

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-4-00300
Petitioners: Leroy E. & Carol L. Doty
Respondent: Department of Local Government Finance
Parcel #: 003-23-09-0326-0021
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 assessment for the subject property is \$105,200 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on March 25, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. Special Master Ken Daly held the hearing on April 6, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 800 Thomas Street, Crown Point, in Center Township.
6. The subject property consists of a two-story frame and concrete block commercial building located on .365 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$68,400 for the land and \$36,800 for the improvements, for a total assessed value of \$105,200.
9. The Petitioners requested an assessment of \$52,600 for the land and \$36,800 for the improvements, for a total assessed value of \$89,400.
10. Leroy E. Doty, one of the Petitioners, and Everett Davis, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The Petitioners contend that the subject property's land value is incorrect.¹ *Id.* In support of this contention, the Petitioners submitted property record cards (PRC) of two comparable properties in the same neighborhood. *Petitioner Exhibit 2, pages 1 and 2.*
 - b) The Petitioners contend that the size of the subject parcel falls between the parcel sizes of the two comparable properties but that the subject parcel is valued higher than the two comparables. *L. Doty testimony.* The Petitioners testified that Comparable #1 located at 407 Thomas Street, is .200 acres in size and valued at \$3.31 per square foot and that Comparable #2 located at 814 N. Indiana Avenue, is .604 acres in size and is valued at \$3.05 per square foot. However, the subject located at 800 Thomas Street, according to the Petitioners, is .365 acres in size and valued at \$4.30 per square foot. *Id.; Petitioner Exhibit 2, pages 1-3.*
 - c) The Petitioners claimed that there was an error in the land assessment and that they were paying a premium. *L. Doty testimony.* The Petitioners argued that even though the subject property should be valued less than \$3.31 per square foot, they are only asking for the same square foot rate as the smaller lot, or \$3.31 per square foot. *Id.*
12. Summary of Respondent's contentions in support of assessment:
- a) The Respondent contends that the property is correctly valued. *Davis testimony.* In support of this contention, the Respondent testified that the land order that was in effect at that time for the subject's area was used. *Id.*
 - b) In addition, the Respondent testified that the differences in the base rates of the three properties (the subject property and Petitioners' two comparables), are due to the properties' size. *Id.* According to the Respondent, for industrial lots there is an "average" lot size for the area. *Id.* The square foot rate for a larger lot would drop and the square foot rate for a smaller lot would increase. *Id.*

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. #1487.
 - c) Exhibits:

¹ As testified to by the Petitioners, the only issue before the Board for review is the land value.

Petitioner Exhibit 1: Copy of Form 139L Petition
Petitioner Exhibit 2: PRCs for the subject and comparable properties and neighborhood map
Petitioner Exhibit 3: Summary of Petitioners' argument

Respondent Exhibit 1: Copy of subject's PRC
Respondent Exhibit 2: Copy of Form 139L Petition

Board Exhibit A: Form 139L Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign-in Sheet

d) These Findings and Conclusions.

Analysis

14. 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 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 276 (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 establish a prima facie case for a reduction in the value of the subject property. The Board reached this decision for the following reasons:
- a) The Petitioners contend that the subject property’s land base rate should fall between the two comparables that were submitted. *L. Doty testimony; Petitioner Exhibit 2, pages 1 and 2*. The Petitioners argue that the comparables are .200 acres and .604 acres with the subject being .365 acres. *Id.*; *Petitioner Exhibit 2, pages 1-3*. In addition, according to the Petitioners, the smaller parcel is valued at \$3.31 per square foot, the larger parcel at \$3.05 per square foot and the subject property is assessed for \$4.30 per square foot. *Id.*

- b) The Respondent testified that the differences in the properties’ base rates were due to their lot sizes. *Davis testimony*. The Respondent testified that for industrial lots there is an “average” lot size for the area. *Id.* Based on the average lot size, a parcel larger than the average would have a lower base rate, and a parcel smaller than the average would have a higher base rate. *Id.*
- c) Here, the Petitioners’ comparable #1 has a base rate of \$6.90. Comparable #1 is also receiving a negative influence factor of 52%. *See Petitioner Exhibit 2, page 1*. 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. Neither the subject nor Comparable #2 is receiving a negative influence factor. *See Petitioner Exhibit 2, pages 2 and 3*. Nor has the Petitioners provided any evidence that the subject property is entitled to receive a negative influence factor.
- d) As stated by the Respondent, the differences in the base rates of Petitioners’ comparable properties are due to differences in the properties’ sizes compared to the average lot size in a neighborhood. *Davis testimony; see also ¶15(b)*. In summary, the properties’ assessment comparison looks like this:

Comparable #1	.200 acres	\$6.90 per square foot base rate
Subject property	.365 acres	\$4.30 per square foot base rate
Comparable #2	.604 acres	\$3.05 per square foot base rate

Petitioner Exhibit 2, pages 1-3. Again, as the size of the lot increases the base rate applied to that lot decreases as was indicated by the Respondent. The Petitioner has failed to raise a prima facie case that the land value on the subject property was improperly applied.

- e) Even if we were to accept Petitioners’ arguments regarding the application of the land order to the subject property, we find that the assessed value is a reasonable measure of true tax value. *See Ind. Admin. Code tit. 50, r.2.3-1-1(d) (2002 Supp.)* (“failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value[.]’”). The Petitioners have presented no market evidence to show that the assessment is not a reasonable measure of the property’s true tax value and the Petitioners’ argument regarding a strict application of the GUIDELINES is not sufficient to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor, 841 N.E.2d 764 (Ind. Tax Ct. 2006)* (“Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) Thus, a Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property’s market value-in-use. Here, the Petitioners did not. Therefore, the Petitioners have failed to raise a prima facie case. *See Eckerling*, (“In challenging

their assessment, the Eckerlings have offered [no] market value-in-use evidence. Rather, they have focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error.”).

- f) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Industries v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners failed to raise 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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.