

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00037
Petitioners: Dennis L. & Carol J. Kellen
Respondent: Department of Local Government Finance
Parcel #: 006421703430010
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 in December 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$129,000 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties dated July 6, 2004.
4. A hearing was held on September 1, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 3625 E. 32nd Court, Hobart, in Hobart Township.
6. The subject property is a one and one half story, frame, single-family dwelling located on a lot 141.20 feet by 305 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land: \$27,300 Improvements: \$101,700 Total: \$129,000.
9. Assessed Value requested by Petitioners:
Land: \$20,000 Improvements: \$101,700 Total: \$121,700.

10. The following persons were present and sworn in at the hearing:
- For Petitioners: Dennis J. Kellen, Owner
Carol J. Kellen, Owner
- For Respondent: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

11. Summary of Petitioners' contentions in support of alleged error in land assessment:
- Petitioners contend that their lot is assessed higher than all others on their cul-de-sac street but it should be assessed at a lower value due to topographical issues. *D. Kellen testimony; Pet'r Ex. 1.*
 - The subject lot slopes at a 35' angle from the street down to a spring fed creek that flows into Deep River and floods with every significant rainfall. *D. Kellen testimony; Pet'r Exs. 1-4.*
 - According to the FEMA map, 33% of the subject lot lies within designated flood plain area. *D. Kellen testimony; Pet'r Exs. 1, 3.*
 - Subject property record incorrectly shows the topography to be level. *Resp't Ex. 2.* The property record card also indicates that there is no water or natural gas facilities; that is also incorrect. *D. Kellen testimony; Pet'r Ex. 1; Resp't Ex. 2.*
 - Petitioners do not dispute the assessed value placed on the improvements. *D. Kellen testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- The subject property is 141.02' x 305' and received a negative influence factor of 32% for excess frontage because the normal frontage is 100 feet. *Elliott testimony.* The neighbor's lots are smaller than the subject property. *Elliott testimony.*
 - The subject property is within the value range for the neighborhood. *Elliott testimony.*
 - The Respondent was not responsible for entering the information regarding the topography or public utilities. *Elliott testimony.*

Record

13. The official record for this matter is made up of the following:
- The Petition and all subsequent pre-hearing submissions by either party.
 - The tape recording of the hearing labeled Lake Co. Tape #365.

c. Exhibits:

- Petitioner Exhibit 1: Summary of Petitioners' case.
- Petitioner Exhibit 2: Assessments of 3600 block of 32nd Court.
- Petitioner Exhibit 3: National Flood Insurance Program map.
- Petitioner Exhibit 4: Photographs showing flooding on subject property.
- Petitioner Exhibit 5: Form 11.
- Petitioner Exhibit 6: Plat survey of subject property.
- Petitioner Exhibit 7: Property information sheet – 3625 E. 32nd Court.
- Petitioner Exhibit 8: Property information sheet – 3645 E. 32nd Court.
- Petitioner Exhibit 9: Property information sheet – 3665 E. 32nd Court.
- Petitioner Exhibit 10: Property information sheet – 3669 E. 32nd Court.
- Petitioner Exhibit 11: Property information sheet – 3675 E. 32nd Court.
- Petitioner Exhibit 12: Property information sheet – 3685 E. 32nd Court.

Respondent Exhibit 1: Form 139L.

Respondent Exhibit 2: Subject property record card and photograph.

Respondent Exhibit 3: Comparable sales analysis, property record cards and photographs of comparables.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases:

- 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 did not establish a prima facie case. This conclusion was arrived at because:
- a. Petitioners presented evidence that the land value assessed to their property is higher than certain neighboring properties that range between \$20,800 and \$23,600. *Pet'r Ex. 2, 7-12*. The Petitioners contend “[t]here is essentially no difference in topography between this lot and any other lot in that area, other than the fact that this lot is mowed and free from rampant vegetation.” *Pet'r Ex. 1*. The other properties are all bordered on the south by the same creek. *D. Kellen testimony*.
 - b. The Petitioners did not provide any information regarding the lot size of their property or of the neighboring comparable properties. The Respondent, as part of Respondent Exhibit 1, provided lot sizes for most of the properties on 32nd Court in handwritten notes. *Resp't Ex. 1*.
 - c. Based on those notes, it is clear that the properties vary widely in both frontage and depth. *See Resp't Ex. 1*. It does not appear that the assessed value of those properties correlates in any way to the sizes of the lots.¹ None of the comparables are sufficiently similar in size to allow direct comparison to the subject. The parties provided neither the property record cards for Petitioners' comparable properties nor an analysis that reduces the lots to a unit that is easily comparable. There is simply not enough evidence for the Board to conclude what the market value of the subject lot should be by comparing it to the assessments of the neighboring lots of widely varied sizes.
 - d. The fact that one lot is assessed at a lower value than a neighboring lot is not sufficient to establish a prima facie case. It is the duty of the Petitioner to provide evidence sufficient to prove that the lots are comparable. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
 - e. The Petitioner must present evidence of an error in the assessment. The Petitioner must also present evidence indicating what they believe the correct assessment to be. In the present case, the Petitioner merely provided evidence showing his lot is assessed differently from other lots in his edition. The Petitioner did not provide probative evidence indicating the comparability of these lots to the subject property. The Petitioner did not provide any evidence supporting the claimed value of \$20,000.
 - f. Petitioners' evidence establishes that the subject lot slopes 35' from the street to an existing creek and some portion of the lot floods occasionally when it rains. *D. Kellen testimony; Pet'r Exs. 3, 4, 6*. Petitioners did not, however, establish to what degree this condition affects the market value of his land. *D. Kellen testimony; Petitioners' Exhibit 6*. Petitioners must make the connections between the condition

¹ For example, the Hill property at 3580 32nd Court has 1.925 acres and has a total land value of \$25,700. *Resp't Ex. 1*. Petitioners' property is 0.989 acres and is valued at \$27,300. *Elliott testimony*. The Studenroth property at 3620 32nd Court is also larger than Petitioners' lot, but far smaller than the Hill property and is valued at \$26,400. *Resp't Ex. 1*.

affecting the land and the loss in market value claimed. There is not sufficient evidence in the record for the Board to find that this condition lowers the value of the property by \$7300.

- g. Petitioners' Exhibits 2 and 3 seems to show that the comparable neighboring properties are also affected by the flood plain. *Pet'r Exs. 2, 3*. Those properties were also assessed without an adjustment for topography or flooding. *Elliott testimony*.
- h. The total assessed values for the comparable neighboring properties shown on Petitioners' Exhibits 2 and 7-12 demonstrate that the subject's total assessed value is within the range of those in his immediate neighborhood. Petitioners have not shown that their property is assessed differently than the neighboring properties.
- i. While the information on the property record card regarding the topography and the utilities is incorrect, Petitioners have not proven that the assessment is in error and what the correct assessed value should be. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

Conclusion

16. The Petitioners failed to make 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 assessed value 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.