

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01688
Petitioner: James J. Buckley
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0103-0017
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Department of Local Government Finance (the DLGF) determined the assessed value for the subject property is \$99,200 and notified Petitioner on November 14, 2003.
2. Petitioner filed a Form 139L on August 4, 2004.
3. The Board issued a notice of hearing to the parties dated July 5, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on September 6, 2005.

Facts

5. The subject property is located at 1541 Ohio Avenue in Whiting, Indiana.
6. The subject property is a single-family dwelling.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is:
land \$26,100 improvements \$73,100 total \$99,200.
9. The assessed value requested by Petitioner is:
land \$20,100 improvements \$73,100 total \$93,200.
10. The following persons were present and sworn as witnesses at the hearing:
James J. Buckley, owner,
Phillip E. Raskosky, assessor/auditor.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The subject property is burdened by high taxes due to excessive tax rates in Whiting. The high tax rates are partially due to the expense of the Lake County assessment, one of the most expensive reassessments ever, and the failure of companies such as BP Amoco to pay their assessments as ordered by an Indiana Supreme Court ruling. *Buckley testimony; Petitioner Exhibits 25, 27.*
 - b) The tax statements and property maintenance reports for assessment years 1989 to 1990 and 1998 to 2004 show dramatic increases in the assessment values from \$2,400 in 1989 to \$99,200 in 2002. *Buckley testimony; Petitioner Exhibits 4-12, 17-24.* Petitioner paid no taxes until after the 2002 reassessment. At that time, the annual taxes rose to \$1,918.42. *Petitioner Exhibit 8.*
 - c) The assessment of the dwelling is not at issue in this appeal. Although some neighborhoods in Whiting are prime property because of their close proximity to the beaches on Lake Michigan, there are approximately eighteen sets of railroad tracks between Petitioner's property and Lake Michigan. *Buckley testimony.* The subject property is negatively affected by numerous train tracks, noise from nearly eight hundred train whistles per day, pollution and the risk of explosion. These factors should impact the assessment of the land by at least twenty-five percent. *Buckley testimony; Petitioner Exhibit 26; Board Exhibit A.*
 - d) One comparable property identified by Respondent is located on Oliver Street in the most expensive neighborhood in Whiting. The location of this purportedly comparable property is superior to Petitioner's location on Ohio Avenue. *Buckley testimony.*
 - e) Petitioner's concern is with the tax rates and the taxes. These are out of line with the rest of the state and need to be reduced. *Buckley testimony; Petitioner Exhibit 27.*
 - f) A realtor estimated that the subject property would probably sell for \$115,000, but Petitioner would accept \$100,000 for it. *Buckley testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Comparable sales in the same neighborhood range from \$54.10 to \$90.24 per square foot. Petitioner's assessment falls in the middle at \$76.78 per square foot. This fact supports the assessment as fair. Similarly, sale prices of the comparable properties range from \$83,000 to \$126,000, with the subject being assessed at \$99,200. *Raskosky testimony; Respondent Exhibit 3.* Respondent submitted photographs and property record cards of these four similar properties, as well as a map of Whiting showing their location. *Respondent Exhibits 4, 5.*

- b) The issue in this appeal appears to be the taxes and the tax rates, and not necessarily the assessment itself. On his petition, Petitioner estimated the “asking price” of the property would be \$100,000, which is more than the current assessment. *Raskosky testimony*.

Record

- 13. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 - Notice of hearing on petition,
Petitioner Exhibit 2 - Certificate of Eligibility Disabled Veteran Tax Deduction,
Petitioner Exhibit 3 - Notice of Assessment for 2002 dated November 14, 2003,
Petitioner Exhibit 4 - Notice of Assessment for 1989 dated January 19, 1990,
Petitioner Exhibit 5 - 1999 pay 2000 Real Property Maintenance Report,
Petitioner Exhibit 6 - 2000 pay 2001 Real Property Maintenance Report,
Petitioner Exhibit 7 - 2001 pay 2002 Real Property Maintenance Report,
Petitioner Exhibit 8 - 2002 pay 2003 Real Property Maintenance Report,
Petitioner Exhibit 9 - 2003 pay 2004 Real Property Maintenance Report,
Petitioner Exhibit 10 - The 2003 pay 2004 annual tax statement,
Petitioner Exhibit 11 - Installment A of the 2003 pay 2004 tax statement,
Petitioner Exhibit 12 - Installment B of the 2003 pay 2004 tax statement,
Petitioner Exhibit 13 - Order to Verify Participation in Informal Hearing,
Petitioner Exhibit 14 - Reconciliation Tax Bill due July 12, 2004,
Petitioner Exhibit 15 - Certificate of Eligibility Disabled Veteran Tax Deduction,
Petitioner Exhibit 16 - Subject property record card (page 1 only),
Petitioner Exhibit 17 - Computer generated 2003 Real Property Maintenance Report,
Petitioner Exhibit 18 - Tax statements payable in 1999,
Petitioner Exhibit 19 - Tax statements payable in 1990,
Petitioner Exhibit 20 - 1989 Tax Summary showing exemption,
Petitioner Exhibit 21 - Computer printout of 2002 Real Property Maintenance Report,
Petitioner Exhibit 22 - Computer printout of 2002 Real Property Maintenance Report showing ownership,
Petitioner Exhibit 23 - Computer printout of 2002 Real Property Maintenance Report showing assessment values and deductions,
Petitioner Exhibit 24 - Computer printout of 2001 Real Property Maintenance Report showing the tax rate,
Petitioner Exhibit 25 - Newspaper articles titled, “Treasurer Believes Tax Relief on Way” and “Appeals Court Orders Audit of BP’s Whiting Refinery,”
Petitioner Exhibit 26 - Newspaper article titled, “Whiting Just Wants a Little Quiet,”
Petitioner Exhibit 27 - Newspaper article titled, “Verdict in County, Andersen Trial Could Take Months” and a copy of the Lake County tax rates,

Respondent Exhibit 1 - Subject property record card,
Respondent Exhibit 2 - Photograph of the subject property,
Respondent Exhibit 3 - List of "Top 20 Comparables and Statistics,"
Respondent Exhibit 4 - The property record cards and photographs of the properties
identified as the most comparable to the subject property,
Respondent Exhibit 5 - Street map of the subject neighborhood,
Board Exhibit A - Form 139L,
Board Exhibit B - Notices of Hearing,
Board Exhibit C - Sign-in sheet for the hearing,

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. Petitioner did not make a prima facie case. This conclusion was arrived at because:

- a) The Board is a creature of the legislature and has only the powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E. 2d 904, 908 (Ind. Tax Ct. 2002), *citing Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999).
- b) By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over matters involving local tax rates.

- c) Each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, what the assessment or the taxes were for this property in prior years has no relevance or probative value in determining the 2002 assessment.
- d) An influence factor is a multiplier applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2).
- e) A negative influence factor may be applied to account for extraneous noise or other such nuisances not characteristic of the neighborhood base lot, which represents the typical and average characteristics of lots in the neighborhood for the purpose of making pricing adjustments. GUIDELINES, ch. 2 at 9, 63.
- f) An influence factor is used to account for deviations from the norm. It is expressed as a percentage that represents the composite effect of the factor that influences the value. To prevail on the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001); *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).
- g) Petitioner testified that the land assessment is excessive because of noise from trains, pollution, and the risk of explosion. Petitioner submitted a newspaper article to support his testimony that train noise is a problem in the Whiting community and that the city is trying to designate some areas as quiet zones due to the number of train whistles. Petitioner presented no probative evidence regarding pollution or the risk of explosion. Petitioner did not establish the train noise reduced the value of his property more than other property in the neighborhood. Further, Petitioner did not quantify any loss of value resulting from the noise. For example, Petitioner presented no market evidence such as an appraisal or sales data of comparable properties in support of the claimed twenty-five percent reduction. Petitioner's conclusory statements do not constitute probative evidence. *Talesnick*, 756 N.E.2d at 1108; *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Petitioner did not make a prima facie case for a negative influence factor.
- h) Petitioner testified that a realtor told him that the property would probably sell for \$115,000. Petitioner also testified that he would be likely to accept \$100,000 for the property, the same amount identified by Petitioner as the "asking price" on his Form 139L Petition. Petitioner's own evidence therefore supports the current assessment of \$99,200.

16. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

17. Petitioner failed to make a prima facie case. 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>>. 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 days of the date of this notice.