

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-026-02-1-5-00753
45-026-02-1-5-00762
45-026-02-1-5-01190
45-026-02-1-5-01406

Petitioners: Keith C. & Rubystean Perry

Respondent: Department of Local Government Finance

Parcels: 007-24-30-0630-0029
007-24-30-0630-0028
007-24-30-0630-0027
007-24-30-0630-0026

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 February 10, 2004. The Department of Local Government Finance (the DLGF) determined that the assessments for the subject properties were as follows:

Parcel 007-24-30-0630-0029 (0029) - \$164,300
Parcel 007-24-30-0630-0028 (0028) - \$ 10,600
Parcel 007-24-30-0630-0027 (0027) - \$ 19,100
Parcel 007-24-30-0630-0026 (0026) - \$ 16,200
2. Petitioners were notified of these assessments on March 31, 2004.
3. Petitioners filed a Form 139L for each property on April 15, 2004.
4. The Board issued a notice of hearing to the parties dated November 8, 2004.
5. Special Master Kathy J. Clark held the hearing in Crown Point on December 9, 2004.

Facts

6. The subject properties are located at 4130, 4126, 4122, and 4118 Hawthorn Street, East Chicago. The location is in North Township.

7. The subject properties consist of a bi-level, single-family dwelling and four contiguous residential lots.
8. The Special Master did not conduct an on-site visit of the property.
9. Assessed value of subject property as determined by the DLGF:

(0029) Land \$23,900	Improvements \$140,400	Total \$164,300
(0028) Land \$10,600		
(0027) Land \$19,100		
(0026) Land \$16,200.		
10. Assessed value of subject property requested by the Petitioners:

(0029) Land \$15,000	Improvements \$139,000	Total \$154,000
(0028) Land \$ 7,500		
(0027) Land \$ 8,000		
(0028) Land \$ 7,000.		
11. Persons sworn as witnesses at the hearing:
 - Rubystean Perry, owner,
 - Stephen H. Yohler, assessor/auditor.

Issues

12. Summary of Petitioners' contention in support of an error in the assessment:
 - a) The properties are overvalued as shown by the appraisal by Mr. Scott E. Emerick on June 4, 2002, which determines a value of \$139,000. *Petitioner Exhibit 2; Perry testimony.*
 - b) The house sits on lot 29 and 25 feet of lot 28, which is why lot 28 shows only 31 feet. The legal description for this was corrected this year after the first hearing. *Perry testimony.*
13. Summary of Respondent's contentions in support of the assessment:
 - a) The appraisal submitted by Petitioners is for lot 29 and the dwelling. It does not consider the other three lots under appeal. *Petitioner Exhibit 2; Yohler testimony.*
 - b) After review of information submitted at the informal hearing, it is noted that 25 feet of frontage located between lot 29 and lot 28 has never been assessed. Lot 29 should have 81 front feet of frontage, not 56 feet as shown on the current property record card. This determination was arrived at because the actual width of the dwelling as recorded is 69 feet, therefore it must sit partially on lot 28. This is confirmed by an aerial map, which shows the dwelling and garage to be located on both lots. *Respondent Exhibit 2, pages 1 and 2; Respondent Exhibits 5, 6, 7; Yohler testimony.*

Record

14. 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 860,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Notices of Final Assessment,
 - Petitioner Exhibit 2 – Appraisal by Mr. Scott E. Emerick,
 - Petitioner Exhibit 3 – Survey map of lots 28, 27, and 26,
 - Respondent Exhibit 1 – Form 139L petitions,¹
 - Respondent Exhibit 2 – Subject property record cards,
 - Respondent Exhibit 3 – Photograph of subject,
 - Respondent Exhibit 4 – Height design sheet,
 - Respondent Exhibit 5 – Survey map,
 - Respondent Exhibit 6 – Plat map,
 - Respondent Exhibit 7 – Aerial map,
 - Respondent Exhibit 8 – Property record card and photograph of comparable used by appraiser,
 - Board Exhibit A – Form 139L petitions,
 - Board Exhibit B – Notice of Hearings,
 - Board Exhibit C – Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

15. The most applicable governing law is:
- 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.*

¹ The Respondent submitted an Exhibit 1 and 2 for all four appeals. Exhibits 3-8 were submitted for petition 45-026-02-1-5-00753.

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.

- d) Valuation date is the date as of which the true tax value of the property is estimated. This date is January 1, 1999, for the 2002 general reassessment. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2).
- e) Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required for that evidence to have probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

16. The Petitioners failed to establish a prima facie case. This conclusion was arrived at because:

- a) Petitioners submitted an appraisal for lot 29 and the improvement. Lots 28, 27, or 26 were not considered in the appraisal and it states no value conclusion for them. The fact that the appraisal does not cover all the property is problematic for Petitioners' case, but it is unnecessary to resolve the problem because there is a more fundamental problem.
- b) The appraisal estimates that the value of lot 29 and the house is \$139,000 as of June 3, 2002. Petitioners provided no information that would allow the Board to relate that value to the valuation date of January 1, 1999. The appraisal has no probative value for their claim. *Id.*
- c) Of separate concern to the Board is the fact that the appraisal lists the size of the land being appraised as 56 feet wide by 113 feet deep while the width of the dwelling is recorded as being 69 feet. By the Petitioners' own admission the house sits on lot 29 and 25 feet of lot 28.
- d) Neither party submitted probative evidence to support a change in the assessment regarding lots 26, 27, and 28.
- e) Respondent stated that lot 29 should reflect a frontage of 81 feet instead of the current 56 feet as evidenced by Petitioner Exhibit 3/Respondent Exhibit 5 as well as Respondent Exhibits 6 and 7. While evidence submitted by both parties appears to indicate that a 25 foot by 113 foot section of land is unaccounted for on any of Petitioners' property record cards, neither party supplied sufficient evidence for the Board to determine on which lot that piece of land belongs.
- f) Accordingly, no change to the front foot measurements for any of the lots would be appropriate.

Conclusion

17. Petitioners failed to establish a prima facie case. The Board finds in favor of Respondent.

Final Determination

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