

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-037-02-1-5-00035 **Parcels:** 010-10-01-0093-0027
45-037-02-1-5-00036 010-10-01-0093-0026
45-037-02-1-5-00037 010-10-01-0093-0024

Petitioner: Darrell E. Mink
Respondent: Department of Local Government Finance
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the DLGF) determined the tax assessments for the subject property and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L for each parcel on May 17, 2004.
3. The Board issued a notice of hearing to the parties dated November 16, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 16, 2004.

Facts

5. The subject properties are located at 20005-10 Drummond in Lowell.
6. The subject properties are 50' by 160' residential lots. One parcel is assessed with a detached garage improvement. The other two parcels are assessed for land only.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed values as determined by the DLGF:

Parcel -0027	Land \$15,000	Improvements \$6,400	Total \$21,400
Parcel -0026	Land \$12,000	Improvements \$0	Total \$12,000
Parcel -0024	Land \$12,000	Improvements \$0	Total \$12,000
9. Assessed values requested by Petitioner:

Parcel -0027	Land \$4,000	Improvements \$6,400	Total \$10,400
Parcel -0026	Land \$3,500	Improvements \$0	Total \$3,500
Parcel -0024	Land \$4,000	Improvements \$0	Total \$4,000

10. Persons sworn as witnesses at the hearing were:
- For Petitioners: Darrell Mink, owner,
Rick Niemeyer, Township Assessor,
 - For Respondent: Phillip Raskowski, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Each parcel is only 50 feet wide and under Lake County law cannot be built upon, thereby reducing its market value. The value of the improvement is not disputed in this case. *Mink testimony; Niemeyer testimony; Petitioner Exhibit 1.*
 - b) The subject should be valued with a negative influence factor so that its assessed value is \$4,000. That value is supported by an affidavit from an experienced, licensed real estate agent who has worked in the real estate industry in this area for 50 years. *Niemeyer testimony; Petitioner Exhibit 3.*
 - c) The subject floods during heavy rains, an average of at least once each year, which reduces its value. *Mink testimony; Petitioner Exhibit 2.*
12. Summary of Respondent's contentions in support of the assessment:
- a) A garage straddles parcels 010-10-01-0093-0026 and 010-10-01-0093-0027, thereby disqualifying both of them from getting a negative influence factor (20%) for vacant land. *Raskowski testimony; Mink testimony; Respondent Exhibits 2, 3, 4.*
 - b) The fact that Petitioner owns five contiguous fifty-foot parcels results in a combined property with 250 front feet, which satisfies codes for new construction.¹ The property is buildable. In fact, it currently has improvements including two dwellings and a detached garage. *Id.*
 - c) The realtor who opined that each lot is only worth \$4,000 is not a licensed appraiser. *Raskowski 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 659,

¹ Petitioner and Respondent agreed that Petitioner owns lots 24, 25, 26, 27, and 28 as shown on Respondent Exhibit 3. Petitioner is not pursuing an appeal of the assessments for lots 25 or 28, which are the same size and have an assessed land value of \$15,000 each. There also are houses on both lot 25 and 28. *Raskowski testimony; Mink testimony.*

- c) Exhibits:
 - Petitioner Exhibit 1: Buildable Lot Ordinance
 - Petitioner Exhibit 2: Photographs
 - Petitioner Exhibit 3: Realtor's Opinion of Value for Parcels
 - Respondent Exhibits: Form 139L for each parcel,
 - Respondent Exhibit 2: Property Record Card for each parcel,
 - Respondent Exhibit 3: Plat Map
 - Respondent Exhibit 4: Aerial
 - Board Exhibit A: Form 139 L for each parcel,
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
- 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. The Petitioner did not provide sufficient evidence to support his contentions because:
 - a) The Petitioner submitted an opinion of value from a licensed real estate broker estimating value at approximately \$4,000 each as of Dec. 9, 2004. It is not an appraisal. This evidence has no probative value because there is no evidence or explanation that relates the proposed value to the assessment valuation date, January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). In addition, this evidence has no probative value because it is merely a conclusory statement about value. Conclusory statements do not qualify as probative evidence. *Lacy Diversified Industries v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215,

1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- b) The claim that the individual lots are unbuildable is not consistent with the evidence. The undisputed evidence establishes that Petitioner has five contiguous lots. There already are two homes and a detached garage on them. There is no dispute that each parcel is 50 feet wide. Furthermore, there is no dispute that the minimum width for new construction is more than 50 feet. Those facts, however, do not prove that the current assessed values of these parcels are wrong. Furthermore, that evidence does not help to prove what the market value-in-use might be. Under these circumstances, Petitioner failed to prove that the market value-in-use for the subject properties should be based on the price a single, unbuildable lot might bring. It is not realistic to anticipate that the parcels would be sold in that manner because they almost certainly have more value as integral parts of Petitioner's other contiguous properties.
- c) Petitioner testified the subject lots flood during heavy rain, thereby reducing their value in the marketplace. A nearby street or road had to be raised to allow pedestrian traffic to cross the subject following heavy rains. Petitioner offered four photographs showing standing water on a portion of the subject property. Petitioner failed to prove the diminished value caused by floods. Petitioner's claim would have to be supported by evidence that reflects how much the 1999 value of the subject is diminished by flooding. Petitioner has failed to provide that value or evidence to support it. Petitioner's testimony and that of his witness fails to rise above the level of conclusory statements. Those statements do not prove his claim. *Id.*
- d) Petitioner failed to make a prima facie case.
- e) The requirement that Respondent rebut Petitioner's case was not triggered. *Lacy Diversified*, 799 N.E.2d at 1221-1222.
- f) Respondent pointed out an error in one assessment. The detached garage that is assessed on parcel 010-10-01-0093-0027 is actually located on both parcels. The evidence established that parcel 010-10-01-0093-0026 is not vacant. The 20% negative influence factor on that lot is based on vacancy. Respondent correctly pointed out that this lot is not eligible for that 20% adjustment. Petitioner's arguments that the garage is old and that it had to be assessed entirely on one parcel or the other do not change the fact that neither of these two parcels is actually vacant. Accordingly, the negative influence factor on parcel 010-10-01-0093-0026 must be removed.

Conclusion

16. The Petitioner failed to make a prima facie case to support a lower assessment. The Respondent was not required to rebut the evidence. The Board finds in favor of the Respondent regarding Petitioner's claims. Nevertheless, the evidence establishes that a change must be made regarding the assessment for parcel 010-10-01-0093-0026, which

was erroneously allowed a negative 20% influence factor based on vacancy. That adjustment must be eliminated and the land value changed to \$15,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment will be changed for parcel 010-10-01-0093-0026. The assessments on the remaining parcels will 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>.