

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00419
Petitioners: Tim & Lorrie McNabney
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0162-0071
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 on January 13, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment is \$3,000. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 26, 2004.
2. The Petitioners filed the Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated February 25, 2005.
4. A hearing was held on March 30, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is located at 712 Wellington Street, Dyer, in St. John Township, Lake County.
6. The subject property is an easement adjacent to residential land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$3,000 for the land. There are no improvements on the property.
9. The Petitioners requested an assessed value of \$0.
10. Lorrie McNabney, one of the property owners, and Stephen Yohler, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend that a piece of property that was an easement on their residence lot was made available to them to purchase at a tax sale. The Petitioners at the time of the notice of the tax sale believed that they were already the owners of the property. *L. McNabney testimony & Petitioners Exhibits 10, 13, and 14.* According to the Petitioners, they may have been paying double the taxes on this piece of property since purchasing the easement over 15 years ago. *L. McNabney testimony & Petitioners Exhibits 13 - 16.*
 - b) The Petitioners also testified that there are separate taxes and a separate address (712 Wellington) on this easement. According to the Petitioners, being assessed separately on an easement is not fair. It should be included in the mortgage.
 - c) Finally, the Petitioners allege that the subject property is assessed too high. According to the Petitioners, the assessment has increased to \$3,000 on the property. *L. McNabney testimony & Petitioner Exhibit 5.*

11. Summary of Respondent's contentions in support of assessment:
 - a) In support of the assessment, the Respondent submitted a copy of the Form 139L petition, the subject property record card (PRC), a copy of the plat page, the Residential Neighborhood Valuation Form, and the Petitioner's homesite PRC. *Respondent Exhibits 2 - 5.*
 - b) The Respondent argued that the lot is being assessed correctly as a rear lot. According to the Respondent, the correct front foot base rate of \$500 was used but was adjusted for the subject being valued as a rear lot. This property is not doubly assessed and the rear lot value is properly applied. *Yohler testimony & Respondent Exhibits 2, 4, and 5.*

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 #1334.
 - c) Exhibits:

Petitioners Exhibit 1: Copy of Notice of Hearing
Petitioners Exhibit 2: Hearing Instructions

Petitioners Exhibit 3: Notice of Assessment – Form 11
Petitioners Exhibit 4: Notice of Final Assessment
Petitioners Exhibit 5: Copy of subject’s PRC
Petitioners Exhibit 6: Form 139L – Petition for Review
Petitioners Exhibit 7: Form 139L – Page 2
Petitioners Exhibit 8: Form 139L – Page 3
Petitioners Exhibit 9: Photographs of easement
Petitioners Exhibit 10: Tax Sale Letter
Petitioners Exhibit 11: Old petition in 1992
Petitioners Exhibit 12: Notice of Assessment – 1996
Petitioners Exhibit 13: Warranty Deed for House
Petitioners Exhibit 14: Survey Plat for Mortgage
Petitioners Exhibit 15: Real Estate Transfer Record
Petitioners Exhibit 16: Plat of Outlot J (easement)
Petitioners Exhibit 17: Plat of House for Mortgage

Respondent Exhibit 1: Copy of Form 139L
Respondent Exhibit 2: Copy of subject’s PRC
Respondent Exhibit 3: Copy of Plat page
Respondent Exhibit 4: Neighborhood Land Summary Sheet
Respondent Exhibit 5: PRC of Petitioner’s Front lot and
Improvements

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

d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases and regulations 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 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 Township 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.

14. The Petitioners failed to provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because of the following:
- a) The Petitioners testified that they purchased the subject property easement in 1987 for \$400. The Petitioners contend that they already owned this property when they purchased their home the prior year. Whether the Petitioners' previously owned the subject parcel, or simply purchased it at the tax sale, there is no question that they are the owners of the subject property. Therefore, the subject property is properly assessed to the Petitioners. The question of whether Petitioners purchased the subject property twice is not one for this Board.
 - b) The Petitioners further contend that they are being double assessed for the property. According to the Petitioners, the easement parcel at issue here was already a part of the property they purchased when the Petitioners purchased their home. However, the subject property is a separate parcel with a separate address. There is no evidence in the record that the parcel upon which the Petitioners' home is located is being assessed any amount for the subject property.¹ Petitioners' contention that they are being double assessed is unsupported by any evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
 - c) Finally, the Petitioners contend that their assessment has increased to \$3,000 and that this is unfair. However, evidence that the assessment on the subject property has increased is not evidence that the current assessment is incorrect. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*
 - d) The Petitioner has failed to raise a prima facie case that the assessment on the subject property is incorrect. Where the Petitioner has not supported his 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

¹ The Petitioners' home parcel is not at issue in this appeal.

Conclusion

15. The Petitioners failed to make a prima facie case that the subject property is improperly assessed. The Board finds in favor of the 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 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>.