

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-01340
Petitioners: William G. & Ruth A. Finke
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0107-0002
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 January 8, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$178,400, and notified the Petitioners on April 1, 2004.
2. Petitioners filed the Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 15, 2005.
4. Special Master Dalene McMillen held the hearing on April 15, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located on 8835 Kennedy Avenue, Highland, North Township, in Lake County.
6. The subject property is a general retail building located on .605 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$120,200 for the land and \$58,200 for the improvements for a total assessed value of \$178,400.
9. The Petitioners did not request a specific value.

10. William G. and Ruth A. Finke, property owners, and Stephen H. Yohler, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The assessed value established for the subject land is overstated. *R. Finke argument.* The subject land is a triangle shape, and the use of the property is restricted and limited. *R. Finke testimony.*
 - b. In support of this contention, the Petitioners submitted comparable properties located in the subject area. The comparable properties are assessed lower than the subject property, as their land assessments range from \$2,900 to \$79,100. *Petitioner Exhibits 3- 7; R. & W. Finke testimony.*
 - c. A comparable property owned by David Barsic consists four parcels that, when combined, equals .608 acres with a land assessment of \$62,300. *Petitioner Exhibit 3; R. Finke testimony.* The subject property is .605 acres with a land assessment of \$120,200. This demonstrates the subject property's land is being overvalued in its assessment. *R. Finke argument.*
 - d. The subject improvements are assessed fairly and accurately. *R. Finke testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a. The subject property is correctly assessed at \$120,200 for the land and \$58,200 for the improvements for a total assessed value of \$178,400. *Respondent Exhibit 1; Yohler testimony.* The DLGF does not like to break land out separately, but is more concerned with the total assessment. *Yohler testimony.*
 - b. Petitioners' parcel is located in neighborhood #02634. The seven comparable properties identified by the Petitioners are located in neighborhoods #01697 and #01616. *Id; Petitioner Exhibit 3, 5, 6, 7.*
 - c. Petitioners' parcel is classified as commercial property. The three comparable properties identified by the Petitioners are classified as unusable undeveloped exempt property and as residential. *Petitioner Exhibit 4- 6; Yohler testimony.*
 - d. The David Barsic properties offered by the Petitioners are not located in the same designated neighborhood as the subject property. The Barsic properties are also receiving a 60% negative influence factor to the land. *Petitioner Exhibit 3; 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 Co. 1548,
- c. Exhibits:

Petitioner Exhibit 1 – Form 139L petition and subject property record card,
Petitioner Exhibit 2 – Notice of Final Assessment,
Petitioner Exhibit 3 – Four property record cards and two photographs for properties owned by David Barsic,
Petitioner Exhibit 4 – Property record card for the Town of Highland,
Petitioner Exhibit 5 – Property record card for the Mercantile National Bank Trust #6643 (parcel #007-16-27-0108-0006),
Petitioner Exhibit 6 – Property record card for Harold VanGorp and two photographs of Petitioner Exhibits 4-6,
Petitioner Exhibit 7 – Property record card and two photographs for Mercantile National Bank Trust #6643 (parcel #007-16-27-0108-0003),

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject property,
Respondent Exhibit 3 – Plat map of the subject area,
Respondent Exhibit 4 – The Incremental/Decremental Land Pricing in Lake County, Indiana and the Commercial and Industrial Neighborhood Valuation Form for neighborhood #01694,

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Insurance Company 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 support the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioners contend the subject land is overvalued in its assessment.
 - 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. The Petitioners did not request a specific value for their land, but submitted assessed values of other properties located in the subject area in an attempt to show disparity in assessed land values.
 - d. Although the properties submitted as comparables are located in the same area, seven of the Petitioners’ comparables are from a different designated neighborhood. Petitioners noted that one of the comparables has more acreage than their property, but its assessment is much lower. Without more complete information, it is impossible to meaningfully compare properties that are not located in the same neighborhood.
 - e. Petitioners did not establish that their purported comparables were actually comparable to the subject property. The Petitioners’ merely claimed them to be so. The Petitioners’ conclusory statement that something is comparable does not constitute probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Blackbird Farms Apts., LP v. Dept. of Local Gov’t Fin.*,

765 N.E.2d 711 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- f. The Petitioners testified the subject property is triangular in shape, and the use of the property is restricted and limited. There is no probative evidence, however, that establishes the extent of any negative impact the shape might have on the market value-in-use of the subject property.
- g. Where the Petitioners have 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). Thus, no change in the assessment is warranted.

Conclusion

- 16. 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>