

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-016-02-1-4-00176
45-016-02-1-4-00177
Petitioner: Edward Prusiecki
Respondent: Department of Local Government Finance
Parcel #s: 006271800120081
006271800120014
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 that the Petitioner's property tax assessment for the subject properties is \$40,900 for parcel no. 0062-71-8-00120-0081 (Parcel 81) and \$125,000 for parcel no. 0062-71-8-00120-0014 (Parcel 14) and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L petitions on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated March 14, 2005.
4. A hearing was held on April 14, 2005 in Crown Point, Indiana before Special Master Beth Hammer.

Facts

5. The subject parcels are contiguous parcels located at 230 and 230½ Main Street, Hobart, Hobart Township. Parcel 81 is a single story retail building located at 230½ Main Street and Parcel 14 is a theatre located at 230 Main Street.
6. The Special Master did not conduct an on-site visit of the properties.
7. The DLGF determined the assessed value of the subject properties to be \$15,500 for the land and \$25,400 for the improvements, for a total assessed value of \$40,900 for Parcel 81 and \$24,400 for the land and \$100,600 for the improvements, for a total assessed value of \$125,000 for Parcel 14.

8. The Petitioner did not request an assessed value on his Form 139L petitions.
9. Edward Prusiecki, the Petitioner, and Stephen Yohler, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contests the land value of the subject properties. According to the Petitioner, the two parcels were one lot until 1976 when a small retail building was built on Parcel 81. *Prusiecki testimony.*
 - b) The Petitioner argues that Parcel 81 is 14.2' x 133.13' and being assessed at \$7.53 per square foot. *Prusiecki testimony; Pet'r Ex.2.* Whereas Parcel 14 is 51.80' x 133.13' and being assessed at \$3.24 per square foot. *Prusiecki testimony; Pet'r Ex.2.*
 - c) The Petitioner contends the base rate should be the same for both parcels. *Prusiecki testimony.*
11. Summary of Respondent's contentions in support of the assessment:
 - a) In support of the assessment, the Respondent presented property record cards and photos of the subject parcels. The Respondent also presented the plat map page and land value calculations. *Yohler testimony; Resp't Exs. 1 - 4.*
 - b) The Respondent testified that the same rate was used to value both parcels. Both parcels are valued at the S1 rate of \$3.25 per square foot. According to the Respondent, the standard lot size for the subject neighborhood (02791) is 7,500 square feet.
 - c) The Respondent argued that the parcels were properly assessed based on the incremental/decremental adjustments. *Yohler testimony; Resp't Ex. 4.* According to the Respondent, Parcel 81 is smaller than the standard and the adjusted base rate computed out to \$7.53 per square foot. Whereas Parcel 14 is larger than the standard lot and the adjusted base rate computed out to \$3.24 per square foot.
 - d) However, the Respondent testified that minor errors were made in the lot sizes of each parcel. According to the Respondent, the square footage area of the land was incorrect due to the Petitioner donating 12' of land to the city. The Respondent presented corrected property record cards for both parcels. The land value for Parcel 81 changed from \$15,500 to \$15,200. The land value for Parcel 14 changed from \$24,400 to \$23,400. *Yohler testimony; Resp't Ex. 5.*

Record

12. The official record for this matter is made up of the following:

- a) The Petitions.
- b) The tape recording of the hearing labeled BTR #1538.
- c) Exhibits:

- Petitioner Exhibit 1: Notice of Hearing
 - Petitioner Exhibit 2: Summary of Petitioner's arguments

- Respondent Exhibit 1: Subject Property Record Card (the PRC)
 - Respondent Exhibit 2: Subject Photograph
 - Respondent Exhibit 3: Plat Map Page
 - Respondent Exhibit 4: Land Calculations/NBHD Land Summary Sheet
 - Respondent Exhibit 5: Corrected PRC

- Board Exhibit A: Form 139L petition
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet

- d) These Findings and Conclusions.

Analysis

13. 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 Township 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 Township 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.

14. The Petitioner failed to provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the same base rate should be used to compute the land value for both parcels.
 - b) Land is seldom bought and sold at a flat rate. More often, land is sold on a “sliding rate” based on the size of the property. The larger the lot, the lower the price per foot or per acre. Similarly, the smaller the lot, the higher the price per foot or per acre. This concept is reflected in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES), ch. 2 at 54-56 (incorporated by reference at 50 IAC 2.3-1-2), wherein the depth factor for a property half the depth of the standard lot is .73 and the depth factor for a property twice the depth of the standard lot is 1.21. Similarly, a one acre lot has an adjustment factor of 1, but a lot that is a half acre has an adjustment factor of 1.50. GUIDELINES at 73.
 - c) Here the Petitioner alleges that the lot that is 14.2’ x 133.13’ is improperly assessed at \$7.53 per square foot; whereas the lot that is 51.80’ x 133.13’ is being assessed at \$3.24 per square foot. The Petitioner presented no evidence that this assessment was in error and we find none. The Petitioner failed to show that the land values applied to his properties were incorrect or that the assessed value of the properties exceeded the market value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
 - d) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). However, the Respondent testified that minor errors were made in the lot sizes of each parcel. According to the Respondent, the square footage area of the land was incorrect due to the Petitioner donating 12’ of land to the city. The Respondent presented corrected property record cards for both parcels wherein the land value for Parcel 81 changed from \$15,500 to \$15,200 and the land value for Parcel 14 changed from \$24,400 to \$23,400. *Yohler testimony; Resp’t Ex. 5*.
 - e) The Petitioner failed to raise a prima facie case that the assessment of the subject parcels was incorrect. However, the Respondent testified that the land value for Parcel 81 should be \$15,200 and the land value for Parcel 14 should be \$23,400. We accept the reduction in value as offered by the Respondent and hold that the assessment on the subject properties should be changed accordingly.

Conclusion

15. The Petitioner failed to make a prima facie case. However, the Respondent recommended corrections to the square footage and provided corrected property record cards. The Board finds in favor of the Respondent but accepts the corrected value on the subject properties.

Final Determination

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