

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 82-029-02-1-4-00833
Petitioner: Herbert Hatt
Respondent: Pigeon Township Assessor (Vanderburgh County)
Parcel #: 1143026036026
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 Petitioner initiated an assessment appeal with the Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 9, 2003.
2. The notice of the decision of the PTABOA was mailed to the Petitioner on August 6, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 31, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 25, 2005.
5. The Board held an administrative hearing on March 23, 2005, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Herbert Hatt, Petitioner
 - b) For Respondent: Judy Stricker, Township Assessor Chief Deputy
Jonah Sauer, Township Assessor Real Estate Deputy

Facts

7. The property is classified as commercial, as is shown on the property record card (PRC) for parcel # 1143026036026.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Vanderburgh County PTABOA:

Land: \$4,600 Improvements: \$0
10. Assessed Values requested by Petitioner per the Form 131 petition:

Land: \$2,500 Improvements: \$0

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) According to the Petitioner, the subject property is a gravel parking lot across the street from an improved lot also owned by the Petitioner. The improved lot was a funeral home that has been converted into apartments. *Hatt testimony*. The Petitioner testified that the property is comprised of two partial lots (29 feet x 58 feet) located on a corner. *Hatt testimony*. The Petitioner contended that the subject property is necessary for use with his apartment property as a parking area. *Hatt testimony*.
 - b) The Petitioner argued that the State valued the property at \$2,500 and the assessment was 1/3 of that. The assessor later made it \$9,300 and then reduced it to \$4,600. *Hatt testimony*.
 - c) The Petitioner also argued that the property is one city block from the old Evansville Plating Works. According to the Petitioner, the whole neighborhood has been blighted for years and has been declared so by both State and Federal EPA. *Hatt testimony; Board Exhibit A*.
 - d) Finally, the Petitioner alleged that the land is valued higher than other property in the area. *Hatt testimony*. In response to questioning, the Petitioner testified that he wanted a value within reason of the \$2,500. *Hatt testimony*.
12. Summary of Respondent's contentions in support of the assessment:

- a) Land is valued within the range established in the Commercial Neighborhood Valuation Form, from a low of \$2.00 to a high of \$13.00 per square foot. *Stricker testimony & Respondent Exhibit 12.*
- b) Properties in the contaminated area (lead) are valued from a low of \$1.70 to a high of \$11.00 per square foot. The Pigeon Township Assessor assessed the subject property at \$2.00 per square foot and applied a 50% negative influence factor due to the contamination. *Stricker testimony & Respondent Exhibit 13.*
- c) The subject property is commercial land used as a parking lot for the Petitioner's other property (apartments). *Stricker testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 5970.
- c) Exhibits:

Petitioner's exhibit is attached to the Form 131 petition and labeled as "Petition to the Indiana Board of Review". See Board Exhibit A.

Respondent Exhibit 1: Township witness list

Respondent Exhibit 2: Notice of Hearing

Respondent Exhibit 3: Picture of subject property taken Dec. 21, 1999

Respondent Exhibit 4: PRC of the subject property

Respondent Exhibit 5: Plat sheet

Respondent Exhibit 6: Township Assessor/Petitioner conference form

Respondent Exhibit 7: Memo dated September 9, 2003 from Paul Hatfield

Respondent Exhibit 8: Letter sent to Herbert Hatt dated September 12, 2003

Respondent Exhibit 9: PTABOA minutes June 4, 2004

Respondent Exhibit 10: Form 115 – Notification of Final Assessment Determination

Respondent Exhibit 11: PTABOA minutes April 12, 2002 (see page 6)

Respondent Exhibit 12: Commercial Neighborhood Valuation Form for Neighborhood P-7

Respondent Exhibit 13: Commercial Neighborhood Valuation Form for Neighborhood P-7 (lead contamination area)

Respondent Exhibit 14: Base land value calculation sheet

Respondent Exhibit 15: Price adjustment for Commercial land in

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Neighborhood P-7

- Respondent Exhibit 16: Market data sheet for the first comparable
- Respondent Exhibit 17: Copy of plat sheet for 27-75-1
- Respondent Exhibit 18: PRC for 27-75-1
- Respondent Exhibit 19: Market data sheet for the second comparable
- Respondent Exhibit 20: Copy of plat sheet for 29-50-3
- Respondent Exhibit 21: PRC for 29-50-3
- Respondent Exhibit 22: Market data sheet for the third comparable
- Respondent Exhibit 23: Copy of plat sheet for 29-64-4
- Respondent Exhibit 24: PRC for 29-64-4
- Respondent Exhibit 25: Market data sheet for the fourth comparable
- Respondent Exhibit 26: Copy of plat sheet for 29-64-3
- Respondent Exhibit 27: PRC for 29-64-3
- Respondent Exhibit 28: Market data sheet for the fifth comparable
- Respondent Exhibit 29: Copy of plat sheet for 25-101-12
- Respondent Exhibit 30: PRC for 25-101-12

- Board Exhibit A: Form 131 Petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Notice of Appearance for Vanderburgh County Assessor as additional party

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A petitioner seeking review of a determination of the DLGF 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 at 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 Petitioner’s evidence. *See American United Life Ins. 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 479.

15. The Petitioner failed to provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

Influence Factors

- a) The Petitioner alleged that the property was over-valued based upon the proximity of the Old Evansville Plating Works and the contamination caused by that operation. *Hatt testimony.*
- b) 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. 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).
- c) Here, the Respondent testified that the property's proximity to the contaminated Evansville Plating Works was addressed by the Assessor within the Neighborhood Valuation Forms for that subject area and on the subject property's PRC. Because the property has been recognized to be within this contaminated area, the Assessor applied a negative 50% influence factor to the property as well as lowering the land base rate. *See Respondent Exhibit 4.* The Petitioner failed to show that any further influence factor is warranted. Nor did Petitioner show how this condition 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.

Prior Assessment

- d) The Petitioner further alleged that the assessed value of the subject property should not have increased from its 1995 assessed value. The Petitioner is mistaken in his reliance on that assessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Id.*
- e) Similarly, the Petitioner's statement that taxes were formerly calculated on 1/3 of a determined value, while correct, has no bearing on this proceeding. Beginning with

the 2001 assessment year, fractional assessments no longer legally exist because statutory changes raises the assessment level to 100% of true tax value. *See ¶14 (d).*

- f) Conclusory statements made by the Petitioner that the subject property should be valued within reason of \$2,500 do not constitute probative evidence. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119 (Ind. Tax 1998).
- g) The Petitioner failed to provide probative evidence in support of a specific value different from the value established by the Assessor. 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 Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to raise a prima facie case that his assessment was incorrect. 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/trial_proc/index.html. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>.