

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00512A
Petitioners: Rindert N. & Fae A. Flisyn
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0510-0007
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 9, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$235,700. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 14, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 1903 Eggert Drive, Schererville, St. John Township, Lake County.
6. The subject property is a single-family residence on .558 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of the subject property as determined by the DLGF are:
Land \$48,200 Improvements \$187,500 Total \$235,700

9. Assessed Values requested by Petitioners per the Form 139L petition are:
Land \$30,400 Improvements \$187,500 Total \$217,900

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Rindert Flisyn, Petitioner
Fae Flisyn, Petitioner

For Respondent: Anthony Garrison, DLGF Representative

12. At the hearing, the Special Master requested additional information from the Petitioners regarding the construction costs for the subject dwelling. The Petitioners responded to this request and forwarded to the attention of the Board a copy of a Residential Sworn Construction Statement to Owner and Chicago Title Insurance Company (“Construction Statement”). It does not appear, however, that the Petitioners served the Respondent with a copy of the Construction Statement. Consequently, the Petitioners’ submission of the Construction Statement does not comply with the Board’s rules regarding the post-hearing submission of evidence. *See* 52 Ind. Admin Code tit. 52 r. 2-8-8 (“Posthearing evidence submitted must be served on all parties.”)¹

Issues

13. Summary of Petitioners’ contentions in support of an alleged error in the assessment:

- a) The land value is in error. Thirty-seven percent (37%) of the subject lot’s total area is a creek and wetlands and thus not usable. *R. Flisyn testimony.*
- b) The Petitioners submitted photographs of the creek and calculations as to how the thirty-seven percent (37%) was determined. The Petitioners claimed that he did not have access to the eastern side of the creek – wetlands area. *R. Flisyn testimony.*
- c) The Petitioners did not contest the assessed value of the improvements. The Petitioners bought the subject land for \$39,900 in 1992, but they received a \$3,000 rebate.

14. Summary of Respondent’s contentions in support of the assessment:

- a) The parcel is valued fairly and no change in assessment is warranted. *Garrison testimony.*

¹The Board recognizes that the Special Master did not specifically tell the Petitioners to serve the Construction Statement on the Respondent. Nonetheless, the Board cannot base its decision on evidence to which an opposing party has not been given the opportunity to respond. Moreover, it appears unlikely that the Construction Statement would have been helpful to the Petitioners. That statement shows a total cost of \$238,003.04, which is more than the total amount for which the subject property is assessed.

Record

15. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled Lake Co. #819.
- c) Exhibits:

Petitioner Exhibits 1-5: Photographs of creek and adjoining land
Petitioner Exhibit 6: Plat of survey with creek highlighted
Petitioner Exhibit 7: Plat of survey with creek highlighted
Petitioner Exhibit 8: Grounds for Appeal
Petitioner Exhibit 9: Subject property record card (PRC)

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject photograph

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

- d) These Findings and Conclusions.

Analysis

16. The most applicable laws are:

- a) A petitioner seeking review of a determination of the DLGF 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 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. 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.

17. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners claimed that thirty-seven percent (37%) of the total area of the subject land is comprised of a creek and wetlands, and that the assessed value of the land should be lowered to reflect those conditions. *R. Flisyn testimony*.
 - b) The Petitioners presented a plat of survey with a hand-sketched location of the creek near the rear of the subject lot. *Petitioner Exhibit 6*. The Petitioners contend that the portion of the subject lot stretching from the eastern border of the creek to the eastern border of the lot "is considered wetlands." *Petitioner Exhibit 8*. According to the Petitioners, those "wetlands" are critical for natural drainage and therefore are not suitable for the construction of improvements. *Petitioner Exhibits 3, 8*. Based on the dimensions on the survey along with measurements taken by the Petitioners, the Petitioners calculated that thirty-seven percent (37%) of the total property area (9,215 square feet) is comprised of the creek and "wetlands." The Petitioners contend that, because that portion of the subject lot is unusable, the subject lot's assessment should be reduced by thirty seven percent (37%) to a total of \$30,400.
 - c) As an initial matter, the Petitioners did not offer any evidence in support of their assertion that a portion of the land is "wetlands" that is critical for natural drainage and therefore is not suitable for construction. The Petitioners' assertions in that regard amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
 - d) In addition, even if the Petitioners are correct in their assertion that the creek and the "wetlands" negatively impact the market value-in-use of the subject land, they did not present any evidence to quantify that impact. The Petitioners' assertion that the affected portion of the land lacks any value whatsoever because they cannot build upon it is an unsupported conclusion. As indicated above, such conclusions lack probative value.
 - e) The Petitioners did present evidence that they purchased the subject lot for \$39,900 minus a \$3,000 rebate in 1992. The Petitioners, however, did not explain how that purchase price relates to the subject lot's market value-in-use as January 1, 1999 – the relevant valuation date for the 2002 general reassessment. Consequently, the purchase price lacks probative value. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).

Conclusion

18. The Petitioners did not make a prima facie case for a reduction in value of the land. 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 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>.