

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-028-02-1-5-00459
45-028-02-1-5-00460
Petitioner: Sharyn Parpart
Respondent: The Department of Local Government Finance
Parcels #: 008-08-15-0072-0015
008-08-15-0072-0014
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 not held due to lack of notice to the Petitioner. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$17,600 and \$93,600 respectively.
2. The Petitioner filed Form 139L petitions on July 9, 2004.
3. The Board issued a notice of hearing to the parties dated May 20, 2005.
4. Special Master Kathy J. Clark held a joint hearing at 1:00 P. M. on June 22, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are both located at 6150 Virginia Street, Merrillville. The location is in Ross Township.
6. The subject properties consist of two residential lots and a one-story, frame, single-family dwelling with a detached garage.
7. The Special Master did not conduct an on-site visit of the properties.
8. Assessed values of subject properties as determined by the DLGF:
Parcel #008-08-15-0072-0015:
Land \$17,600

Parcel #008-08-15-0072-0014:

Land \$19,100 Improvements \$74,500 Total \$93,600.

9. The Petitioner did not request specific values for the properties.
10. Persons sworn in as witnesses at the hearing:
Robert D. Parpart II, Petitioner's son,
Joseph Lukomski, Jr, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessments:
 - a. Prior to 1993, Turkey Creek, located immediately south of the subject properties, flooded so severely at least every two years that the basement flooded and the land behind the house was under water. *Petitioner Exhibits 2, 5, 6; Parpart testimony.*
 - b. Due to the severe damage caused by the flooding, the dwelling was jacked up, all four basement walls were replaced, the walk-out basement was eliminated, and a standpipe was installed in the basement. The rear patio has also been eliminated but the damage to the garage floor still has not been corrected. *Petitioner Exhibits 5 and 6, pgs 2 - 5; Parpart testimony.*
 - c. The Petitioner added fill to some areas of the back and side yards in 1993 but could not afford to build up the entire rear and side yards. There is now a 3' slope from the house into the back yard. Though this slope helps prevent most of the flooding, it renders most of the backyard unusable for recreation or leisure purposes and the rest is still swampy. *Petitioner Exhibit 6, pgs 8 - 19; Parpart testimony.*
 - d. The county placed 10' standpipes at the edge of the subject property to try to control the flooding from Turkey Creek but during hard rains there is still 3 to 4 feet of standing water in the standpipe in the subject dwelling's basement. *Petitioner Exhibit 6, pgs 1 - 3; Parpart testimony.*
 - e. Lots 9 through 18 in Block 2 of the subdivision and lots 15 through 18 in Block 1 are unbuildable and considered to be in the flood plain of Turkey Creek. The road shown on Petitioner Exhibit 2 and marked 62nd Avenue does not exist and never did. Virginia Street, which is where the subject properties are located, actually ends in front of the subject's garage. A fire hydrant was placed in front of the original driveway. *Petitioner Exhibit 2, 6, pgs 6 - 7; Parpart testimony.*
 - f. Due to the swampy ground at the western and southern boundaries of the properties, the three foot lower land level (as compared to the immediate neighbor to the north), and the slope leading to Turkey Creek at the western property line, only 56% of the total subject land is usable. The assessments are too high because of these factors. *Petitioner Exhibits 2, 4, 6; Parpart testimony.*
 - g. Homes built by the same builder that are identical in style to the subject have assessments that are lower than the subject. *Petitioner Exhibit 3; Parpart testimony.*
12. Summary of Respondent's contentions:
 - a. The Respondent testified that a 14% deduction should be applied to the land of both subject parcels to account for excess frontage; it is designated by a code 3. This

would reduce the land value of parcel #0014 from \$19,100 to \$16,500. Parcel #0015 would change from \$17,600 to \$14,500. Parcel #0015 already has the standard 20% deduction for vacancy which is designated by a code 7. *Respondent Exhibit 8; Lukomski testimony.*

- b. No consideration has been given for flooding or topography. *Lukomski testimony.*
- c. With the excess frontage adjustments applied to the subject assessments, the per square foot value of the two parcels would be \$101.44. *Respondent Exhibit 3.* A report of sales from within the subject's neighborhood shows the two comparables have per square foot values of \$82.65 and \$86.01. *Respondent Exhibits 3-5; Lukomski 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 1562,
 - c. Exhibits:
 - Petitioner Exhibit 1: Hearing Notice giving Power of Attorney to Mr. Parpart,
 - Petitioner Exhibit 2: Aerial photograph of surrounding area showing plat, subject's proximity to flooding creek, and the high number of vacant lots due to flooding,
 - Petitioner Exhibit 3: Property information printed from county website listing house and similar houses on same block,
 - Petitioner Exhibit 4: Hand drawn plat of lots in question showing actual vs. usable land,
 - Petitioner Exhibit 5: Photographs of past flood,
 - Petitioner Exhibit 6: Photographs of changes to house due to flooding and lack of usable land,
 - Petitioner Exhibit 7: Summary of Petitioner's issues,
For 45-028-02-1-5-00459:
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject property record with proposed changes,
For 45-028-02-1-5-00460:
 - Respondent Exhibit 1: Subject record card,
 - Respondent Exhibit 2: Photograph of parcel #0014,
 - Respondent Exhibit 3: Top twenty comparable sales,
 - Respondent Exhibit 4: Sales in Ross Township neighborhood #3429,
 - Respondent Exhibit 5: Comparable property record cards and photographs,
 - Respondent Exhibit 6: Aerial map,
 - Respondent Exhibit 7: Residential neighborhood valuation form,
 - Respondent Exhibit 8: Subject property record card with proposed changes,
 - Board Exhibit A: Form 139L,
 - 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 provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. The Petitioner contends that the subject property would sell for considerably less than the other three houses on the block due to various problems, such as the low-lying land, flooding, lack of a walk-out basement and damage to the garage.
 - b. The Petitioner presented evidence that shows a long term history of flooding on and around the subject property, the actions taken by both the Petitioner and the municipal body responsible for flood control to try to alleviate the problem, and the existing negative influences and partial loss of use that remain. *Petitioner Exhibits 2, 4 – 7; Parpart testimony.*
 - c. The Petitioner presented evidence that the basement had to be reconstructed, which changed it from a walk-out basement. The slope of the back portion of the lot limits its use for recreation and leisure and there is less usable area because of the swampy nature of the land. *Id.*
 - d. The Petitioner also presented photographs of the subject lot and the neighboring property to illustrate the differences in the topography and in how the properties are utilized. The Petitioner presented a sketch of the subject properties alleging that only 56% of the land was actually usable. This same exhibit indicates that although the lots are 126 feet deep, they are actually only 96 feet deep because of the swampy area. *Petitioner Exhibit 4 and 6.*
 - e. When the township assessor establishes base rates for a neighborhood, the assessor establishes rates for a base lot. The calculated value of this base entity becomes the standard to which all remaining lots within the neighborhood are compared. Often there are conditions peculiar to specific lots within a neighborhood that must be analyzed on an individual basis. These conditions require the assessor to make an adjustment to the value of the lot. This adjustment is an influence factor. REAL

PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch.2 at 58 (incorporated by reference at 50 IAC 2.3-1-2).

- f. An influence factor may be applied for topography, which is a decrease based on adverse topographical features. GUIDELINES, ch.2 at 64.
- g. A taxpayer who seeks a negative influence factor must submit probative evidence that (1) identifies the property's deviation from the norm and (2) quantifies the effect of that deviation on the property's value. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- h. The Land Order may have accounted for the topography of the area, but that does not mean that the extra burden the Petitioner alleges was accounted for in valuing the Petitioner's land. The question to be addressed is whether the Petitioner's land is affected to such an extent that a negative influence factor is warranted.
- i. The Petitioner established that the property is negatively impacted by the proximity of Turkey Creek. While some of the problems occurred in the past, sections of the land are still affected. The Petitioner calculated the percentage of usable land. The Petitioner made a prima facie case. 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.*, 803 N.E.2d at 276.
- j. The Respondent testified that a 14% deduction should be applied to the land of both subject parcels to account for excess frontage; the vacant parcel currently has a 20% influence factor for vacancy. The Respondent stated that no consideration had been given for flooding or topography.
- k. The Respondent offered no rebuttal to the Petitioner's evidence of swampy areas and flooding that appear to have a far more negative influence on the subject property than on its neighbors. The Respondent also did not offer any contradiction in regards to the Petitioner's determination of the percentage of usable land versus unusable land. *American United Life Ins. Co.*, 803 N.E.2d 276.

Conclusion

- 16. The Petitioner established a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds for the Petitioner and determines the following:
 - a. The land on both parcels should be reduced by the 14% offered by the Respondent to account for excess frontage.
 - b. The Petitioner's determination that only 56% of the land is usable was not contested by the Respondent. Both parcels should be further reduced by 44% to account for the undesirable topography.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments 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>.