

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 46-022-02-1-4-00007
Petitioner: Park Place Investment Partnership
Respondent: Michigan Township Assessor (LaPorte County)
Parcel #: 42-01-29-178-016
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 Petitioner initiated an assessment appeal with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 22, 2004.
2. The Petitioner received notice of the decision of the PTABOA on July 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 20, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 19, 2006.
5. The Board held an administrative hearing on July 24, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioner: Kenneth Purze, Property Owner

For Respondent: Terry Beckinger, Michigan Township Assessor
Carol McDaniel, County Assessor and PTABOA Member.

Marilyn Meighen appeared as counsel for the Michigan Township Assessor and the LaPorte County PTABOA.

Facts

7. The subject property is a portion of the vacated 2nd street between Buffalo and Wabash streets, Michigan City, in Michigan Township, measuring approximately 66' x 123'.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the vacant subject property to be \$13,200.
10. The Petitioner requested an assessment of \$6,500 for the land.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the property is over-valued relative to its market value-in-use. *Purze testimony*. In support of this contention, the Petitioner testified the irregular shape of the lot and its dissection by a railroad track severely limits its value and necessitates the application of a negative influence factor to the land value. *Id.*; *Petitioner Exhibit 1*.
 - b. The Petitioner further contends that an "inefficient market" exists in this case. *Purze testimony*. According to the Petitioner, the value of the property should be based on its value in use. *Id.* At the time of assessment, the property was vacant, located in a commercial area with contamination, has an irregular shape and has market influences due to its unique location near a power plant. *Id.*
12. The Respondent contends that the Petitioner failed to make a prima facie case. *Meighen argument*. The Respondent, therefore, did not present evidence in support of the current assessment.

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 BTR # 6152,
 - c. Exhibits:

Petitioner Exhibit 1 - Plat map of area surrounding the subject property,

The Respondent submitted no exhibits.¹

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Notice of Appearance for Marilyn Meighen,
Board Exhibit D – 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

- a. The Petitioner contends that the subject land should have an influence factor applied in order to reduce the assessed value. *Purze testimony*. According to the Petitioner, the property is over-assessed due to the presence of a railroad track in one corner and the resulting effect on the value of the property. *Id.* Further, the Petitioner contends, the property has contamination and is located near a power plant. *Id.*
- b. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v.*

¹ Petitioner initially objected to Respondent exhibits because they had not been made available to him 5 days prior to the hearing. The Petitioner admitted, however, that he had not requested the exhibits; therefore, his objection is overruled. Further, the Respondent chose not to submit any exhibits at hearing. Thus, the Petitioner's objection is moot.

State Bd. of Tax Comm'rs, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." See *Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- c. Here the Petitioner contends the presence of railroad tracks on the property has a negative effect on the value of the property. The Petitioner further contends that the property is contaminated and located near a power plant. The Petitioner, however, failed to present any substantive evidence supporting a loss in value or quantifying the loss. The Petitioner's evidence consists of a map and the conclusory statement that an influence factor should be applied to the assessed value for the land. A conclusory statement is insufficient to establish a prima facie case of error in assessment. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d. 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. 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>.