

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00339
Petitioners: Nick & Martha Jean Thomas
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0604-0001
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 April 2004 in Lake County. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$56,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L on April 29, 2004.
3. The Board issued a notice of the hearing to the parties dated June 2, 2005.
4. Special Master Kathy J. Clark held a hearing at 1:15 P.M. on July 6, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 75 East 73rd Avenue¹, Merrillville. The location is in Ross Township.
6. The subject property consists of a single-story, commercial building.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$31,100 Improvements \$25,800 Total \$56,900.

¹ The petition shows 65 E. 73rd Avenue; the property record card and Final Determination show 75 E. 73rd Avenue.

9. Assessed value of the subject property as requested by the Petitioners:
Land \$10,000 Improvements \$25,800 Total \$35,800.
10. Persons sworn as witnesses at the hearing:
Nick Thomas, Owner,
Lori Harmon, Assistant Director of Assessment, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The subject property was originally assessed incorrectly at 14,723 square feet; the Petitioners recognize that that issue has since been corrected to reflect the true lot size of 11,415 square feet. Lot size is no longer an issue. *Petitioner Exhibit 1; Respondent Exhibit 1; Thomas testimony.*
 - b. The square foot base land rate is too high as compared to Able Paper's property and a residence across the street from the subject. The Petitioners have been told that because Able Paper's property is larger in size than the subject its base square foot rate is reduced to account for market pricing. The Petitioners contend that this system is unfair. Able Paper utilizes all but a small section of their land for their business while, due to easements, the Petitioners are unable to utilize that same percentage of the subject property. This fact would make the Able Paper land more valuable than the subject. *Thomas testimony.*
 - c. Due to new set-back requirements from the City of Merrillville, if the subject building burnt down only 7,268 square feet would be permitted to be utilized for rebuilding. *Petitioner Exhibit 4; Thomas testimony.*
 - d. A 20% land influence discount for size and shape is not sufficient consideration for a lot that is a right triangle. *Petitioner Exhibit 3; Respondent Exhibit 1; Thomas testimony.*
 - e. A property owned by Walter F. Jr. and Rosemary Cook, located at 7175 Broadway, is being assessed for 36,372 square feet of land, which represents a larger lot reduced in size to account for both a highway easement and a utility easement. The lot is actually around 80,000 square feet in size. *Petitioner Exhibit 2.* Their land is then further reduced by 50% for "restrictions" noted as easements on their property record card. The assessed value of the Cook land includes two different deductions for the same thing. *Id; Thomas testimony.*
 - f. The subject land would be more fairly assessed if the current 20% land influence factor was increased to 50% to match the Cook property. *Petitioner Exhibits 1 and 2; Thomas testimony.*
 - g. Assessing land is not an exact science. Land in the Merrillville area has been routinely over-assessed. An example would be another property the Petitioners know of that was originally assessed at \$880,000 and, after two meetings with assessing officials, was reduced to \$169,000. This is a clear example of errors made in the assessment of land in the area. *Thomas testimony.*

12. Summary of the Respondent's contentions in support of the assessment:
- a. The assessing officials have noted the triangular shape of the subject parcel and have given a 20% discount to account for this fact. *Respondent Exhibits 1 and 4; Harmon testimony.*
 - b. Certain mathematical equations were used in Lake County to adjust the base land rate used within a neighborhood to account for land that is either larger or smaller than the one acre size that is considered "standard". This approach is based upon the premise that certain construction costs that are incurred when developing raw land, grading, installing utilities, road cuts, etc., are the same whether the land size is 10,000 square feet or 20,000 square feet. Because these somewhat fixed costs are assessed as part of the developed land value they have a greater impact on a small lot's improved land value than on a larger lot's land value. The result is a higher base rate for properties containing less than one acre and a lower base rate for properties containing more than one acre. *Respondent Exhibit 3; Harmon testimony.*
 - c. The issue at hand is the value of the land. A uniform, systematic approach was used to consider lot sizes, rates, negative influences, etc. The subject property has been fairly assessed. *Harmon testimony.*
 - d. The Petitioners' example, the Cook property, has an assessed land value of \$109,900. The subject has an assessed land value of \$31,100. The properties are not similar in size, and, because they are located in different neighborhoods, are not similarly situated. Other factors used to consider comparability are not in evidence. The Cook property is not relative in comparison. *Petitioner Exhibit 2; Respondent Exhibit 1; Harmon testimony.*
 - e. The Petitioners have not shown that any further restrictions exist on the subject lot. Even if Merrillville's new set-back requirements would ever need to be considered, it would not restrict the Petitioners from building parking lots and other support functions on the rest of the land. The Petitioners have not submitted any evidence that the \$31,100 assessed land value being appealed is not appropriate. *Harmon 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 1599,
 - c. Exhibits:
 - Petitioner Exhibit 1: Subject property record card prior to informal hearing,
 - Petitioner Exhibit 2: Neighbor's property record card,
 - Petitioner Exhibit 3: Plat map,
 - Petitioner Exhibit 4: Plat map,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Incremental/Decremental land summary,
 - Respondent Exhibit 4: Plat map,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Hearing Notice,

- 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, by preponderance of the evidence, 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 at 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 Petitioners failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The original issue of an error in the square footage of the subject parcel was resolved as a result of the informal hearing. The current land assessment is for 11,415 square feet. *Harmon testimony*. The Petitioners agreed that was the correct land area. *Thomas testimony*.
 - b. The Petitioners contend that the negative 20% influence factor is insufficient to account for the shape of the parcel and the easements and setback requirements.
 - c. The Petitioners stated that the utility of the land would be greatly reduced by the new setback requirements for the Town of Merrillville, but failed to introduce those requirements or quantify the alleged loss in value. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).
 - d. The Petitioners contend that the subject property should have a 50% reduction, the same as applied to a neighboring property at 7175 Broadway. The neighboring property is in a different neighborhood and is considerably larger than the subject property. The Petitioners failed to show that the Broadway property is in anyway comparable to the subject. If comparability is not established, the Board can not determine in what way the 50% land influence factor applied to that property relates to the 20% land influence factor currently assessed on the subject property. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- e. The Petitioners offered no probative evidence that Able Paper's property, "a residence across the street from the subject", or a property whose assessed value the Petitioners claim was reduced from \$880,000 to \$169,000 are comparable in any way to the subject property. *Id.*
- f. The Petitioners failed to establish that the current assessment is incorrect or substantiate their requested land value of \$10,000.
- g. Where the Petitioner has not supported the 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 Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners' failed to establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the current 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.