

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00802
45-001-02-1-5-00803
45-001-02-1-5-00804

Petitioners: J. Edward & Monica A. Johnston

Respondent: The Department of Local Government Finance

Parcel #s: 001-25-45-0255-0049
001-25-45-0255-0048
001-25-45-0255-0047

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 February 23, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties are \$2,800 each and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 10, 2005.
4. Special Master Ellen Yuhan held the hearing on March 14, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 1090-1092 Warren St., 1086-1088 Warren St., and 1082-1084 Warren St., Gary in Calumet Township.
6. The subject properties are three vacant lots each measuring 25' by 120'.
7. The Special Master did not conduct an on-site visit of the properties
8. The DLGF determined the assessed value of the subject properties to be \$2,800 for the land for each of the three parcels. There are no improvements on the parcels.

9. The Petitioners requested an assessment of \$900 each for the three parcels.
10. Monica A. Johnston, one of the owners of the properties, and Stephen H. Yohler, with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend the properties are over-assessed in light of the fact that Lot 46 is assessed at \$35.29 per front foot, or \$600 total. The subject lots are assessed at \$385 per front foot. *Petitioner Exhibit 13; Johnston testimony.*
 - b. The lots are below the minimum size required by the City of Gary for construction. They are also 10' to 12' below street level, which would require many loads of fill, if a variance for construction could be obtained. These are wild lots. *Petitioner Exhibits 5-8; Johnston testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent testified that the subject lots were originally in neighborhood 02512 with an influence factor of 70%, 20% for unimproved and 50% for not being on the lakefront. When the neighborhood was changed to 02513, the 50% influence factor should probably have been removed, but it wasn't. *Respondent Exhibit 2; Yohler testimony.*
 - b. Because of the blowout and the depth of the lots, the 70% influence factor is adequate and the land should remain as assessed. *Yohler testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 1206 & 1207,
 - c. Exhibits:

Petitioner Exhibit 1 - Estimate for repairs and remodeling, ¹
Petitioner Exhibit 2 - Survey,
Petitioner Exhibit 3 - Notice of Circuit Breaker Tax Relief,
Petitioner Exhibit 4 - Form 133,

¹ Petitioner Exhibits 1-4, 9, 10, and 12 were for hearings on contiguous parcels.

Petitioner Exhibits 5-8 - Photographs of the vacant lots,
Petitioner Exhibit 9 - Interior and exterior photographs,
Petitioner Exhibit 10 - Interior photographs,
Petitioner Exhibit 11 - Interior and exterior photographs,
Petitioner Exhibit 12 - Photographs showing condition,
Petitioner Exhibit 13 - Notice of Final Assessment for 001-25-45-0255-00046, a
contiguous parcel

Respondent Exhibit 1 - Form 139L petition,
Respondent Exhibit 2 - Subject property record card,
Respondent Exhibit 3 - Plat map,

Board Exhibit A - Form 139L petitions,
Board Exhibit B - Notices of Hearing,
Board Exhibit C - Sign in Sheet,

d. These Findings and Conclusions.

Analysis

14. 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.
15. The Petitioners did not provide sufficient evidence to establish a prima facie case for a reduction in value. This conclusion was arrived at because:
- a. The Petitioners contend the properties are over-valued because Lot 46 is assessed at \$35.29 per front foot, or \$600 total. The subject lots are assessed at \$385 per front foot. *Petitioner Exhibit 13; Johnston testimony*. The Petitioners did not submit a property record for Lot 46. The petitioner must submit ‘probative evidence’ that

- adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890 (Ind. Tax Ct. 1995).
- b. The Petitioners also contend that the individual lots are not buildable because of zoning ordinances and because the lots are below street level.² 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. Petitioners have 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). The DLGF testified that a 70% negative adjustment factor was applied to the properties to reflect the nature of the lots and their unimproved status. While the properties' size or depth in relation to the street may be relevant to the issue of whether a different negative influence factor should apply here, the Petitioners failed to show how these conditions 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.
- c. Where the Petitioner has not supported the 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 Petitioners did not provide sufficient evidence to establish 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 assessment should not be changed.

² The lots are contiguous, so if the parcels were combined, they would be buildable.

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 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>.