

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition Nos.: 45-041-02-1-5-00434
45-041-02-1-5-00434A
45-041-02-1-5-00434B
Petitioners: David & Susan Jostes
Respondent: Department of Local Government Finance
Parcel Nos.: 003312501100008
003312501100009
003312501100015
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 Petitioners did not receive the Form 11 Notices of Assessment from the Department of Local Government Finance ("DLGF"). The Petitioners filed the Form 139L petitions on August 9, 2004.
2. The Board issued a notice of hearing to the parties dated March 7, 2005.
3. A hearing was held on April 7, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

4. The subject property consists of a single family residence and two adjoining vacant land parcels located at 7410 and 7408 West 143rd Lane, Cedar Lake, Center Township, Lake County.
5. The Special Master did not conduct an on-site visit of the property.
6. Assessed Value of subject property as determined by the DLGF:

Petition #	Parcel #	Land	Improvements
45-041-02-1-5-00434	003312501100008	\$18,800	\$147,400
45-041-02-1-5-00434A	003312501100009	\$37,600	
45-041-02-1-5-00434B	003312501100015	\$1,400	

7. Assessed Value requested by Petitioners on the Form 139L petitions:
- | Petition # | Parcel # | Land | Improvements |
|----------------------|-----------------|----------|--------------|
| 45-041-02-1-5-00434 | 003312501100008 | \$14,382 | \$112,761 |
| 45-041-02-1-5-00434A | 003312501100009 | \$28,764 | |
| 45-041-02-1-5-00434B | 003312501100015 | \$1,071 | |
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioners: David Jostes, Taxpayer

For Respondent: John Toumey, DLGF

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The assessed value is not representative of the market value. The Petitioners refinanced the subject parcels for \$157,000. The Petitioners presented a one page document titled "Schedule of Real Estate Owned" from Countrywide Home Loans, Inc. The document shows a market value of \$157,000 and is dated May 8, 2003. The appraisal was done for refinancing purposes. The Petitioners could not get a copy of the appraisal since they did not pay for it. *Jostes testimony; Pet'r Ex. 2.*
 - b) The Petitioners shopped for a home equity loan and also had appraisals valued at \$149,000 and \$152,000. The Petitioners could not get copies of the appraisals. *Jostes testimony.*
 - c) The Petitioners purchased the subject parcels in 1987 and the total taxes were \$600 per year. The Petitioners presented printouts showing the taxes for the subject parcels from 1999 to 2002. In 2002, the total taxes were \$3,875. In ten years the taxes have increased 800%. *Jostes testimony; Pet'r Ex. 3.*
 - d) The year of construction for the dwelling shows 1997, which is incorrect. The house has been in the Petitioners' family since the 1950s. The house dates back previous to that, possibly back to the 1920s. *Jostes testimony; Pet'r Ex. 4.*
 - e) The footprint of the house has not changed. The Petitioners have made improvements to the house including siding, interior changes, kitchen, windows, and doors. In 1997, the house was lifted up and a partial basement and garage was put underneath the house. *Jostes testimony.*

- f) The Petitioners contend Lot 9 [parcel # 003312501100009] is unbuildable due to size. The town regulations say it has to be over 5,000 square foot to build on. This lot contains part of the driveway for the subject home. *Jostes testimony; Pet'r Ex. 5.*
- g) Lot 9 [parcel # 003312501100009] has three different influence factors on one lot. The influence factor should all be the same and since the lot is unbuildable the negative 70% is probably more correct. *Jostes testimony; Pet'r Ex. 5.*
- h) The property to the west of the subject house is a much smaller house, in poor condition, and has been vacant for 6 months. No one will pay \$200,000 for the subject property when it is located next to a 600 or 700 square foot house, in poor condition. *Jostes testimony; Pet'r Ex. 6.*
- i) The road in front of the subject property is in bad shape and floods. The Petitioners presented a photo showing the condition of the road. *Jostes testimony; Pet'r Ex. 7.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The land values are established by neighborhood. The base rate established for the subject neighborhood is \$535. *Toumey testimony.*
- b) Parcel 003312501100015 has been given a negative 50% influence factor. *Toumey testimony; Resp't Ex. 1.*
- c) Parcel 003312501100009 is divided into three sections. Two sections are receiving a negative 20% influence factor for being undeveloped. The remaining section has been given a negative 70% influence factor. The Respondent stated that he could not explain how the negative 70% influence factor was determined or why the parcel was divided into three sections. The 70% influence factor is probably made up of a 20% factor for undeveloped plus an additional factor. The property record card shows a code of 70 but offers no explanation of the influence factors. The parcel has many angles, it may have been divided into sections to make it easier to assess. *Toumey testimony; Resp't Ex. 1.*
- d) Parcel 003312501100008 includes a bi-level home which is graded at C+2 and in average condition. The subject parcels are located in neighborhood 3118. The Respondent found no home sales in the subject neighborhood. The Respondent presented the Top 20 Comparables and Statistics of sales from other neighborhoods. The property record card shows land on this parcel has been given a negative 50% influence factor. *Toumey testimony; Resp't Exs. 1, 3.*
- e) The subject property record card shows the year of construction for the subject house as 1997. The explanation on the property record card shows a first story addition was added in 1997 and that it was taken down to the studs and built back up. The Petitioners testified the house was lifted up and a partial basement and garage were added in 1997. *Toumey testimony; Resp't Ex. 1.*

- f) The Petitioners indicated the appraisal was done for refinancing purposes. The Petitioners did not provide the appraisal. *Toumey testimony*.

Record

12. The official record for this matter is made up of the following:

- a) The Petitions
- b) The tape recording of the hearing labeled Lake Co. #1405
- c) Exhibits:
 - Petitioner Exhibit 1: Copies of Form 139L Petitions
 - Petitioner Exhibit 2: Schedule of Real Estate Owned
 - Petitioner Exhibit 3: Taxes from prior years
 - Petitioner Exhibit 4: Subject Property Record Cards
 - Petitioner Exhibit 5: Survey of subject properties
 - Petitioner Exhibit 6: Photograph property to the west
 - Petitioner Exhibit 7: Photograph of road
 - Petitioner Exhibit 8: November 2003 Surprise Park Water Association listing

 - Respondent Exhibit 1: Subject Property Record Cards
 - Respondent Exhibit 2: Subject photograph
 - Respondent Exhibit 3: Top 20 listing of comparables

 - Board Exhibit A: Form 139L petitions
 - Board Exhibit B: Notices of Hearing
 - Board Exhibit C: Sign in Sheet
- d) These Findings and Conclusions.

Analysis

13. 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 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 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 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the assessed value of the subject properties is not representative of the market value.

Market Value

- b) In support of their contention, the Petitioners stated the subject properties were refinanced for \$157,000.
- c) The 2002 Real Property Assessment Manual (hereinafter "Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- d) The appraisal submitted by the Petitioners is actually a single page document titled "Schedule of Real Estate Owned" which shows a market value of \$157,000 and is dated May 8, 2003. *Pet'r Ex. 2*. This document is not an appraisal. The document does not describe the property being appraised, nor does it explain how the market value was computed.
- e) Even if the "Schedule of Real Estate Owned" were probative of the market value of the subject properties, the schedule is dated May 8, 2003, more than four years after the relevant valuation date of January 1, 1999. *Pet'r Ex. 2*. The Petitioners presented no explanation of how the market value of \$157,000 relates to the value as of the subject properties as of January 1, 1999. The "Schedule of Real Estate Owned" therefore lacks probative value.

Prior taxes

- f) The Petitioners contend that the taxes for the subject parcels have gone up 800% over the past ten years. The Petitioners presented printouts showing the taxes for the subject parcels back to 1999. *Pet'r Ex.3.*
- g) The Petitioners' evidence does show that the taxes for the subject parcels have increased since 1999. However, an increase in the taxes is not indicative of an error in the assessment.
- h) The Petitioners have the burden to prove the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers*, 805 N.E.2d at 478.
- i) The Petitioners did not explain how the increase in taxes proves the current assessment is incorrect. The Petitioners' evidence of prior taxes lacks probative value.

Year of Construction

- j) The Petitioners contend the year of construction shown on the property record card for the dwelling is incorrect. The property record card shows the year of construction to be 1997. The Petitioners stated the house dates back possibly to the 1920s.
- k) By changing or modernizing a structure, the age of the structure is effectively lowered and the total economic life is extended. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 (Incorporated by reference at 50 IAC 2.3-1-2), app. B at 6.
- l) Effective age may be changed in a residential structure when remodeling takes place and the structure is updated, renovated, or when additional area is added which increases the structures functional utility. GUIDELINES, app. B at 6.
- m) The Respondent noted the explanation on the property record card shows a first story addition was added in 1997 and that it was taken down to the studs and built back up. *Resp't Ex. 1.*
- n) The Petitioners testified the house was lifted up and a partial basement and garage were added in 1997. The Petitioners also testified that other improvements had been made to the house.
- o) The Petitioners have not shown the year of construction is incorrect. In fact, the Petitioners' evidence tends to support the year of construction as 1997.

Parcel 003312501100009 [Lot 9]

- p) The Petitioners contends that parcel 003312501100009 is unbuildable due to the size. The Petitioners did not offer any evidence to support this contention. The Petitioners contention is nothing more than a conclusory statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- q) The Petitioners noted this parcel has three influence factors applied to it. The Petitioners contend that only one influence factor should be applied. The Petitioners contend negative 70% is probably the most correct influence factor.
- r) An influence factor is 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. The factor may be positive or negative and is expressed as a percentage.” GUIDELINES, glossary at 10. To prevail on the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 (Ind. Tax Ct. 1999).
- s) This parcel is assessed in three sections. A negative 20% influence factor has been applied to two sections. A negative 70% influence factor has been applied to the third section. The parties are therefore in agreement that there are characteristics peculiar to the parcel sufficient to support an application of a negative influence factor. Accordingly, the first requirement of the two-prong *Phelps Dodge* test has been satisfied, but Petitioners failed to satisfy the second prong of the *Phelps Dodge* test. The Petitioners’ failed to present any evidence to quantify the requested influence factor of negative 70% for the entire parcel. The Petitioners’ unsubstantiated conclusory statements that negative 70% is probably the most correct influence factor do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1120.

Miscellaneous

- t) The Petitioners contend the house next door and the condition of the road impact the value of the subject property. The Petitioners did not explain how the house next door and the road affected the market value-in-use of the subject property. The Petitioners merely made statements about the house and the road. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products*, 704 N.E.2d at 1120.
- u) The Petitioners have the burden to prove the current assessment is incorrect and what the correct assessment would be. The Petitioners have not met their burden.

Conclusion

15. The Petitioners failed to make a prima facie case proving the current assessment is incorrect. The Board finds in favor of 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: **November 21, 2005**

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>.