

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00089
Petitioner: Hubert N. Dumbsky
Respondent: Department of Local Government Finance
Parcel #: 002020301590015
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 October 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$88,100 and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 19, 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 9:15 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 5807 West 250th Avenue, Lowell, Cedar Creek Township in Lake County.
6. The subject property is a one-story frame 1480 square foot dwelling, with a 768 square foot pole building located on a 150' x 200' (30,000 sq. ft.) lot.

7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
 Land: \$16,000 Improvements: \$72,100 Total: \$88,100
9. The assessed value of the subject property as requested by the Petitioner:
 Land: \$10,000 Improvements: \$40,000 Total: \$50,000
10. The following persons were present and sworn in at the hearing:
 - For the Petitioner: Hubert N. Dumbsky, Owner

 - For the DLGF: Sharon S. Elliott, Staff Appraiser, CLT for the DLGR

 - For the IBTR: Peter Salvesson, Special Master (observing only)

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a. The Petitioner contends the assessed value is overstated because the property is located in a flood plain. Also, the subject property’s assessed value exceeds the market value of the property. The Petitioner requests the land be assessed for \$8,000 and the improvements for \$32,000 for an overall value of \$40,000. *Dumbsky testimony.*
 - b. In support of this contention, Petitioner presented a letter and location map from the Lake County Surveyor that states the property is located in a 100-year flood zone. *Petitioner’s Exhibit 1.* The Petitioner testified that the property has been sand bagged due to floodwater 5 or 6 times in the last four years. *Dumbsky testimony.*
 - c. Petitioner testified the property is located in a declining neighborhood. *Dumbsky testimony.*

12. Summary of Respondent’s contentions in support of assessment:
 - a. The subject property is correctly assessed at \$88,100. The assessed value is supported by comparable properties in the neighborhood. *Elliott testimony.*
 - b. The Respondent submitted comparable properties demonstrating the subject property is valued fairly and consistently for the subject area. The three comparable properties are priced at an average of \$61.10 per square foot and the subject property is being assessed at \$59.00 per square foot. *Respondent’s Exhibit 3; Elliott testimony.*
 - c. The subject land is valued with the same base rate as the adjoining lots in the neighborhood and has received a 60% negative influence factor – 40% due to excessive frontage and 20% for being in a flood plain. *Elliott 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 Lake Co. #140.
 - c. Exhibits:
 - Petitioner's Exhibit 1 – A letter from Lake County Surveyor, dated July 30, 2004, a copy of the real property maintenance report on the subject property and geographic data map of the subject area.
 - Respondent's Exhibit 1 – A copy of the 139L petition, dated April 19, 2004.
 - Respondent's Exhibit 2 – A copy of Hubert Dumbsky's 2002 property record card and two photographs of the subject dwelling and pole barn.
 - Respondent's Exhibit 3 – Three comparable properties with exterior photographs of the dwellings for Mario Avignone, Clint Johnson, and Robert Lore.
 - d. These Findings & Conclusions.

Analysis

14. The most applicable governing law is:
- a. A Petitioner seeking review of an assessment has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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. Wash. 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. Petitioner did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a. The Petitioner's contentions regarding the assessed value of the property being overstated were not sufficiently supported by market evidence.
 - b. The Petitioner submitted a letter from the Lake County Surveyor that states the subject property is located in a 100 year flood plain, however this letter fails to establish the effect, if any, it has on the market value of the subject property for the 2002 general reassessment. *Petitioner Ex. 1.*
 - c. Petitioner's evidence does prove that the land is subject to flooding, but he failed to offer any evidence regarding the effect that the flooding may have on the property's value. *Petitioner Ex. 1.*
 - d. Although it can be presumed that flooding has a negative affect on property value, the property already has a 20% negative influence factor to account for loss of value due to flooding. *Elliott testimony.* Petitioner failed to show that a greater adjustment is necessary.

Conclusion

16. The Petitioner did not present sufficient evidence to make a prima facie case regarding error in the assessment. 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.