damage to the land. *Schrader testimony*. According to Mr. Schrader, the Petitioner should receive a reduction in taxes because the land is severed from the county road. *Id.*
 - c. Finally, the Petitioner argues, the land suffers from drainage problems. *Schrader testimony*. According to Mr. Schrader, drainage from the toll road adversely affects the eastern half of the property. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends the Petitioner presented no evidence showing how much of the land the Toll Road Commission took or what portion of the land is affected by drainage problems. *Scott testimony*.
 - b. The Respondent further contends that it is difficult to determine the value of any damage to the land if the Petitioner still has access to Meridian Road. *Id.*

Record

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The recording of the hearing labeled J. F. Schrader Hearing,
- c. Exhibits:

Petitioner Exhibit 1 – 1955 Documents including a letter from the Indiana Toll Road Commission to the Porter County Surveyor, Complaint for Condemnation, Survey, Order of Court Appointing Appraisers, Award of Appraisers, and Order of Court,

Petitioner Exhibit 2 – “As-Built” drawing of land used for the toll road,

Respondent Exhibit 1 – Aerial photograph of the subject property,

Respondent Exhibit 2 – Aerial photograph of subject property,

Respondent Exhibit 3 – Property record card,

Board Exhibit A - Form 131 petition and all subsequent mailings to the Board,

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Petitioner failed to provide sufficient evidence to establish an error in the assessment. The Board reached this decision for the following reasons:
- a. The Petitioner contends the land is damaged because, in 1955, the Porter County Court awarded the Toll Road Commission the entire frontage of the property in fee simple title, when it should only have awarded an easement. *Schrader testimony; Petitioner Exhibit 1*. According to the Petitioner, the assessed value of the property does not reflect the damage to the land, which is severed from the county road through the fraudulent actions of government entities. *Id.* The Petitioner further contends that drainage from the toll road adversely affects the eastern half of the property. *Schrader testimony*.
 - b. The property is agricultural land and the assessed value of agricultural land in 2006 was based on a four-year rolling average of market value-in-use as calculated by the Department of Local Government Finance.² Some properties, however, possess peculiar attributes that set them apart from the standard. For properties such as these an assessor may apply an influence factor.³ Here, the Petitioner seeks an adjustment to his property value due to damage caused by drainage problems and damage related to the purported governmental interference with his property.
 - d. A 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). Here the Petitioner has not met this burden. While the severing of the land from the county road and the alleged drainage problems caused by the toll road may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value of the subject property. *See Talesnick*, 756 N.E.2d at 1108. Further, the Petitioner failed to show the actual market value of the property. *Id.* In fact, the Petitioner presented no evidence to establish the market value-in-use of the property under appeal.
 - e. A petitioner must submit “probative evidence” that adequately demonstrates all alleged errors in the assessment. Mr. Schrader provided evidence that some of the Petitioner’s property was taken in condemnation in 1955, but he

² Senate Enrolled Act 327 froze the base rate for the March 1, 2006, assessment date at \$880. (The unpublished base rate had been calculated at \$1,050 and was based on data from 2000, 2001, 2002, and 2003). SEA 327 also required changing the four-year rolling average to a six-year rolling average for the 2007 assessment year and beyond

³ 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. REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2)

presented no evidence that the Petitioner was assessed for the property taken for the toll road. Further, the Petitioner presented no evidence that the remaining property is being assessed unfairly. He merely contends that the property has been “damaged.” Mere allegations, unsupported by factual evidence, are not sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998). To the extent Mr. Schrader believes he has been damaged by the actions of the state, Mr. Schrader must seek his remedy elsewhere. The Board of Tax Review does not have jurisdiction over such civil matters.

- f. The Petitioner failed to establish a prima facie case. 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).

Conclusion

- 16. The Petitioner failed to raise 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 changed.

Issued: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>