

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00336
Petitioner: Thomas M. & Elise M. Seed
Respondent: Department of Local Government Finance
Parcel: 001-25-46-0109-0009
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 not held. The Department of Local Government Finance (the DLGF) determined that, as a result of appeals filed and other information brought to their attention in the appeal process, other objective adjustments in assessments were needed to properties that were not appealed. The DLGF determined that the assessed value of the subject property is \$314,000 and notified Petitioners on March 31, 2004.
2. Petitioners filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated September 1, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 6, 2004.

Facts

5. The subject property is located at 7721 Lake Shore Drive in Gary.
6. The subject property is a two-story, single-family dwelling. It is located on a lot with 50 feet of frontage and a depth of 125 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$141,900 Improvements \$172,100 Total \$314,000.
9. The assessed value requested by Petitioners is:
Land \$37,700 Improvements \$150,000 Total \$187,700.

10. Persons sworn as witnesses at the hearing were:
Thomas Seed, Owner,
Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble,
Tommy P. Bennington, Assessor/Auditor,
Diane Spenos, Assessor/Auditor.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The subject parcel is not located directly on Lake Michigan. Lake Shore Drive runs between the subject property and Lake Michigan. Petitioners have a view of the lake. *Seed testimony.*
 - b) The subject lot sits in a hollow and is the lowest lying lot on the street, which causes it to suffer from drainage problems. Petitioners need two separate drainage systems to keep the septic system from being damaged when it rains because water runs off the neighbors' properties onto the subject. *Id.*
 - c) The subject lot is identical to seven others around it, yet the subject has the highest square foot price of all of the lots. *Id; Petitioner's Exhibits 3, 7.*
 - d) The subject lot does not have city sewer, which is preferable in a selling situation. *Seed testimony.*
 - e) The width of the lakeside deck is only five feet wide, not 12 feet wide. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Lots within the subject's neighborhood have been given a variety of land influence factors for different reasons. The subject lot received a positive 200 percent multiplier because of the lake view. Lots located further from the lake's edge with less accessibility to the water, and less view of lake, receive a lower influence factor. "Feathering" is used to scale back the influence factors for lots further from the lake. Another factor that was applied to some of the neighboring lots is a 20 percent negative influence for being vacant or unimproved. Petitioners' lot is not vacant or unimproved. *Elliott testimony.*
 - b) Respondent agrees that the lakeside deck is only five feet wide, and agrees that it should be changed. *Id.*

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 270,
- c) Exhibits:
 - Petitioner Exhibit 1–Plat of Survey,
 - Petitioner Exhibit 2–Property record cards for subject and neighbors (relates to Exhibit 7),
 - Petitioner Exhibit 3–Photographic display board,
 - Petitioner Exhibit 4–Summary of arguments,
 - Petitioner Exhibit 5–Form 11,
 - Petitioner Exhibit 6–Notice of Administrative Correction,
 - Petitioner Exhibit 7–Neighborhood sketch board,
 - Petitioner Exhibit 8–1999 subject property record card,
 - Petitioner Exhibit 9–Photographs numbered 12 through 23 of east neighbor,
 - Petitioner Exhibit 10–Spreadsheet of land values,
 - Respondent Exhibit 1–Form 139L,
 - Respondent Exhibit 2–Subject property record card,
 - Respondent Exhibit 3–Subject photograph,
 - Respondent Exhibit 4–Comparable sales analysis with some comparable property record cards and photographs,
 - Respondent Exhibit 5–Neighboring property record cards,
 - 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 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 Board 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.

15. The Petitioners failed to establish a prima facie case, except for the issue of the size of the north deck on the dwelling. This conclusion was arrived at because:

- a) Petitioners' claim that the land assessment should be lowered from \$141,900 to \$37,700 is not supported by probative evidence. Petitioners offered statements that their lot is the lowest lying lot in the neighborhood and suffers rain runoff from neighboring properties. Petitioners provided no probative evidence, however, establishing to what degree, if any, this fact would affect the property's value. Similarly, Petitioners offered no probative evidence to establish what the lack of city sewers might do to the market value of the property. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) An analysis of the subject and the four most comparable land values submitted by the Petitioner reveals the following:

Subject: 7721 Lake Shore Dr.: 50 feet frontage, 125 feet depth; improved lot; direct lake view; land assessment-\$141,900. *Respondent Exhibit 2; Petitioners Exhibit 7 marked photo 3.*

Comparable 1: 7807 Lake Shore Dr.: 40 feet frontage, 150 feet depth; improved lot; direct lake view; land assessment-\$122,800. *Respondent Exhibit 5, page 1; Petitioners Exhibit 7 marked photo 12.*

Comparable 2: 7737 Lake Shore Dr.: 48 feet frontage, 158 feet depth; improved lot; direct lake view; land assessment-\$150,100. *Respondent Exhibit 5, number 5; Petitioners Exhibit 7 marked photo 1.*

Comparable 3: 7725 Lake Shore Dr.: 48 feet frontage, 142 feet depth; improved lot; direct lake view; land assessment-\$143,100. *Respondent Exhibit 5, number 6; Petitioners Exhibit 7 marked photo 2.*

Comparable 4: 7645-47 Lake Shore Dr.: 43 feet frontage, 158 feet depth; improved lot; direct lake view; land assessment-\$134,400. *Petitioners Exhibit 2, page 2; Petitioners Exhibit 7 marked photo 6.*

Other properties submitted by Petitioners as comparables were either vacant, set further back from Lake Michigan, or had much less frontage than the subject. For these reasons, they are not deemed to be comparable.

- c) The above comparable lots, as well as the subject, were priced using the front foot method for land pricing. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A, ch. 2 at 38-56 (incorporated by reference at 50 IAC 2.3-1-2).
- d) The analysis of the subject and the four comparables reveals that all five lots have the identical base land rate of \$965 per front foot. Adjustments have been made for the specific depths of each of the lots. A positive 200 percent land influence factor has been applied equally to each of the lots. The Board finds no evidence that the subject has received disparate treatment when compared to the most comparable lots Petitioners offered.
- e) Petitioners offered no testimony or other evidence proving that the market value of their lot is incorrect, or what the value should be. The evidence concerned only whether or not this lot was assessed correctly as compared to the neighbors. The Board finds these five lots have been consistently assessed. Petitioners did not make a prima facie case regarding land value.
- f) Respondent agreed that the deck in question is only five feet wide, not 12 feet wide as the assessment shows. Therefore, the assessment of the deck should be changed to show that the deck is only 320 square feet.

Conclusions

- 16. Petitioners failed to make a prima facie case that the land assessment is incorrect. Petitioners proved that the assessment of the deck is incorrect.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the dwelling value should reflect that the deck is 320 square feet, not 544 square feet. No other changes should be made.

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>.