

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-028-02-1-5-00190
Petitioners: Shirley Henderson
Respondent: Department of Local Government Finance
Parcel: 008-08-15-0427-0016
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$17,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties on August 09, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on September 23, 2004.

Facts

5. The subject property is located at 1102 West 73rd Avenue in Merrillville.
6. The subject property is a .223 acre vacant residential lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed land value as determined by the DLGF is \$17,400.
9. The assessed land value requested by the Petitioner is \$4,237.
10. Persons sworn as witnesses at the hearing were:
Shirley Henderson, Owner,
David M. Depp, Senior Appraiser, Cole-Layer-Trumble.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) According to town code, the vacant lot is useless. *Henderson testimony.*
 - b) The land value of the subject property is excessive in relationship to larger parcels in the neighborhood that have a lower assessment. *Henderson testimony; Petitioner Exhibit A.*

13. Summary of Respondent's contentions in support of the assessment:
 - a) The subject land is valued by the front foot. Petitioner's comparables are valued by acreage. Therefore, the values do not compare. *Depp testimony.*
 - b) If the parcels were legally combined, an influence factor for excess frontage could be applied. The subject parcel currently has a 20 percent negative influence factor for vacancy. *Depp testimony; Respondent Exhibit 2.*
 - c) The building ordinances were requested from the townships, but most refused to comply. The record does not establish what is permissible as far as use and size. *Depp 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 Co. 277,
 - c) Exhibits:
 - Petitioner Exhibit A–Comparable land assessments,
 - Petitioner Exhibit B–Real estate advertisement,
 - Petitioner Exhibit C–Fourteen photos from informal hearing,
 - Respondent Exhibit 1–Form 139L,
 - Respondent Exhibit 2–Subject property record card,
 - Respondent Exhibit 3–Aerial map,
 - Board Exhibit A–Form 139L,
 - Board Exhibit B–Notice of Hearing,
 - Board Exhibit C–Sign in Sheet,
 - Board Exhibit D–Orders to Verify Participation,
 - d) These Findings and Conclusions.

Analysis

15. 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 at 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.
16. The Petitioner did not make a prima facie case to support her contentions. This conclusion was arrived at because:
- a) Petitioner provided property record cards to compare the subject property's land value with larger residential lots in the neighborhood. They establish that larger residential lots are assessed lower than the subject property. The difference may stem from the fact that Petitioner's comparables are valued on an acreage basis, while the subject is valued by the front foot. Petitioner failed to prove a basis for comparison between the other parcels and her land. Conclusory statements that something is comparable do not constitute probative evidence. *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Rather, specific reasons must be provided as to why a property is comparable. *Long*, 821 N.E.2d at 470; *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
 - b) Petitioner contends that the vacant lot is unusable, but presented no probative evidence to support that contention. Mere allegations, unsupported by factual evidence, do not prove an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998); *see also Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998). Furthermore, Petitioner failed to explain how the town code makes the lot useless. This failure deprives the testimony of any relevance. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- 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*, 799 N.E.2d at 1222.

Conclusion

17. The Petitioner did not establish a prima facie case. 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. 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>.