

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00121A **Parcel #:** 006-27-18-0141-0004
45-016-02-1-5-00118 006-27-18-0141-0007
45-016-02-1-5-00119 006-27-18-0141-0003
45-016-02-1-5-00120 006-27-18-0141-0019

Petitioner: William A. Watts
Respondent: Department of Local Government Finance
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. For petition number 45-016-02-1-5-00121A, the Department of Local Government Finance (the DLGF) determined that the tax assessment is \$105,600. For petition number 45-016-02-1-5-00118, the DLGF determined that the tax assessment is \$32,300. For petition number 45-016-02-1-5-00120, the DLGF determined that the tax assessment is \$14,400. For petition number 45-016-02-1-5-00119, the DLGF determined that the tax assessment is \$13,100. The DLGF notified the Petitioner of all assessments on March 31, 2004.
2. The Petitioner filed all of the Form 139Ls on April 27, 2004.
3. The Board issued the notices of hearing to the parties dated November 16, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 16, 2004.

Facts

5. The subject properties are located at, common address 2705 W. 37th Avenue, Hobart, Indiana. The property identified in petition ending in 00120 is identified as located in the 800 block of Linden Street.¹
6. The property identified in petition ending in 00121A is a single-family residential home. The property identified in petition ending in 00118 has a garage and attached carport. The properties identified in petitions ending in 00119 and 00120 are vacant land.

¹ This property is a rear lot contiguous with the Petitioners other lots.

7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF for petition ending in 00121A:
 Land: \$17,200 Improvements: \$84,400 Total \$105,600
 Assessed value as determined by the DLGF for petition ending in 00118:
 Land: \$20,100 Improvements: \$12,200 Total: \$32,300
 Assessed value as determined by the DLGF for petition ending in 00119:
 Land: \$13,100 Improvements: \$0 Total: \$13,100
 Assessed value as determined by the DLGF for petition ending in 00120:
 Land: \$14,400 Improvements: \$0 Total: \$14,400
9. Assessed value requested by Petitioner for petition ending in 00121A
 Land: \$12,000 Improvements: \$84,400 Total: \$96,400
 Assessed value requested by Petitioner for petition ending in 00118:
 Not provided
 Assessed value requested by Petitioner for petition ending in 00119:
 Not provided
 Assessed value requested by Petitioner for petition ending in 00120:
 Requested between \$12,000 and \$14,000
10. Persons sworn as witnesses at the hearing were:
 William Watts, owner
 Phillip Raskoski, assessor/auditor.

Issues

Petition Number 45-016-02-1-5-00121A / Parcel -0004

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
 - a) The assessed value of the land is over-stated because it is inconsistent with similar lots of identical size. *Watts testimony.*
 - b) The assessed value of the improvements is over-stated because a detached garage and a car shed are inappropriately double-assessed since they appear on this parcel and the appropriate parcel 006-27-18-0141-0007, which is the subject of Petition 45-016-02-1-5-00118. *Watts testimony.*
12. Summary of Respondent’s contentions in support of the assessment:
 - a) The assessed value of the land is correct because it is assessed as a front lot with the correct dimensions and is an improved parcel that includes Petitioners’ residence. Unimproved lots receive a negative influence factor because they are vacant and undeveloped. *Raskoski testimony.*

- b) Petitioners' contention that a detached garage and car shed is double assessed is correct and should be removed from this parcel's assessment. It is correctly assessed on parcel 006-27-18-0141-0007. *Raskowski testimony.*

Petition Number 45-016-02-1-5-00118 / Parcel -0007

13. The Petitioner contends the land is over assessed because the lot is land locked. The only access is through Petitioner's other property. *Watts testimony.*
14. The Respondent agreed the value of the lot is incorrect and stated the lot should be assessed as a rear lot. *Raskowski testimony.*

Petition Number 45-016-02-1-5-000120 / Parcel -0019

15. The Petitioner contends the land is over assessed because the lot is vacant and is land locked. The street shown on the plat map just to the west of this parcel was never built.² The only access is through Petitioner's other properties. *Watts testimony.*
16. The Respondent agreed the value of the lot is incorrect and stated the lot should be assessed as a rear lot. *Raskowski testimony.*

Petition Number 45-016-02-1-5-00119 / Parcel -0003

17. The Petitioner contends this lot should be assessed the same as other lots owned by the Petitioner. *Watts testimony.*
18. The Respondent contends this lot is correctly assessed. This lot has a negative influence factor of 20% for being vacant and a negative 28% influence factor for excess frontage. *Raskowski testimony.*

Record

19. 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 1012,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Lake Co. Form 11 for subject dated Nov. 4, 2003 and DLGF Final Value Determination for parcel -0004,
 - Petitioner Exhibit 2 – Lake Co. Form 11 for parcel -0003 and DLGF Final Value Determination for that parcel,
 - Petitioner Exhibit 3 – Lake Co. Form 11 for parcel 006-27-18-0141-0005,

² Petitioner was not certain of the street name, but apparently the reference is to Linden Street shown on Respondent Exhibit 4.

Petitioner Exhibit 4 – Lake Co. Form 11 for parcel -0019 and DLGF Final Value Determination for that parcel,
Petitioner Exhibit 5 – Lake Co. Form 11 for parcel -0007 and DLGF Final Value Determination for that parcel,
Petitioner Exhibit 6 – Property Record Card for parcel -0004,
Petitioner Exhibit 7 – Property Record Card for parcel -0003,
Petitioner Exhibit 8 – Property Record Card for parcel 006-27-18-0141-0005,
Petitioner Exhibit 9 – Property Record Card for parcel -0007,
Petitioner Exhibit 10 – Property Record Card for parcel -0019,
Petitioner Exhibit 11 – Plat Map,
Respondent Exhibit 1 – Form 139L Petition for each parcel,
Respondent Exhibit 2 – Subject Property Record Card for each parcel,
Respondent Exhibit 3a and 3b – Photograph of house and photograph of garage,
Respondent Exhibit 4 – Plat Map,
Board Exhibit A – Form 139L for each parcel,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet.

d) These Findings and Conclusions.

Analysis

20. The most applicable laws 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.
- d) The petitioner must submit probative evidence that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *see also Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

21. The Petitioner did not provide sufficient evidence to support his contention that the assessed value of the land is over-stated. This conclusion was arrived at because:
- a) The Petitioner testified only that the assessed value of the subject land should be the same as the assessed value of the land on the adjacent identical parcel. *Watts testimony*.
 - b) The adjoining parcel is larger and is unimproved. The base rate of the adjoining lot is the same as the subject property (\$205.00). *Pet'r Exhibits 6 – 7, 9 – 10*. The influence factors are different. For example, the subject property has a negative 24% influence factor. The parcel ending in 0003 has a negative influence factor of 48%. The parcel ending in 0019 has a negative influence factor of 65%.
 - c) The Respondent testified that the subject lot is improved with utilities and landscaping. The Respondent stated that unimproved lots get a negative influence factor that is not available for an improved lot. *Raskowski testimony*.
 - d) The Petitioner contends that the “land is land” and lots of similar size next to each other should have the same value. Such conclusory statements are not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119. Furthermore, Petitioner is incorrect. Depending on improvements that may exist, such as utilities or site work needed to prepare a lot for an improvement, there could be differences in value. It is the duty of the Petitioner to present probative evidence indicating an error in the assessment. In the present case, the only evidence presented by the Petitioner was two vacant lots owned by the Petitioner.
 - e) The Petitioner’s evidence is not probative to show an error in the assessment or what the correct assessment should be. The four lots assessed on a front foot basis all had the same base rate, but differing influence factors. The Petitioner did not present any evidence establishing which influence factor is appropriate. In addition, the Petitioner failed to establish what the market value-in-use of the land should be.
 - f) Here, the only difference in the assessments was the application of negative influence factors. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present both “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 Commissioners*, 705 N.E. 2d 1099, 1105 (Ind. Tax Ct. 1999).
 - g) The Petitioner did not quantify the influence factor he sought. As such, he has failed to make a prima facie case regarding the land assessment.

22. The Petitioner provided sufficient evidence that the assessed value of the improvements should be changed on this parcel. This conclusion was arrived at because:

- a) Petitioner proved that the PRCs for the subject parcel and parcel -0007. They both include the same garage and car shed. The improvements in question are located on parcel -0007 and the data including them on that parcel is correct. *Watts Testimony; Pet'rs Exhibits 1, 5.*
- b) The DLGF representative agreed with Petitioner in the matter. *Raskoski Testimony.*
- c) Based on this undisputed testimony, the garage and attached car shed should be removed from this assessment and the value of the improvements should be lowered.

Petition Number 45-016-02-1-5-00118 / Parcel -0007
and
Petition Number 45-016-02-1-5-00120 / Parcel -0019

23. "Landlocked" is a term that means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." BLACK'S LAW DICTIONARY 894 (8th ed. 2004). The evidence established that Petitioner has access to these parcels through other parcels that he owns. Therefore, neither one of them is landlocked. Nevertheless, the undisputed testimony at the hearing established that these two parcels are rear lots. The street indicated on the plat map to the west of these properties does not exist. Neither parcel has any frontage. The assessments should be changed to assess each one as a rear lot.

Petition Number 45-016-02-1-5-00119 / Parcel -0003

24. The Petitioner did not provide sufficient evidence to support his contention that the assessed value should be changed. This conclusion was arrived at because:

- a) The Petitioner contends that the assessed value of this land should be the same as the assessed value of the land on the adjacent identical parcel where his house is located. *Watts testimony.*
- b) This parcel is larger than the house parcel and is unimproved. The base rate of the adjoining lot is the same as the subject property. *Pet'r Exhibits 6 – 7, 9 – 10.* The influence factor assigned to the lots is different. For example, the subject property has a negative 48% influence factor. The parcel ending in 0007 has a negative influence factor of 45%. The parcel ending in 0019 has a negative influence factor of 65%.

- c) The Petitioner’s evidence is not probative to show an error in the assessment or what the correct assessment should be. The four lots assessed on a front foot basis all had the same base rate, but differing influence factors. The Petitioner did not present any evidence establishing which influence factor is appropriate, nor did the Petitioner establish what the market value-in-use of the land should be.
- d) Here, the only difference in the assessments was the application of a negative influence factor. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present both “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*, 705 N.E. 2d at 1105.
- e) The Petitioner did not quantify the influence factor sought. As such, he has failed to make a prima facie case that the land assessment is incorrect or what the correct value should be.

Conclusion

- 25. The garage and attached car shed should be removed from the assessment of the parcel 006-27-18-0141-0004. The land on parcel 006-27-18-0141-0004 will remain unchanged. The improvements on parcel 006-27-18-0141-007 will remain unchanged. The land on parcel 006-27-18-0141-0007 and parcel 006-27-18-0141-0019 should be changed to value the parcels as rear lots. The land on parcel 006-27-18-0141-0003 will not be changed.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that there is a change in the assessed value on 3 of the 4 petitions.

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>>.