

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition #: 45-016-02-1-5-00339
Petitioners: John & Marlon Gauder
Respondent: Department of Local Government Finance
Parcel #: 006-27-18-0181-0020
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 Petitioner's property tax assessment for the subject property is \$25,200 and notified Petitioner on March 26, 2004.
2. Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated November 15, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 15, 2004.
5. Persons present and sworn in at hearing:
For Petitioners – Marlin Gauder, property owner,
John Gauder, property owner,
For Respondent – Phillip Raskowski, DLGF.

Facts

6. Subject property is a residential platted lot measuring 42 feet (effective frontage) by 127 feet with a detached garage located at 126 N. Connecticut in Hobart.
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:
Land \$14,100 Improvements \$11,100 Total \$25,200
9. The assessed value requested by Petitioner:
Land \$8,600 Improvements \$11,100 Total \$19,700

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) Subject property was purchased along with the adjacent property in 1952. The dwelling is on both properties. *M. Gauder testimony; Petitioner Exhibit 1 at 3.* The land assessment for subject property is higher than the land assessments of neighboring properties. *M. Gauder testimony.*
 - b) The total assessment for both parcels is \$27,500. *M. Gauder testimony.* The assessment for the subject property is \$14,000. *M. Gauder testimony; Petitioner Exhibit 1 at 3.*
 - c) The Bell property located directly behind subject property consists of two lots and has a land assessment of \$17,500. *M. Gauder testimony; Petitioner Exhibit 1 at 3, 9.* The Bell property is practically identical to subject property. *M. Gauder testimony.*
 - d) The property located at 533 W. Ridge Road, also made up of two lots, has a total land assessment of \$14,500. *M. Gauder testimony; Petitioner Exhibit 1 at 3.*
 - e) The square foot land value of subject property is higher than the square foot land value of any other property on the block. The properties located at 51 N. Connecticut and 115 N. Connecticut have land values of \$17,500 and \$24,800, respectively. *M. Gauder testimony; Petitioner Exhibit 1 at 9.*
11. Summary of Respondent's contentions in support of the assessment:
- a) The Bell property (submitted as a comparable) is valued as two separate lots with one lot valued as improved and one lot valued as vacant. The vacant lot is assessed with a 20% discount. The land assessment for the improved lot is approximately \$17,000. *Raskowski testimony; Respondent Exhibit 5.*
 - b) The base rate for land value on Petitioners' lots and the Bell's lots is the same. The frontage of the lots differs. The Bell's two lots together have an assessed value of \$28,500. *Raskowski testimony; Respondent Exhibits 2, 5.*
 - b) The current assessment is correct for subject property with an improvement. *Raskowski testimony.*

Record

12. 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 1011,
- c) Exhibits:
 - Petitioner Exhibit 1 – Form 139L with a summary of arguments,
 - Petitioner Exhibit 2 – Notice of assessment,
 - Petitioner Exhibit 3 – Notice of Final Assessment,
 - Petitioner Exhibit 4 – Subject property record card,
 - Petitioner Exhibit 5 – Assessment comparison,
 - Petitioner Exhibit 6 – Plat with the subject property and comparable properties highlighted,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – The subject property record card,
 - Respondent Exhibit 3 – A photograph of the subject property,
 - Respondent Exhibit 4 – Aerial and plat maps depicting the subject property and a neighboring property,
 - Respondent Exhibit 5 – Property record cards for neighboring properties,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign in Sheet,
- d) These Findings and Conclusions.

Analysis

13. 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 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.

14. Petitioners did not provide sufficient evidence to support their contentions because:
- a) Although Petitioners offered properties as comparables, Petitioners failed to establish that those properties are truly comparable.
 - b) Other than to testify that the Bell property is "practically identical" to their own, Petitioners did not offer evidence showing how or why the properties are comparable. Therefore, the Petitioners' evidence lacks probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
 - c) In fact, the Bell property is comprised of one improved and one vacant lot which is not comparable to Petitioner' lots, because both of Petitioners' lots contain improvements.
 - d) Furthermore, Petitioners claim that the Bell's land was combined into one parcel that is assessed for only \$17,800, but the property record cards prove otherwise. Although Petitioners testified that the Bell parcels were combined into one parcel, their evidence does not establish when that action occurred. It is possible that those parcels were combined subsequent to March 1, 2002. Therefore, a combined Bell parcel is not reflected in the 2002 reassessment. At least for the 2002 reassessment, the Bell's land was assessed as two parcels and the value upon which the Petitioners rely is only for one of those parcels. *Respondent Exhibit 5*.
 - e) The evidence establishes that the Bell's have a total of .272 acres that is assessed for \$28,500. The Petitioners have a total of .239 acres that is assessed for \$27,500. Such a comparison supports the current assessment, not a change.

Conclusion

15. Petitioner did not make a prima facie. The Board finds in favor of 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>>.