

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00199
Petitioners: Ruben & Maria Dalia Peña-Rodriguez
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0454-0024
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 January 13, 2004. The Department of Local Government Finance (the "DLGF") determined that the assessment for the subject property is \$5,000 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 24, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 3, 2004.

Facts

5. The subject property is located at 3808 Melville Avenue, East Chicago. The location is in North Township.
6. The subject property is a vacant lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$5,000 Improvements \$-0- Total \$5,000.
9. Assessed value requested by the Petitioners:
Land \$900 Improvements \$-0- Total \$900.

10. Persons sworn as witnesses at the hearing:
For Petitioners — Maria D. Peña, Owner,
Eddie Peña, son of Maria D. Peña,
For Respondent — Stephen H. Yohler, Assessor/Auditor.

Issues

11. Summary of Petitioners' contentions in support of alleged error in the assessment:
 - a. The Petitioners disagree with the assessed value placed on the subject property. The property is a single vacant lot. A home cannot be built on one lot. *E. Peña testimony.*
 - b. The Petitioners contended that the neighborhood is run down and property values are low. In support of their position, the Petitioners presented an appraisal prepared by Michael C. Genger, a state licensed appraiser with Sandridge Appraisals. *Petitioners Exhibit 4.*
 - c. The appraisal estimates the market value of the subject property as of October 29, 2004, was \$1,500. *Id.*
 - d. The Petitioners submitted photographs showing neighboring oil drums and a cement factory across the street from the dwelling. *Petitioners Exhibits 3, 4; E. Peña testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The land values were based on sales in the neighborhood. The base rate for the subject neighborhood is \$280 per foot front. For the Petitioners' land, that rate was adjusted to \$252 per front foot to account for the depth factor. *Yohler testimony; Respondent Exhibit 2.*
 - b. The parcel also received a 20 percent negative influence factor due to the land being vacant. The assessment is correct. *Id.*¹

Record

13. The official record for this matter is made up of the following:
 - a. The Form 139L,
 - b. The tape recording of the hearing labeled Lake Co. 482,

¹ An influence factor is a "multiplier that is applied to the value of the land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage." REAL PROPERTY ASSESSMENT GUIDELINES for 2002 – VERSION A, glossary at 10.

- c. Exhibits:
 - Petitioner Exhibit 1 — Form 139L Petition,
 - Petitioner Exhibit 2 — Summary of Arguments,
 - Petitioner Exhibit 3 — Photograph of single lot,
 - Petitioner Exhibit 4 — Appraisal prepared by Sandridge Appraisals,
 - Respondent Exhibit 1 — Form 139L,
 - Respondent Exhibit 2 — Subject property record card,
 - Board Exhibit A — Form 139L,
 - Board Exhibit B — Notice of Hearing,
 - Board Exhibit C — Sign-in sheet,
- d. These Findings and Conclusions.

Analysis

- 14. The most applicable cases are:
 - a. A Petitioner seeking review of an assessment 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 Board of Tax Commissioners*, 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 support their contentions. This conclusion was arrived at because:
 - a. Petitioners presented an appraisal that estimates the market value of the subject property to be \$1,500 as of October 29, 2004. The Petitioners failed to explain the manner in which this value supports the requested value on the Form 139L Petition of \$900.

- b. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471, (Ind. Tax Ct. 2005); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- c. The appraisal's valuation date is October 29, 2004, (more than five years after the valuation date). The Petitioners did not explain how the appraised value demonstrates, or is relevant to, the property's value as of January 1, 1999. Accordingly, the appraisal is not probative of the value of the property. *Id.*
- d. The Petitioners also presented two photographs showing oil storage tanks next to the property and a cement factory across the street. Petitioners did not establish any link between the neighboring structures and a reduction in value. Without any explanation of the impact of these structures on value, the photographs are not probative evidence of error. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
- e. Finally, the Petitioners contended the size of the lot precludes building on it. To prevail on this issue, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999). Because the lot is vacant, the Respondent had applied a 20 percent negative influence factor to the parcel. Petitioners presented no probative evidence to quantify how the adjustment by the Respondent did not adequately account for the inability to build on the lot.

Conclusion

- 16. The Petitioners failed to make a prima facie case that the value of the land is overstated. 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.