

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00347
Petitioners: Wade & Donna Weber
Respondent: Department of Local Government Finance
Parcel #: 006271702270001
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 Section 6-1.1-4-33 was held in Lake County, Indiana. The Department of Local Government Finance (the “DLGF”) determined that the Petitioners’ property tax assessment for the subject property was \$36,300 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 18, 2004, at 2:03 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is a vacant lot located at 1338 South Wabash, Hobart, Hobart Township in Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. The DLGF determined that the assessed value of the subject property is \$36,300.

8. The Petitioners requested that the land be valued at \$14,000.
9. The following persons were present and sworn in at the hearing:

For the Petitioners: Donna Weber, Owner

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF

Issues

10. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The assessed value is overstated in comparison with properties located in the surrounding area. Five (5) comparable lots within the same neighborhood as the subject property have assessed values that are lower than the assessed value of the subject property. *Petitioner Ex. 2; Weber testimony.* Additionally, other vacant lots in the area that are superior to the subject sold for between \$8,000 and \$30,000 from 2001 to 2003. Those lots have city utilities and they sold for less than the assessed value. *Petitioner Ex. 3; Weber testimony.*
 - b. The subject land is undeveloped and unbuildable. It slopes and floods in the spring. *Weber testimony; Petitioner Ex. 4.*
11. Summary of Respondent's contentions in support of assessment:
 - c. The subject land is valued as an unimproved residential lot based on the 1999 market. *Respondent Exhibit 2.*

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 Co. #665.
 - c. The following exhibits were presented:

Petitioner Exhibit 1:	A copy of the first page of the Form 139L petition.
Petitioner Exhibit 2:	A copy of five (5) comparable Lake County property profiles for Arthur Knight, Michael Camarena (2), Daniel Horn and Michael Brazil and aerial map.
Petitioner Exhibit 3:	A street map of the subject area and real estate

	agent detail reports for five (5) comparable properties.
Petitioner Exhibit 4:	Five (5) photographs of the subject property.
Respondent Exhibit 1:	A copy of the Form 139L petition.
Respondent Exhibit 2:	A copy of Wade Weber's 2002 property record card.
Board Exhibit A:	Form 139L petition, dated April 23, 2004
Board Exhibit B:	Notice of Hearing on Petition, dated October 18, 2004
Board Exhibit C:	Hearing 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 E. & W. 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 Am. United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 281 (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 Petitioners did provide sufficient evidence to support an error in the assessment. This conclusion was arrived at because:
- a. The Petitioners claimed that the assessment is overstated because the subject lot is undeveloped. *Weber testimony*. Petitioner, Donna Weber, testified that the subject property has not been developed for a well or septic system. *Weber testimony*. The Respondent conceded that those factors might be considered in

determining whether a lot is developed, but pointed out that the subject lot contains a driveway.

- b. The Board finds that subject lot is not fully developed and that the Petitioners therefore are entitled to a negative influence factor to account for the effect of such lack of development on the market value-in-use of the subject lot.
- c. The Respondent conceded that it would not be unreasonable to apply a negative influence factor of 20% to an undeveloped lot. *McKinney testimony*.
- d. The Petitioners argued that the value should be reduced further because the land slopes, is subject to flooding, and is not suitable for building. The Petitioners, however, did not provide any evidence from which to quantify the effects of the slope and flooding on the market value-in-use of the subject land.
- e. The Petitioners also submitted information concerning the assessed values of three vacant lots and two lots with improvements that they claimed are comparable to the subject lot. The vacant lots are assessed for \$29,800, \$28,300, \$27,000, respectively. The lots with improvements are assessed at \$44,400 and \$33,100, respectively. *Weber testimony; Petitioner Ex. 2*.
- f. When a taxpayer alleges that purportedly comparable lots have been assessed differently than the subject lot, the taxpayer must provide specific reasons why the properties are comparable in order for such a comparison to qualify as probative evidence. *Blackbird Farms Apartments, LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Here, Donna Weber simply testified that the lots in question are similar to the subject lot. This is nothing more than a conclusory statement. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). It is also worth noting that, with the application of a 20% negative influence factor, the assessed value of the subject lot will closely approximate the values of the purportedly comparable lots identified by the Petitioners.
- g. The Petitioners also submitted sales data for three (3) vacant lots sold between 2001 and 2003. Once again, the Petitioners did not provide sufficient information to establish that the lots in question are comparable to the subject lot. While Ms. Weber asserted that the lots in question have utilities, she did not describe how they compare to the subject lot in terms of shape, geographical features or topography. *See Blackbird Farms*, 765 N.E.2d at 715. Moreover, the sales of the purportedly comparables lots occurred substantially after the valuation date of January 1, 1999, applicable to the 2002 general reassessment. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 4* (incorporated by reference at 50 IAC 2.3-1-2); *see also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Those sale prices lack probative value absent some explanation

regarding how they relate to January 1, 1999, values. *See Long*, 466 N.E.2d at 471 (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).

- h. Based on the foregoing, the Board finds that the Petitioners established, by a preponderance of the evidence, that the subject lot is entitled to receive a 20% influence factor for being undeveloped. The Board further finds that the Petitioners failed to establish a prima facie case for any further reduction in assessment.

Conclusion

- 15. The Petitioners established by a preponderance of the evidence that the subject lot is entitled to receive a negative 20% influence factor for being undeveloped. The Board finds in favor of the Petitioners in that regard. The Board further finds that the Petitioners failed to establish a prima facie case for any further reduction in assessment.

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>.