

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-4-00120
Petitioners: Tim and Janet Curless
Respondent: Department of Local Government Finance
Parcels #: 010100101790001
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 in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined the Petitioners' property tax assessment for the subject properties notified the Petitioners on March 23, 2004.
2. The Petitioners filed the Form 139L on April 23, 2004.
3. The Board issued the notice of hearing to the parties dated March 3, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 5, 2005.

Facts

5. The subject property is located at 17974 Wicker Avenue, Lowell, Indiana.
6. The subject property is a commercial retail operation on 2.373 acres of land.
7. The Special Master did not conduct an on-site visit of the properties.
8. The assessed value of subject property as determined by the DLGF:
Land \$170,900 Improvements \$201,100 Total \$372,000.
9. The assessed value requested by Petitioners:
The Petitioners requested no specific value. The Petitioners requested a base rate of \$48,000 per acre for the useable land and \$12,000 for the unusable land.

10. Persons present and sworn in at hearing:
For Petitioners – Timothy A. Curless, taxpayer,
Rick Niemeyer, West Creek Township Assessor,¹
For Respondent – Lori Harmon, DLGF.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The land value of \$170,900 is overstated. The land value should be based on a base rate of \$48,000 for the useable land and \$12,000 for the unusable land. *Curless testimony.*
 - b) The subject property, 2.37 acres, was purchased in February 1995 for \$15,000. At the time of purchase, the Petitioners were aware of the requirement for construction of a sewer system and detention pond on the subject property. The Lake County Planning Commission placed a restriction on the land used for the sewer system and detention pond, which prohibits any construction on or use of the ground. *Curless testimony.*
 - c) The detention pond serves the entire industrial/commercial development. The sewer system and detention pond are situated on approximately 0.50 acres, but the actual allocation of land will not be disclosed. *Curless testimony.*
 - d) The settlement statements for the sale of properties in the same development are proof of the correct land value. The land value should be based on a per acre value of \$13,000 to \$43,000. *Niemeyer testimony; Petitioner Exhibit 1, 2.*
12. Summary of Respondent's contentions in support of the assessment:
- e) Land that is necessary to support the site is primary land. Land dedicated to the sewer system and detention pond for a site is necessary support land. *Harmon testimony.*
 - f) The land values were derived by allocating values between land and buildings because the area lacked raw land sales. The base rate of this parcel is \$87,120; however, after adjustments for size, the per acre base rate applied for the subject property is \$71,997. *Harmon testimony.*
 - g) The DLGF position regarding the appeal process is only the total property value is appealable rather than the component values. The components are the tools used to arrive at the total property value. *Harmon testimony.*

¹ Mr. Niemeyer stated for the record that his role in the proceedings was as a supporter of the taxpayer. Mr. Curless agreed to allow Mr. Niemeyer to speak on his behalf.

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 1427,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Settlement statement for 1800 Wicker Avenue,
 - Petitioner Exhibit 2 – Settlement statement for an unidentified property,
 - Respondent Exhibit 1 – A copy of the Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Photographs of the subject property,
 - Respondent Exhibit 4 – Land calculations and neighborhood summary sheet,
 - Board Exhibit A – The Form 139L,
 - Board Exhibit B – The Notice of Hearing,
 - Board Exhibit C – The 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.

15. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- h) The Petitioners challenged the land value established for the subject property. *Board Exhibit A*. The land value may be challenged by showing that the land order was applied incorrectly; that the land suffers from some sort of negative impact requiring the application of a negative influence factor; or that other land, comparable to the subject property, is valued differently than the subject property.
 - i) The Petitioners failed to present any evidence or argument that the land order was applied incorrectly or that the land should have a negative influence factor applied. The Petitioners merely claimed that the current value was excessive. *Curless testimony*.
 - j) The only evidence offered was settlement statements for properties that sold in the same development. *Petitioner Exhibit 1, 2*. However, the Petitioners offered no explanation of how or why these properties were comparable to the subject property other than stating that all the properties are located in the same area. *Neimeyer testimony*. Mere allegations that properties are comparable do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E. 466 (Ind. Tax Ct. 2005).

Conclusion

16. The Petitioners failed to make 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>.