

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #'s:	45-041-02-1-5-00351	45-041-02-1-5-00352
	45-041-02-1-5-00353	45-041-02-1-5-00354
	45-041-02-1-5-00355	45-041-02-1-5-00356
Petitioners:	James & Renee Ellis	
Respondent:	Department of Local Government Finance	
Parcel #'s:	003-31-25-0122-0006	003-31-25-0122-0008
	003-31-25-0122-0004	003-31-25-0122-0007
	003-31-25-0122-0005	003-31-25-0122-0016
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 November 19, 2003 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for petition 45-041-02-1-5-00351 (parcel 003-31-25-0122-0006) was \$154,300, for petition 45-041-02-1-5-00352 (parcel 03-31-25-0122-0008) was \$9,500, for petition 45-041-02-1-5-00353 (parcel 003-31-25-0122-0004) was \$8,800, for petition 45-041-02-1-5-00354 (parcel 003-31-25-0122-0007) was \$9,500, for petition 45-041-02-1-5-00355 (parcel 003-31-25-0122-0005) was \$4,100 and for petition 45-041-02-1-5-00356 (parcel 003-31-25-0122-0016) was \$5,900 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed Form 139L petitions on April 8, 2004.
3. The Board issued notices of hearing to the parties dated February 14, 2005.
4. Special Master Dalene McMillen held a hearing on March 17, 2005, at 11:35 a.m. in Crown Point, Indiana.

Facts

5. The subject properties are located at 7401 West 142nd Avenue, Cedar Lake. The location is in Center Township.

6. Parcel 003-031-25-0122-0006 consists of a one-story, 2,310 square foot frame dwelling with a detached garage and swimming pool. The five additional properties are vacant lots.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject properties as determined by the DLGF:

Parcel 003-031-25-0122-0006		
Land: \$11,100	Improvements: \$143,200	Total \$154,300
Parcel 003-031-25-0122-0008		
Land: \$9,500		
Parcel 003-031-25-0122-0004		
Land: \$8,800		
Parcel 003-031-25-0122-0007		
Land: \$9,500		
Parcel 003-031-25-0122-0005		
Land: \$4,000		
Parcel 003-031-25-0122-0016		
Land: \$5,000		
9. The assessed value of the subject properties as requested by the Petitioners:
The Petitioners requested a total assessed value of \$115,000 for all parcels.
10. Persons sworn in as witnesses at the hearing:
James V. and Renee Ellis, Owners
Stephen H. Yohler, Assessor/Auditor, DLGF

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend the assessed values are overstated in comparison with properties located in the subject neighborhood. The Petitioners request the subject properties be assessed at an overall value of \$115,000. *J. Ellis testimony.*
 - b. The Petitioners submitted photographs of the comparable properties and gave a brief description of the properties. *Petitioner Exhibits 2-1 thru 2-19; J. Ellis testimony.*
 - c. The Petitioners contend the subject properties are overstated based on a Limited Restricted Use Appraisal Report prepared for Centier Bank for the purpose of obtaining a 2nd mortgage. The appraisal report shows an estimated value of \$115,000. *Petitioner Exhibit 1.*
 - d. The appraisal report was obtained June 28, 2001 and was prepared by William Hall, Commercial Resource Group, Inc. *Petitioner Exhibit 1.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent submitted a comparable property demonstrating the subject property is valued fairly and consistently for the subject area. The comparable is priced at \$83.34 per square foot and the subject property is being assessed at \$84.33 per square

- foot. *Respondent Exhibit 4; Yohler testimony.* (Petition 45-041-02-1-5-00351 – only).
- b. The Respondent testified that parcels 003-31-25-0122-0008, 003-31-25-0122-0004, and 003-31-25-0122-0007 are valued with the same base rate as the adjoining lots in the neighborhood. And the parcels have received a negative influence factor of 70% due to being vacant and located off the lake. *Respondent Exhibit 2; Yohler testimony.*
 - c. The Respondent testified that parcel 003-31-25-0122-0005 is valued with the same base rate as the adjoining lots in the neighborhood. The parcel has received a negative influence factor of 50% due to being located off the lake. However, the property record card shows an error in the assessed value, the property record card currently shows the assessed value of the land at \$4,100, however, when the 50% negative influence factor is applied to the land, the assessed value should be \$6,800. *Respondent Exhibit 2; Yohler testimony.*
 - d. The Respondent testified parcel 003-31-25-0122-0016 is a rear lot and is inaccurately assessed by DLGF as a front lot. *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 Co. 698,
 - c. Exhibits:
 - Petitioner Exhibit 1 - A Limited Restricted Use Appraisal Report prepared by William Hall, Commercial Resource Group, Inc., dated June 28, 2001,
 - Petitioner Exhibits 2-1 through 2-15 - Sixteen exterior photographs of properties in the subject neighborhood,
 - Petitioner Exhibits 2-16 through 2-19 - Four exterior photographs of the subject property,
 - Petitioner Exhibit 3 - Plat map of the subject area,
 - Petition 45-041-02-1-5-00351
 - Respondent Exhibit 1 - Form 139L petition,
 - Respondent Exhibit 2 - Subject property record card for parcel #003-31-25-0122-0006,
 - Respondent Exhibit 3 - An exterior photograph of the subject dwelling,
 - Respondent Exhibit 4 - Fourteen sales and comparison sheet for Center Township,
 - Respondent Exhibit 5 - A property record card and exterior photograph for comparable,
 - Petitions 45-041-02-1-5-00352, 45-041-02-1-5-00353, 45-041-02-1-5-00354, 45-041-02-1-5-00355, 45-041-02-1-5-00356
 - Respondent Exhibit 1 - Form 139L petitions,
 - Respondent Exhibit 2 - Subject property record cards,
 - Board Exhibit A - Form 139L petitions,
 - Board Exhibit B - Notices of Hearing on Petition,

Board Exhibit C - Hearing sign-in sheets,

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 Insurance Company 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 support the Petitioners’ contentions. This conclusion was arrived at because:

Value

- a. The Petitioners submitted photographs of several properties in the subject neighborhood and claimed the properties to be comparable to the subject property. The Petitioners asserted the comparables all have assessed values lower than the subject. However, the Petitioners failed to explain how these properties were comparable to the subject property or how they affected the value of the subject property other than for their location in the same neighborhood. The Petitioners did not provide the property record cards of the properties or pertinent information such as square footage, age, or physical features. Without this information, the Board cannot determine whether the properties are truly comparable or what affect, if any this has on the market value of the subject property. “[Petitioners’] conclusory statements that something is comparable does not constitute probative evidence. Because [Petitioners] did not present evidence that the [other dwellings] were comparable to its own, [they] did not present a prima facie case.” *Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E. 2d 711, 715 (Ind. Tax Ct. 2002).
- b. The valuation date for the 2002 general reassessment is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). Because the 2002 assessment must reflect the value of the property as of that date, any evidence of value presented by the Petitioners must include an explanation of how this evidence demonstrates the subject properties’ value as of January 1, 1999.

- Lacking such explanation, evidence of value applicable to any valuation date other than January 1, 1999, has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
- c. The Limited Restricted Use Appraisal Report prepared for the purpose of obtaining a bank loan has a valuation date of June 28, 2001. The Petitioner failed to provide an explanation of how that estimate of value is relevant to, or demonstrates the market value of the property as of January 1, 1999. Therefore, the estimate of value presented has no probative value in this matter. *Id.*
 - d. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *Meridian*, 805 N.E.2d 475, 479.
 - e. The Limited Restricted Use Appraisal report is seriously flawed. The report does not contain any probative evidence to support the conclusion of how the market value of \$115,000 as June 28, 2001, was determined or how it should be attributed to each parcel. Such undocumented conclusory statements are irrelevant and have no weight in establishing the market value of the subject property. *Whitley Products V. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).
 - f. 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 Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Error on Property Record Card for 003-31-25-0122-0005

- g. The Respondent testified that parcel 003-31-25-0122-0005 shows the same base rate as adjoining lots in the neighborhood; however, when the DLGF applied the 50% negative influence factor to the subject lot for being located off the lake the assessed value of the property should have reflected an assessed value of \$6,800 instead of \$4,100. The DLGF requested the error be corrected. *Yohler testimony*.
- h. The Respondent testified that the Petitioners' adjoining vacant lots were given a 70% negative influence factor for being undeveloped and for being located off the lake. *Yohler testimony*.
- i. Upon review of the subject's 2002 property record card and plat map, it is determined the subject land is classified as undeveloped and is located off the lake. It was also determined that the DLGF property record card has correctly assessed the land with a negative influence factor of 70% resulting in an assessed value of \$4,100. No change is made in the assessment as a result of this issue.

Classification of Parcel 003-31-25-0122-0016

- j. The Respondent testified the subject lot should be classified as a rear lot. *Yohler testimony*.
- k. The Petitioners did not dispute the Respondent's testimony. The Respondent recommended the subject lot classification be changed from a front lot to rear lot and the assessment be corrected to reflect this change.
- l. The rear lot classification was undisputed by the parties; therefore the evidence in the record supports a finding that the lot classification be changed to rear lot.

Conclusions

Value

- 16. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Error on Property Record Card For 003-31-25-0122-0005

- 17. The Respondent failed to make a prima facie case to effectively establish that the assessed value of the land is incorrect. The Board finds in favor of the Petitioners.

Classification of Parcel 003-31-25-0122-0016

- 18. The evidence supports a finding that the classification of the subject lot should be changed to rear lot. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment of parcel 003-31-25-0122-0016 should be changed. The remaining parcels under appeal 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 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>.