

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-4-01417
Petitioners: John A. & Dora S. Babbs
Respondent: Department of Local Government Finance
Parcel: 001-01-39-0545-0002
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board 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 4, 2004. The Department of Local Government Finance (the DLGF) increased this tax assessment from \$168,500 to \$331,900.
2. The Petitioners filed a Form 139L on July 12, 2004.
3. The Board issued a notice of hearing to the parties dated March 14, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on April 14, 2005.

Facts

5. The subject property is located at 5611 W. Ridge Road, Gary, Indiana.
6. The subject property is a commercial improved lot with 1.363 acres and a building of 992 square feet used for automobile sales.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed values as determined by the DLGF are:
Land \$324,900 Improvements \$7,000 Total \$331,900.
9. The assessed values requested by the Petitioners on the Form 139L Petition are:
Land \$75,000 Improvements \$3,000 Total \$78,000.
10. The following persons were present and sworn in at the hearing:
For the Petitioners — Jill Singleton, Petitioners' daughter,
For the Respondent — Tommy P. Bennington, assessor/auditor.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
 - a) The total assessment of \$331,900 is excessive for the 1.363-acre lot with a dilapidated building. It does not reflect the property's market value. Both the current land assessment of \$324,900 and the initial \$160,500 land assessment are excessive. *Singleton testimony*. After the February 4, 2004, informal hearing, the total assessment was increased to \$331,900. The Petitioners did not receive a notice and were not aware of the increase to their land assessment prior to receiving their tax statement, which reflected the dramatic increase in the assessment. *Id.*; *Petitioners Exhibit 5*.
 - b) The adjoining property owner's original land assessment (\$144,800) also was unreasonably high until it was lowered to \$36,700 by the DLGF after the informal hearing. *Singleton testimony*; *Petitioners Exhibit 7*. A comparison of photographs of the Petitioners' property and the adjoining parcel (both are used as automobile lots) establishes the subject is inferior to the neighboring parcel. The subject parcel has a very old building. The neighbor's building is newer. *Singleton testimony*; *Petitioners Exhibits 6, 8*. Because the Petitioners' property is inferior to the neighbor's adjoining parcel, the Petitioners' land should be valued at less than the neighbor's \$36,700 land assessment. *Singleton testimony*.
 - c) Two comparable vacant land sales indicate a square footage price well below the subject's current assessment of \$5.47 per square foot. *Singleton testimony*; *Petitioners Exhibits 10, 11*.
 - d) Comparable land sale #1, located at 2025 West Ridge Road, is about two miles from the subject and has 2.370 acres on a corner lot. It sold for \$160,000 (\$1.55 per square foot) on July 1, 2001. *Petitioners Exhibit 10*.
 - e) Comparable land sale #2, which has .220 acres, is located about three miles from the subject at 3821-3831 Grant Street. This property sold for \$10,000 (\$1.04 per square foot) on December 10, 2002. *Petitioners Exhibit 11*.
 - f) A third comparable property is an improved property on the corner of Ridge and Chase Roads. It has .530 acres, with 208 front feet on Ridge Road. Two income-producing structures, a duplex and a tavern, were on this property. The total sale price for the property on May 25, 2004, was \$149,900, well below the assessment of \$324,900 for the Petitioners' land. *Petitioners Exhibit 12*.
 - g) These comparable properties are all in a better locations than the subject and are in better condition. They indicate the Petitioners' assessment is excessive. *Singleton testimony*.

- h) A base rate of \$7.10 per square foot, as reflected by the DLGF Neighborhood Valuation Form, is incredibly high. One couldn't find values like that in Munster on Ridge Road or Calumet Avenue. *Singleton testimony*. The Petitioners originally requested on the Form 139L that the land value be reduced to \$75,000, but the comparable property information obtained for the appeal subsequently established the value should be less than \$36,700 for the Petitioners' 1.363 acre lot. *Singleton testimony; Petitioners Exhibit 2*.
 - i) On the Form 139L Petition, the Petitioners also contended the assessed value of the building should be reduced from \$7,000 to \$3,000. *Petitioners Exhibit 2*. The Petitioners' building is of no value and is older than the neighbor's building, which was assessed for \$139,700. *Singleton testimony; Petitioners Exhibit 7*.
 - j) The Petitioners requested the Board to remove all penalties associated with their nonpayment of property taxes. *Singleton testimony; Petitioners Exhibit 13*.
12. Summary of the Respondent's contentions:
- a) There is an error in the current assessment. *Bennington testimony; Respondent Exhibit 4*. The land value should be reduced to \$282,800. *Bennington testimony; Respondent Exhibit 5*.
 - b) The Commercial and Industrial Neighborhood Valuation Form shows an average base rate of \$7.10 per square foot for this neighborhood. *Bennington testimony; Respondent Exhibit 4*.
 - c) The plat map indicates the Petitioners' parcel is 1.363 acres in area and the adjoining parcel is 1.036 acres. *Respondent Exhibit 3*.

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 734,
 - c) Petitioners Exhibit 1: Authorization for Representation,
Petitioners Exhibit 2: Form 139L Petition,
Petitioners Exhibit 3: Computer data showing 2001 assessed value at \$20,100,
Petitioners Exhibit 4: Notice of Assessment, assessed value of \$168,500 for 2002,
Petitioners Exhibit 5: 2002 Reconciliation Tax Bill, assessed value of \$331,900,
Petitioners Exhibit 6: Two photographs of the subject land and improvements,
Petitioners Exhibit 7: Notice of Final Assessment for the adjoining comparable parcel at 5607 Ridge Road,
Petitioners Exhibit 8: Two photographs of the adjoining parcel at 5607 Ridge Road,

Petitioners Exhibit 9: Subject property record card for 2002,
Petitioners Exhibit 10: Comparable land sale #1 located at 2025 W. Ridge Road,
Petitioners Exhibit 11: Comparable land sale #2 located at 3821-31 Grant Street,
Petitioners Exhibit 12: Improved comparable sale located at 3044 W. Ridge Road,
Petitioners Exhibit 13: Summary of evidence presented,
Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photograph,
Respondent Exhibit 3: Subject plat map,
Respondent Exhibit 4: Land calculations, Neighborhood Land Summary Sheet,
Respondent Exhibit 5: Corrected property record card showing total revised assessed value of \$289,800,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign-in Sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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.

Land Value

15. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners submitted three purported comparable sales. The first two properties were vacant land sales within three miles of the subject property, and the third

property was the sale of an improved lot with two income-producing structures. *Petitioners Exhibits 10-12.*

- b) To establish that properties are comparable, the Petitioners must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. They also must establish how any differences between the properties affect their relative market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioners failed to describe the similarities and differences between the characteristics of the subject property and the three purported comparable properties. For example, the subject land size is 1.363 acres. The first vacant land sale identified by the Petitioners was for 2.370 acres. The second vacant land sale was for only .220 acre. The third lot, which is improved, has a land size of .530 acre. No explanation of these size differences between the purported comparable lots and the subject property was presented to establish comparability. The Petitioners also did not offer any property record cards or photographs of the three purported comparable lots to support their contention the purported comparable lots are in a “better location” than their property. Conclusory statements that a property is “comparable to” or in a “better location” than another property do not constitute probative evidence. *See Long*, 821 N.E.2d at 470; *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners did not establish these three properties are comparable to the parcel under appeal. Therefore, that evidence has no probative value.
- d) The Petitioners also claimed their property is comparable to the adjacent parcel located at 5607 Ridge Road. The Petitioners’ parcel (1.363 acres) and the adjoining parcel (1.036 acres) are similar in size and both parcels are used as car lots. The assessed land value of the neighboring 1.036-acre parcel is \$36,700.¹
- e) The Petitioners’ evidence establishes that their land is assessed at a rate that is much higher than a comparable contiguous property. The Petitioners’ current assessment is approximately \$238,400 per acre. The adjoining property is comparable and is assessed at approximately \$35,400 per acre. The Petitioners made a prima facie case that the assessed value of their land is in error and that the assessed value should be \$35,400 per acre.
- f) The DLGF representative testified there was an error in the current assessment of the land and proposed yet a third value, \$282,800. This figure amounts to approximately \$207,500 per acre.

¹ The Petitioners asserted their parcel should be assessed less than the adjoining lot because the adjacent building was in better condition than the building on the property under appeal. *Singleton testimony*. The Petitioners did not identify any meaningful differences between the two pieces of land. Further, the photographs of both parcels reveal no apparent variations in physical features between the lots. *Petitioners Exhibits 6, 8*. Accordingly, the Petitioners’ unsubstantiated conclusory statements their land is inferior are of no probative value. *Whitley*, 704 N.E.2d at 1119.

- g) The Respondent presented no evidence or argument that the assessed value of the adjoining property was anything other than its market value-in-use. The Respondent presented no evidence to explain the reason the Petitioners' land was assessed at a value several times greater than the adjoining parcel, even though the properties are comparable in size, physical features, and use. Thus, the Respondent failed to rebut the Petitioners' prima facie case.
- h) The DLGF assessed the comparable neighboring 1.036-acre lot at \$35,400 per acre. Applying this same base rate to the Petitioners' 1.363-acre parcel results in a land value of \$48,300. There must be a change in the land assessment.

Improvement Value

16. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) On the Form 139L Petition, the Petitioners contended the assessed value of the building should be reduced from \$7,000 to \$3,000. The Petitioners offered testimony that the building was of no value and older than the building on the neighboring lot.
 - b) The Petitioners presented no probative evidence, such as an appraisal or evidence of the sale of comparable properties, to support their contentions. Such unsubstantiated conclusory statements are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119.
 - c) The Petitioners failed to make a prima facie case of error in the assessment of the improvements.
 - d) 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, 1222 (Ind. Tax Ct. 2003).

Penalties

17. The Petitioners also requested the Board to remove all penalties associated with the nonpayment of the Petitioners' property taxes. The Board is a creation of the Legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002), citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). In *Whetzel*, the Tax Court determined that the statute empowering the Board to review appeals did not grant the Board power to review penalties imposed by county officials for late payment of property taxes. The Petitioners have not provided any authority under which the Board might review penalties and the Board is aware of no such authority. Accordingly, the penalty issue is one that is beyond the Board's authority.

Conclusions

18. The Petitioners made a prima facie case the current land value is excessive. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners. The land value is changed to \$48,300.
19. The Petitioners failed to make a prima facie case of error in the assessment of the improvements. The Board finds in favor of the Respondent.
20. The Board does not have the authority to review any late payment penalties imposed on the Petitioners by the local assessing officials.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.