

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00345
Petitioner: David T. Rees
Respondent: Department of Local Government Finance
Parcel #: 006271700010017
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 2003 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$16,800 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L 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 18, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is vacant land located at 1216 Shelby Street, Hobart, in Hobart Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The DLGF determined the assessed value of the subject property to be \$16,800 for the land. There are no improvements on the subject property.
8. The Petitioner requested the land be valued at zero.

9. David and Michael Rees, the owners of the property, and Steven McKinney, representing the DLGF appeared at the hearing and were sworn as witnesses.

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the assessed value is overstated compared to other properties. The subject land is a wooded area with a natural waterway running through. As such, the Petitioner alleges, the property is "landlocked" and wetlands. *D. Rees testimony.*
 - b. According to the Petitioner, a photograph of the subject property shows the area is wooded, unimproved and being used as a "nature preserve." *Petitioner Exhibit 1 and D. Rees testimony.*
11. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent testified the property record card shows the subject as vacant land, however the land did not receive a negative 20% influence factor for being an unimproved lot. *Respondent Exhibit 2 and McKinney testimony.*

Record

12. 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. #606.
 - c. The following exhibits were presented:
 - Petitioner Exhibit 1 – A photograph of the subject area
 - Petitioner Exhibit 2 – Form 139L petition

 - Respondent Exhibit 1 – Form 139L petition
 - Respondent Exhibit 2 – Subject's 2002 property record card

 - Board Exhibit A – Form 139L petition, dated April 23, 2004
 - Board Exhibit B – Notice of Hearing on Petition, dated October 18, 2004
 - Board Exhibit C – Hearing sign-in sheet.
 - d. These Findings and Conclusions.

Analysis

13. The most applicable governing cases and regulations 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.

14. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. However, the DLGF agreed to apply an influence factor to the property. This conclusion was arrived at because:
 - a. The Petitioner contends that the property is landlocked and a wetlands area. 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. The 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).
 - b. Petitioner's allegations regarding the subject property's “landlocked” status and the existence of “wetlands” are unsupported by, and even contradicted by, the evidence in

the record.¹ Statements unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).

- c. Further, while the wetland area or the property's "landlocked" status 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-in-use of the subject property, or show what the actual market value of the property is. See *Talesnick*, 756 N.E.2d at 1108.
- d. However, the Respondent stated that it appeared a negative 20% influence factor for the subject parcel being unimproved was omitted when the land value was calculated. *McKinney testimony*. The Respondent offered to apply a negative 20% influence factor to the subject property.

Conclusion

- 15. The Petitioner failed to make a prima facie case. The Respondent, however, agreed that a 20% negative influence factor should be applied to the subject property. The Board, therefore, finds that the subject property should be given a 20% negative influence factor.

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

¹ Petitioner claims the subject property is "landlocked" but the Petitioner testified that the subject property is located behind his home and is accessible by means of that other parcel owned by the Petitioner.

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>.