

REPRESENTATIVES FOR RESPONDENT:
Eleanor J. Mlynarik, Wabash Township Assessor
Ginny Whipple, County Representative
Nancy Moore, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

DWIGHT Q. & M. CHRISTINE	)	Petition Nos:	79-164-02-1-4-01094
DARLAGE	)		79-164-03-1-4-01094
)		
Petitioners,	)	County:	Tippecanoe
)		
v.	)	Township:	Wabash
)		
ELEANOR J. MLYNARIK,	)	Parcel:	164-02500-0403
WABASH TOWNSHIP ASSESSOR))		
)		
Respondent.	)	Assessment Years:	2002 & 2003
)		

Appeal from the Final Determination of
Tippecanoe Property Tax Assessment Board of Appeals (PTABOA)

July 27, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value for the land is overstated due to the environmental contamination of the property.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Dwight Q. and M. Christine Darlage (Petitioners), filed Form 131 Petitions for Review of Assessment, petitioning the Board to conduct administrative reviews of the above petitions. The Form 131's were filed on July 2, 2004. The PTABOA issued its determinations on June 7, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judges (the ALJs), Carol Comer and Dalene McMillen, held hearings on May 16, 2006, in Lafayette, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners: Dwight Q. Darlage, Owner
William L. Hardesty, Certified Public Accountant

For the Respondent: Nancy Moore, Tippecanoe County Assessor
Ginny Whipple, County Representative
Eleanor J. Mlynarik, Wabash Township Assessor

5. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1a - Notice of Hearing on Petition,
 - Petitioner Exhibit 1b - Form 131 petition,
 - Petitioner Exhibit 1c - Power of Attorney for William L. Hardesty,
 - Petitioner Exhibit 1d - Brownfield Site Assessment Report prepared by Keramida Environmental, Inc.

6. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 - Subject property record card (PRC),
 - Respondent Exhibit 2 - Aerial map of the subject area,
 - Respondent Exhibit 3 - A chart showing five properties that sold in the area,
 - Respondent Exhibit 4 - Aerial map, sales disclosure, and two PRCs for WLI, LLC,
 - Respondent Exhibit 5 - Aerial map, appraisal report prepared by Knop Corporation, and PRC for PM Investments, LLC,
 - Respondent Exhibit 6 - Aerial map, sales disclosure, and appraisal comments for West Lafayette Redevelopment Commission,
 - Respondent Exhibit 7 - Reassessment summary sheet and sales disclosure on parcel 164-02500-0447, and PRCs for Brown Street Land, LLC and Purdue Employees Federal Credit Union,

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:
 - Board Exhibit A - Form 131 petitions,
 - Board Exhibit B - Notices of Hearings on Petitions, dated February 17, 2006,
 - Board Exhibit C - Hearing sign-in sheets.

8. The subject property is a 4,100 square foot commercial shop on a 150 foot by 215 foot lot, located at 420 Brown Street Levee, West Lafayette, Wabash Township, Tippecanoe County.

9. The ALJs did not conduct an on-site inspection of the subject property.

10. For the 2002 and 2003 assessment years, the PTABOA determined the assessed values of the subject property to be \$100,100 for the land and \$29,800 for the improvements, for a total assessed value of \$129,900 for each year.

11. For 2002 and 2003 assessment years, the Petitioners contend the assessed values of the subject property should be \$60,030 for the land and \$29,800 for the improvements, for a total assessed value of \$89,830 for each year.
12. At the hearing, the parties agreed to waive the discovery provisions listed in Ind. Code § 6-1.1-15-4, which requires parties to the appeal to file statements of testimonial evidence and lists of witnesses and exhibits prior to the Board's hearing.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. 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).
15. 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”).

16. 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.

ANALYSIS

Issue: *Whether the assessed value for the land is overstated due to environmental contamination.*

17. The Petitioners contend that the subject property's land value is over-stated due to environmental and soil contamination on the property. *D.Q. Darlage testimony.*
18. The Respondent contends that the PTABOA recognized that the subject property had environmental issues and applied a 75% negative influence factor to the land value to address those issues. *Whipple testimony.*
19. The Petitioners presented the following evidence and testimony in regard to this issue:
 - A. The Petitioners contend that the subject property is severely impacted by groundwater contamination and high levels of chromium and mercury found in the soil. *D. Q. Darlage testimony; Hardesty testimony.* Further, according to the Petitioners, the subject property is located over a documented dump. *Id.* The Petitioners argue that the building suffers from an "organic smell" from the contamination on the land. *Id.*
 - B. In support of this contention the Petitioners submitted a "Brownfield Site Assessment Report" performed by Keramida Environmental, Inc., on August 29, 2005. *Petitioner Exhibit 1d.* The purpose of the Brownfield Site Assessment Report was to investigate the environmental condition of the site for purchase by the City of West Lafayette. *Id.* According to the study, additional sampling and

analysis should be done to the fill layer of the soil and groundwater due to the metals and the potential risks to future site workers and users. *Id.*

- C. The Petitioners argue that, due to the environmental contamination, Union Federal Bank of Indianapolis refused to allow the property to be used as collateral and refused to loan the Petitioners money on the property. *D. Q. Darlage testimony; Hardesty testimony.* According to the Petitioners, such financing difficulties have a negative impact on the market value of the subject property. *D. Q. Darlage testimony.*
20. The Respondent presented the following evidence and testimony in regard to this issue:
- A. The Respondent testified that at the PTABOA hearing the county acknowledged that the subject property suffered from environmental issues and, therefore, the PTABOA applied a 75% negative influence factor to the land. *Whipple testimony; Respondent Exhibit 1.*
- B. The Respondent argues that five properties, that are located in the area and affected by the same environmental conditions as the subject property, have been listed for sale or sold between 1996 and 2006 for \$459,000 to \$5,825,000. *Whipple testimony; Respondent Exhibits 3 – 7.* The Respondent contends that the sales show that the environmental issues are based on local perception and are not necessarily reflected in the market values for property. *Whipple testimony.*
21. The Petitioner contends that the assessed value of the land on the subject property is over-stated because of the environmental conditions on the property. 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. State Board of Tax Commissioners*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). Properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding

properties for purposes of valuation. An “influence factor” may be applied to the value of land “to account for characteristics of a particular parcel of land that are peculiar to that parcel.” 2002 REAL PROPERTY ASSESSMENT GUIDELINES (the GUIDELINES), glossary at 10; *see also* GUIDELINES, ch. 2 at 61 – 63. The Petitioner, however, 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 Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001); *see also Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).

22. Here, the Petitioners contend that the subject property is impacted by groundwater contamination and high levels of chromium and mercury in the soil. The Respondent testified that the PTABOA applied a negative influence factor to the subject property to account for the environmental issues. In essence, the Respondent was in agreement with the Petitioner that the land is affected by characteristics peculiar to that property and, in doing so, assisted the Petitioners in their first prong of their burden. The Petitioners, however, failed to quantify that impact and, thus, failed to meet the second prong of their burden. The Petitioners presented no evidence to show how the environmental conditions would impact the market value-in-use of the subject property. Nor did they present evidence to show the actual market value of the property.¹ *See Talesnick*, 756 N.E.2d at 1108. The Petitioners, therefore, failed to establish a prima facie case of an error in the assessment.

¹ The Petitioners testified that “there is an organic smell that comes into the building.” *D. Q. Darlage testimony*. In response to questioning from the ALJ, however, the Petitioners stated they were not seeking to raise an issue pertaining to the improvement value. To the extent that the Petitioners’ evidence could be seen as seeking an obsolescence adjustment to the improvements, the Board notes that the Petitioners failed to present probative evidence of the impact of the “organic smell” on the property value. For a Petitioner to show that he is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence he believes is present in his improvement and also quantify the amount of obsolescence he believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Therefore, the Petitioners failed to raise a prima facie case whether the environmental contamination is addressed as a negative influence factor to the land and/or as obsolescence applied to the improvements.

23. Where Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Summary of Final Determination

24. The Petitioners failed to establish a prima facie case. The Board finds in favor of the Respondent. The assessment is not changed as a result of this issue.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.