

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-032-02-1-5-00373
45-032-02-1-5-00374

Petitioners: Shawn S. & Marlene Lazarian

Respondent: The Department of Local Government Finance

Parcel #s: 009-20-13-0543-0001
009-20-13-0543-0014

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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$41,800 for parcel number 009-20-13-0543-0001 and \$43,700 for parcel number 009-20-13-0543-0014 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed Form 139L petitions on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 8, 2005.
4. Special Master Kathy J. Clark held a hearing on October 12, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 1248 Lakeview Drive (Lot 2) and 1241 Lakeview Drive (Lot 15), Schererville, in St. John Township.
6. The subject properties are two vacant residential lots situated across the street from one another in the Lakeview Estates subdivision.

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7. The Special Master did not conduct an on-site visit of the properties.
8. The DLGF determined the assessed value of Lot 2 to be \$41,800 for the land and the assessed value of Lot 15 to be \$43,700 for the land. There are no improvements on either parcel.
9. The Petitioners requested an assessment of \$36,000 for Lot 2 and an assessment of \$38,000 for Lot 15.
10. Shawn Lazarian, one of the Petitioners, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a) The Petitioners testified that they purchased 1248 Lakeview (Lot 2) on October 21, 1992, for \$36,000 and 1241 Lakeview (Lot 15) on June 2, 1993, for \$39,000.¹ *Petitioner Exhibit 4-3; Lazarian testimony.* The Petitioners contend that the subject lots are over-assessed on the basis of two "comparable" vacant lots in the subdivision and due to the conditions on the subject properties. *Petitioner Exhibits 4, 4-1, 4-2.*
 - b) The Petitioners testified that they purchased another lot (Lot 3) on October 21, 1992, for \$34,500. *Lazarian testimony.* According to the Petitioners, Lot 3 is assessed for \$34,600. *Petitioner Exhibit 4-1.* Further, the Petitioners contend, Lot 3 is a standard shape and size for the subdivision, still vacant like the subject properties, but has no building restrictions due to floodway. *Petitioner Exhibits 4-1/1 and 4-2.* Similarly, the Petitioners argued, Lot 5, which is identical to Lot 3 and located at 1224 Lakeview, also sold for \$34,500 and is assessed at \$34,600. *Petitioner Exhibit 4-2/1. Id.; Petitioner Exhibit 4-2, pg 2; Lazarian testimony.* The Petitioners contend that the assessed values of Lot 3 and Lot 5 amount to only a 3/10ths of 1 percent increase over their actual purchase price. The Petitioners argue that the same percentage should be applied to the market cost of the subject lots. Thus, according to the Petitioners, Lot 2 should have a total assessed value of \$36,100 and Lot 15 should be \$38,100. *Petitioner Exhibit 4; Lazarian testimony.*
 - c) The Petitioners further contend that the current assessments of the subject properties do not give enough consideration to the topography, the size and shape, and the building restrictions on the subject properties. *Lazarian testimony.* According to the Petitioners, the subject properties sit across the street from one another and a county drainage ditch runs along the western side of each lot. *Id.; Petitioner Exhibit 4-2.* The Petitioners argue that County floodway restrictions apply to both lots and special

¹ Petitioners contend that the developer's list price for Lot 15 was \$38,000, but due to a delay in closing, the final contract price was \$39,000. *Petitioner Exhibit 4; Lazarian testimony.*

permission to build would have to be attained from the County to allow for special set-backs and other floodway restrictions. *Id.* In addition, the Petitioners allege, both lots are irregular in shape, slope by as much as 15 feet and have a lower elevation than other lots in the subdivision. *Lazarian testimony.* The Petitioners contend that the subject properties' current assessments ignore the market prices paid in 1992 and 1993, which considered these conditions. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent contends that Lot 2 is currently receiving the standard Lake County deduction for vacancy of 20% and is also receiving a deduction for excess frontage of 36%. Similarly Lot 15 is currently receiving the standard deduction for vacancy of 20% and is also receiving a deduction for excess frontage of 28%. *Respondent Exhibit 2; Elliott testimony.*
 - b) The Respondent argues that the Petitioners have not presented any information regarding Hart Ditch or any county building restrictions that may or may not be applicable to the subjects. *Elliott testimony.* Further, according to the Respondent, the only reference to a possible elevation issue is a note on the property record card for 1248 Lakeview. *Id.*
 - c) Finally, the Respondent submitted a list of all sales of developed lots within the subdivision to show the relationship between developed lot assessments and their time-adjusted sales prices. *Respondent Exhibits 3 and 4; Elliott testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petitions,
 - b) The tape recording of the hearing labeled Lake County 1883,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Form 139L Petitions,
 - Petitioner Exhibit 2 – Notices of Final Assessment,
 - Petitioner Exhibit 3 – Summary of Petitioners' argument,
 - Petitioner Exhibit 4 – Outline of Evidence (calculation of proposed assessed values),
 - Petitioner Exhibit 4-1 - Purchase agreement for 1238 Lakeview Drive and the property record card,
 - Petitioner Exhibit 4-2 – Builder's plat map of subdivision, list of lot prices for subject subdivision, and property record card for 1224 Lakeview,

Petitioner Exhibit 4-3 –Purchase agreement for 1248 Lakeview and the property record card,

Petitioner Exhibit 4-3 – Closing statement for 1241 Lakeview and the property record card,

Respondent Exhibit 1 – Form 139L petitions,

Respondent Exhibit 2 – Subject property record cards,

Respondent Exhibit 3 – Neighborhood sales,

Respondent Exhibit 4 – Property record cards for two sales,

Board Exhibit A - Form 139L petitions,

Board Exhibit B - Notices 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 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.

15. The Petitioners failed to provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

Comparable Properties

- a) The Petitioners contend that the subject properties are over-valued when compared to two other vacant lots in the subdivision based on the percentage of current assessed value to the 1993 purchase prices. The first parcel is an additional parcel owned by

the Petitioners. This parcel is adjacent to 1248 Lakeview, measures 90 feet by 186 feet and is assessed at \$34,600 with a negative 20% influence factor applied.

Petitioner Exhibit 4-1. The second parcel is located at 1224 Lakeview, measures 90 feet by 186 feet and is assessed with a negative 20% influence factor. *Petitioner Exhibit 4-2.* The assessed values of these lots are .003 higher than the 1993 purchase prices. *Petitioner Exhibit 4.*

- b) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
- c) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. V. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also*, *Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- d) In the case at bar, the Petitioners have not met their burden. While the Petitioners identify two properties that are assessed at a lower percentage of their 1993 purchase prices than the subject properties, the Petitioners fail to show how these properties are comparable to the subject properties. Further, while the Petitioners identify differences between the subject lots and the alleged comparables, they fail to show how those differences affect the market value. This falls far short of the burden the Petitioners face. The Petitioners have only made a "de minimis factual showing" and have failed to "sufficiently link the evidence to the uniform and equal argument" they raise. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

Influence Factor

- e) The Petitioners also contend that the subject properties' size, shape, topography, and building restrictions were considered when the builder sold the properties, but were not considered in the reassessment. *Lazarian testimony*. In support of this contention, the Petitioners submitted a plat map and property record cards. *Petitioner Exhibits 4-2 and 4-3*.

- f) Land values in a given neighborhood are generally 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." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). 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).

- g) The DLGF testified that both lots are currently being given consideration for vacancy and for being undeveloped. The Respondent further testified that each of the subject lots was given a deduction for excess frontage. The Respondent explained that this deduction is derived from "standard" formulas used in Lake County when a lot has more frontage than what has been determined to be the "norm" within a neighborhood. Lot 2, 1248 Lakeview, is currently receiving a 36% deduction for excess frontage. Lot 15, 1241 Lakeview, is currently receiving a 28% deduction for excess frontage. *Respondent Exhibit 2; Elliott testimony*. While the properties' topography or proximity to a county ditch may be relevant to the issue of whether a different negative influence factor should apply here, the Petitioners failed to show how these conditions would impact the market value-in-use of the subject properties, or show the actual market value of the properties.² *See Talesnick*, 756 N.E.2d at

² The Petitioners allege that the market prices paid in 1992 and 1993, considered these conditions. However, the Board notes that the lots at issue here (Lot 2 and Lot 15) were purchased for higher prices than the "comparable" lots of Lot 3 and Lot 5 that purportedly did not suffer from the conditions on the subject properties. Further, while the building restrictions, slope and elevation may, in fact, have an impact on the market value of the subject properties, the Petitioners failed to present an appraisal or submit any evidence of the market value of the subject properties as of January 1, 1999, to make such a determination. Petitioners presented no evidence to support this allegation. Statements that are 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).

1108. Thus, the Petitioners have failed to raise a prima facie case that the subject properties are over-valued due to the slope of the properties, the elevation of the properties or because of the adjacent drainage ditch.

- h) Where a Petitioner did not meet its burden of presenting a prima facie case, the Respondent's duty to rebut Petitioner's evidence was not triggered. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

Conclusion

- 16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Board finds for 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/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. 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 days of the date of this notice.