

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00095
45-002-02-1-5-00098
Petitioners: Clyde A. & Dorothy G. Swanson
Respondent: Department of Local Government Finance
Parcel #: 002020301550046
002020301550045
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 on December 4, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for petition #45-002-02-1-5-00095 (parcel #002020301550046) was \$21,600 and petition # 45-002-02-1-5-00098 (parcel #002020301550045) was \$35,100 and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 16, 2004.
3. The Board issued a Notice of Hearing to the parties dated July 16, 2004.
4. A hearing was held on August 26, 2004, at 3:25 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

FACTS

5. The subject property is located at 241 Wildwood Road, Lowell, Cedar Creek Township in Lake County.

6. The subject property for petition #45-002-02-1-5-00095 is vacant lot 50' x 129' (6450 sq. ft.). The subject property for petition #45-002-02-1-5-00098 is a 50' x 142' (7100 sq. ft.) lot with a 20' x 22' (440 sq. ft.) garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property;

a. As determined by the DLGF:

Petition #45-002-02-1-5-00095	Parcel #002020301550046
Land: \$21,600	Improvements: -0- Total: \$21,600

Petition #45-002-02-1-5-00098	Parcel #002020301550045
Land: \$27,700	Improvements: \$7400 Total: \$35,100

b. As requested by the Petitioners:

Petition #45-002-02-1-5-00095	Parcel #002020301550046
Land: \$11,000	Improvements: -0- Total: \$11,000

Petition #45-002-02-1-5-00098	Parcel #002020301550045
Land: \$11,000	Improvements: \$7400 Total: \$18,400

9. The following persons were present and sworn in at the hearing:

For the Petitioners: Clyde A. Swanson, Property Owner
Dorothy G. Swanson, Property Owner

For the DLGF: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble

ISSUES

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend the land for parcel #002020301550045 and #002020301550046 are being assessed too high. *Clyde & Dorothy Swanson testimony.*
 - b. The Petitioners testified the two lots were purchased approximately 30 years ago for \$3500. The Petitioners submitted photographs and testified the two lots are located on a very narrow channel, there is no way to build a pier or dock a boat on the channel. *Petitioner's Exhibit 1; Dorothy Swanson testimony.*
 - c. Petitioner testified that the neighbor directly across from the subject lots purchased her 50' frontage lot for approximately \$3500 two years ago. *Dorothy Swanson testimony.*

- d. The Petitioners contend the assessed value of the two lots should be approximately \$11,000 each. *Clyde Swanson testimony.*
- e. The Petitioners testified on petition #45-002-02-1-5-00098 (parcel #002020301550045) the detached garage has no plumbing or sewage. *Dorothy Swanson testimony.* The Petitioners contend the assessed value of \$7400 is fair and accurate. *Clyde Swanson testimony.*

13. Summary of Respondent's contentions in support of assessment:

- a. The Respondent testified that petition #45-002-02-1-5-00095 (parcel #002020301550046) and petition #45-002-02-1-5-00098 (parcel #002020301550045) are valued the same base land base rate as the adjoining lots in the neighborhood. And that petition #45-002-02-1-5-00095 has received a negative influence factor of 20% due to being a vacant lot. *Respondent Exhibit 2; Elliott testimony.*
- b. The Respondent testified that the detached garage located on parcel #002020301550045 (petition #45-002-02-1-5-00098) valued at \$7400 does not include plumbing or sewage. *Respondent Exhibit 2; Elliott testimony.*

RECORD

14. 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 Lake Co. #156.
- c. The following exhibits were presented:

For the Petitioners:

Petitions # 45-002-02-1-5-00095 & #45-002-02-1-5-00098

Petitioner's Exhibit 1 – Seven photographs of the subject area.

Petitioner's Exhibit 2 – Hand drawn map of the subject lots, prepared by Dorothy Swanson.

For the DLGF:

Petition #45-002-02-1-5-00095

Respondent's Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004.

Respondent's Exhibit 2 – Clyde Swanson's 2002 property record card for parcel #002020301550046.

Respondent's Exhibit 3 – A plat map of the subject area.

Petition #45-002-02-1-5-00098

Respondent's Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004.
Respondent's Exhibit 2 – Clyde Swanson's 2002 property record card for parcel #002020301550045 and a photograph of the subject detached garage.
Respondent's Exhibit 3 - An aerial map of the subject area.

For the Board:

Petitions #45-002-02-1-5-00095 & #45-002-02-1-5-00098

Board Exhibit A – Form 139L petition, dated April 16, 2004

Board Exhibit B – Notice of Hearing on Petition, dated July 16, 2004.

ANALYSIS

15. 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.

Issue 1 – Land Value

16. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a. The Petitioners contention regarding the land value being overstated on the two lots was not supported with probative evidence. The Petitioners stated that the

lots were purchased 30 years ago for \$3500. *Dorothy Swanson testimony*. The amount the Petitioners paid for the lot 30 years ago is not reliable or probative in determining the market value of the property for the 2002 general reassessment. The Petitioners also stated the neighbor's lot was purchased 2 years ago for \$3500. *Dorothy Swanson testimony*. However, the Petitioner did not provide any evidence supporting this contention. Furthermore, the Petitioners did not establish the comparability of the subject property and the neighbor's property by discussing the physical features of each property. Without this type of comparison between the properties there can be no change made to the market value-in-use for the subject lots. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Further, the Petitioners requested value of \$11,000 for each lot was not supported by substantial or reliable evidence presented at the hearing. In order to prove their case, the Petitioners must provide probative evidence indicating an error in the assessment, and the Petitioners must provide probative evidence supporting their requested value.

- b. The DLGF acknowledged the Petitioners' perceived difference in value between the adjoining lots and parcel #002020301550046 (petition #45-002-02-1-5-00095) through the application of the negative influence factor to the land value calculation. *Elliott testimony*. Petitioner did not provide evidence to prove that the adjustment was incorrect.

Issue 2 – Improvement

17. The Petitioner and Respondent verbally agreed that the detached garage was assessed fairly and accurately at \$7,400. *Clyde Swanson testimony; Elliott testimony*. Therefore, the assessed value of the detached garage is undisputed and the Board will not change the assessment.
18. The Petitioner testified that the detached garage did not contain plumbing or sewage. *Dorothy Swanson testimony*. The Respondent testified that the subject garage was not being valued with plumbing or sewage. *Elliott testimony*. Upon review of the subject's 2002 property record card it is determined the garage assessment does not include plumbing or sewage. No change is made in the assessment as a result of this issue.

CONCLUSIONS

Issue 1 – Land Value

19. Petitioners failed to make a prima facie case to effectively establish the land value portion of the assessments were incorrect. The Board finds in favor of the Respondent.

Issue 2 – Improvement

20. The Petitioners and Respondent were in agreement that the garage is fair and accurately assessed at \$7,400. The Board will not change the assessment.
21. The Petitioner failed to make a prima facie case that the garage is being valued with plumbing and sewage. 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 assessments 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.