

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01621
Parcel #: 007-26-35-0328-0020
Petition #: 45-026-02-1-5-01431
Parcel #: 007-26-35-0328-0018
Petition #: 45-026-02-1-5-01634
Parcel #: 007-26-35-0328-0022
Petition #: 45-026-02-1-5-01635
Parcel #: 007-26-35-0328-0019
Petition #: 45-026-02-1-5-01636
Parcel #: 007-26-35-0328-0021
Petition #: 45-026-02-1-5-01637
Parcel #: 007-26-35-0328-0023
Petitioner: Todd Pers
Respondent: Department of Local Government Finance
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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment was \$8,800 for parcel # 007-26-35-0328-0018, \$8,800 for parcel # 007-26-35-0328-0019, \$8,800 for parcel # 007-26-35-0328-0020, \$8,800 for parcel # 007-26-35-0328-0022, \$38,500 for parcel # 007-26-35-0328-0021, and \$45,100 for parcel # 007-26-35-0328-0023; and notified the Petitioner.
2. The Petitioner filed a Form 139L for each parcel on August 6, 2004.
3. The Board issued a notice of hearing for each parcel to the parties on June 13, 2005.
4. Special Master Peter Salvesson held a hearing on July 14, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 4343 Baltimore Ave., 4339 Baltimore Ave., 4347 Baltimore Ave., 4341 Baltimore Ave., 739 Huehn Street, and 737 Huehn Street in Hammond. The location is in North Township.

6. The subject properties are residential lots each consisting of 0.077 acres of land. The subject properties also include two single-family homes.
7. The Special Master did not conduct an on-site visit of the properties.
8. Assessed value of each parcel as determined by the DLGF:

Parcel # 007-26-35-0328-0020			
Land \$ 8,800	Improvements \$	0	Total \$ 8,800
Parcel # 007-26-35-0328-0018			
Land \$ 8,800	Improvements \$	0	Total \$ 8,800
Parcel # 007-26-35-0328-0022			
Land \$ 8,800	Improvements \$	0	Total \$ 8,800
Parcel # 007-26-35-0328-0019			
Land \$ 8,800	Improvements \$	0	Total \$ 8,800
Parcel # 007-26-35-0328-0021			
Land \$11,000	Improvements \$	27,500	Total \$ 38,500
Parcel # 007-26-35-0328-0023			
Land \$11,000	Improvements \$	34,100	Total \$ 45,100

9. The Petitioner requested a total assessed value of \$68,000 for all parcels.
10. Persons sworn in as witnesses at the hearing:
 Todd Pers, Owner,
 Emily Pers, Mother of Owner,
 Everett Davis, Assessor/Auditor, DLGF.

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the subject properties are in close proximity to commercial properties. The Petitioner testified that these commercial properties are the source of a lot of noise. *Pers testimony; Petitioner Exhibit 1.*
 - b. The Petitioner contends that two vacant residential lots were sold for \$2,500 within the last 5 to 10 years. *Pers testimony.*
 - c. The Petitioner presented an appraisal for the six parcels and both dwellings. This appraisal was prepared by a licensed appraiser and indicates a value of \$68,000. *Pers testimony; Respondent Exhibit 4.*
 - d. The Petitioner contends that the whole property would have to be sold as one unit, with the exception of the northernmost two lots. *Pers testimony.*

- e. The Petitioner requested that the total assessed value of all six parcels be changed to \$68,000. *Id.*
12. Summary of Respondent’s contentions regarding assessment:
- a. The Respondent noted that the appraisal presented by the Petitioner states that it only covers three of the six subject properties. *Davis testimony.*
 - b. The Respondent noted that the Petitioner testified that both dwellings are currently occupied. *Davis testimony; Pers testimony.*
 - c. The Respondent recommended a 21% adjustment to the land value of the three lots ending in 21, 22, and 23. This adjustment would reflect the current use of the three lots for two dwellings. No changes are recommended to the land value of the other three lots. *Davis testimony; Respondent Exhibit 5.*
 - d. Based on the evidence presented by the Petitioner, the Respondent recommended that condition of the dwelling located at 739 Huehn be changed to “poor”. No change was recommended to the other dwelling. *Davis testimony.*

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 1910,
 - c. Exhibits:
 - For all parcels:
 - Petitioner Exhibit 1: Form 139L Petition,¹
 - Petitioner Exhibit 2: Photos of 739 Huehn,
 - Petitioner Exhibit 3: Photos of two lots sold,
 - Petitioner Exhibit 4: Appraisal of subject properties,
 - Petitioner Exhibit 5: Summary and sketch of property,
 - For all parcels:
 - Respondent Exhibit 1: Subject property record card,
 - For parcels 007-26-35-0328-0021 and 007-26-35-0328-0023
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Top 20 Comparable Sales Sheet,
 - Respondent Exhibit 4: Comparable property record cards and photos,
 - For Parcel 007-26-35-0328-0021
 - Respondent Exhibit 5: Land adjustment worksheet,
 - Respondent Exhibit 6: Plat/Aerial maps,
 - Respondent Exhibit 7: Residential Neighborhood Valuation Form,

¹ The Petitioner submitted an exhibit cover sheet listing five exhibits. Only Exhibit 5 was submitted at the hearing. Exhibits 2-3 were presented and discussed at the hearing but not submitted to the hearing officer. The Board was in possession of the Form 139L petitions and the appraisal prior to the hearing and these were not resubmitted by the Petitioner.

For all parcels:

- Board Exhibit A: Form 139L Petition,
- Board Exhibit B: Notice of Hearing,
- Board Exhibit C: Hearing Sign-In Sheet,

d. These Findings and Conclusions.

Analysis

14. 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.

15. The Petitioner did not provide sufficient testimony to support the Petitioner’s contentions except on the issue of condition. The Respondent agreed with the Petitioner on that issue and was not required to rebut the Petitioner’s evidence on the other issues. This conclusion was arrived at because:
 - a. The Petitioner testified that two residential lots located across from the subject properties sold for \$2,500 but was not certain as to the date of sale except that it had occurred five to ten years ago.
 - b. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
 - c. The Petitioner did not provide any support documentation for the sale. The Petitioner also failed to provide any documentation showing comparability to the subject properties or how a sale that occurred five or ten years ago relates to the valuation date of January 1, 1999.
 - d. The Petitioner contends that the subject properties are affected by the commercial businesses in the vicinity but did not show how the values of the subject properties were affected. In addition, the Petitioner did not show that the proximity of commercial properties is not reflected in the current assessment. The petitioner must

- submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
- e. The Petitioner contends that the six parcels should be valued at the appraised value of \$68,000. The Petitioner testified that the appraisal was for all the parcels. The appraisal presented by the Petitioner clearly showed that the value indicated in the appraisal was for only three of the six lots. This contradicted the Petitioner’s testimony that the appraisal was for all six lots. *Pers testimony; Petitioner Exhibit 4.*
 - f. The appraisal presented by the Petitioner did not show sufficient adjustments for lot sizes. Also, the appraiser made a negative adjustment to the comparables because the property appraised included a second residence that the appraiser considered to be unmarketable. This is contrary to all rational thought, because the property is habitable according to the Petitioner’s testimony and therefore does have some value. *Petitioner Exhibit 4.*
 - g. Based on the information presented by the Petitioner, the Respondent recommended that the condition of the dwelling located at 739 Huehn be changed to “poor”. The appraisal presented by the Petitioner showed that the condition of this property was “fair to poor” and that the appraiser considered it to be unmarketable. Because the appraiser inspected the property, and because the Petitioner stated that the appraisal properly considered the condition of the property, the condition of the dwelling should be changed to “poor”. *Pers testimony, Davis testimony; Petitioner Exhibit 4.*
 - h. The Respondent recommended that a positive adjustment of 21% be applied to the land value of three parcels. This was based on reconfiguring the properties so that the effective front footage was on Huehn Street; this would increase the front footage and decrease the depth. The Respondent then calculated the value as if there were two lots rather than three. This calculation has no probative value. The lots are not legally combined and the dimensions are given as 25’ x 135’ for each lot. The Respondent’s claim that they should be considered as two lots, each 67.50’ x 75’ has no validity. *Davis testimony; Respondent Exhibit 5.*
 - i. The Petitioner did show that the current condition of 739 Huehn was incorrect. The Respondent agreed that the condition should be changed to poor.

Conclusion

16. The Petitioner did establish a prima facie case on condition. The Board finds in favor of the Petitioner on that issue only.

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>.