

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00331
Petitioners: Josef & Gertrude Wimmer
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0034-0094
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 November 25, 2003 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$3,100, and notified the Petitioners on March 26, 2004.
2. Petitioners filed the Form 139L petition on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 19, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins. The Petitioners did not appear at the hearing.
5. The Petitioners did not contact the Board or Special Master prior to the November 19, 2004 scheduled hearing date and did not request a continuance of the hearing.
6. On January 20, 2005, the Board issued to the Petitioners an Order of Dismissal with attached Findings of Fact and Conclusions of Law as a result of the Petitioners' failure to appear. The Order of Dismissal allowed the Petitioners to submit to the Board a written objection requesting the Order be vacated and set aside.
7. On February 11, 2005, the Board issued the Final Determination (Form 118) with attached Findings of Fact and Conclusions of Law.
8. By letter dated February 17, 2005, Mr. Josef Wimmer requested the Order of Dismissal, Final Determination and Findings of Fact and Conclusions of Law be set aside, stating

the Petitioners were unable to attend the hearing scheduled for November 19, 2004 due a health emergency.

9. On February 25, 2005, the Board issued a Notice of Intent to Rehear Petition, thereby setting aside the Order of Dismissal, Final Determination and Findings of Fact and Conclusions of Law.
10. The Board issued a Notice of Board Rehearing to the parties, dated March 8, 2005.
11. The rehearing was held on April 8, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

12. The subject property is located on 4509 West 15th Place, Hobart, Hobart Township, in Lake County.
13. The subject property is vacant land (1.354 acres).
14. The Special Master did not conduct an on-site visit of the property.
15. The DLGF determined that the assessed value of the subject property is \$3,100 for the vacant land.
16. The Petitioners requested a value of \$2,000.
17. Josef and Gertrude Wimmer, property owners, and Steve McKinney, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

18. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. As a result of reassessment, the subject property is assessed 24 times higher than it was previously assessed. *J. Wimmer testimony*. The property should be assessed for approximately \$2,000. *J. Wimmer argument*.
 - b. The subject property is landlocked, is overgrown with brush and trees, and has water standing from heavy rain. *Id; Pet'r Ex. 1*. Recent work performed on a near-by creek did not solve the flooding problem. *J. Wimmer testimony*.
 - c. The subject property is complimentary land to the lot upon which the Petitioners' dwelling is located, and the two lots would have to be sold together. *Id*.

19. Summary of Respondent's contentions in support of assessment:
- a. The flooding problem can be cured if something is done with the creek to improve drainage. *McKinney argument*. Therefore, the subject property will add \$3,100 value to the home when both lots are sold together. *Id.*
 - b. The subject land is valued at the excess acreage base rate, and has received a twenty-five percent (25%) negative influence factor based on the occasional flooding and the topography. *Resp't Ex. 1; McKinney testimony*.

Record

20. The official record for this matter is made up of the following:
- a. The Petition.
 - b. The tape recording of the hearing labeled Lake Co - 1287.
 - c. The following Exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Two photographs of the subject property.

Petitioner Exhibit 2 – Plat survey of the subject property prepared by Krull & Son.

Petitioner Exhibit 3 – 2000 payable 2001 tax statement for the subject property.

Petitioner Exhibit 4 – Property Cama Management profile of the subject property, dated April 29, 1996.

For the DLGF:

Respondent Exhibit 1 – A copy of the subject property record card.

Respondent Exhibit 2 – Aerial map of the subject area.

For the Board:

Board Exhibit A – Form 139L petition, dated April 23, 2004.

Board Exhibit B – Notice of Hearing on Petition, dated March 8, 2005.

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

21. The most applicable 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 at 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.
22. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioners contend the assessment of the subject property exceeds its market value.
 - b. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c. Taxpayers may offer evidence relevant to the fair market value-in-use of a subject property to rebut their assessment and to establish the actual true tax value of the property. MANUAL at 5.
 - d. Here the Petitioners did not submit any documentary evidence to support their contention. Instead, the Petitioners rely solely upon their conclusory statements that the subject property floods and is landlocked. However, the Petitioners did not present any evidence to quantify how those factors affect the market value-in-use of the subject property. Consequently, the Petitioners’ statements amount to little more than conclusory statements, which, when unsupported by factual evidence, are insufficient to support a claim for a change in assessment. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- e. While the Petitioners have shown that the property floods, a twenty-five percent (25%) negative influence factor has already been applied to the assessment for that reason. There is no probative evidence that a greater adjustment is necessary because of the standing water.
- f. Petitioners are required to show an error in the assessment and what the correct assessment should be. *See Meridian Towers*, 805 N.E.2d at 478. If there should be a greater negative influence factor, the Petitioners must prove what it should be. *See Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999) (Petitioner must present probative evidence that would support the application of a negative influence factor and a quantification of that influence factor at the administrative level.)
- g. Petitioners did not attempt to quantify an additional influence factor.
- h. Where the Petitioner fail to make a prima facie case, the Respondent's burden of proof is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement). Accordingly, the burden never shifted to the Respondent to defend the assessment, and no change is warranted.

Conclusion

- 23. The Petitioners failed 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.