

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

Petitions #: 91-021-02-1-5-00146 & 91-021-02-1-5-00147
Petitioner: David Cox
Respondent: Union Township Assessor (White County)
Parcels #: 021194600 & 021194500
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 White County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 06, 2004.
2. The Petitioner received notice of the decision of the PTABOA on September 20, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 20, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 11, 2005.
5. The Board held an administrative hearing on September 29, 2005, before the duly appointed Administrative Law Judge (ALJ) Joan Rennick.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: David Cox, Taxpayer
 - b. For Respondent: Scott Potts, Consultant on Behalf of Assessor

Facts

7. The properties are a residential, vacant lot (021194600) (the Vacant Lot) and a residential lot with a dwelling (021194500) (the Dwelling Lot) located at 181 S. Bluff Street, Monticello, in Union Township.
8. The ALJ did not conduct an inspection of the property.

9. The PTABOA determined the assessed value of the Vacant Lot to be \$5,900 for the land.
10. The Petitioner requested an assessment of \$1,000 for the land on the Vacant Lot.
11. The PTABOA determined the assessed value of the Dwelling Lot to be \$25,200 for the land and \$46,800 for the improvements, for a total assessed value of \$72,000.
12. The Petitioner requested an assessment of \$12,500 for the land and \$46,800 for the improvements, for a total assessed value of \$59,300 on the Dwelling Lot.

Issues

13. Summary of Petitioner's contentions in support of alleged errors in the assessments:
 - a. The Petitioner argues that the land assessment is excessive on the Vacant Lot because it is a one-half lot that is approximately fifteen feet deep and then has a steep cliff to the adjoining property to the east. *Cox testimony*. According to the Petitioner, the lot is unbuildable and has no improvements such as water, sewer, and sidewalk. *Id.* The Petitioner testified that the dwelling does not encroach on this fractional lot and the lot has no river access. *Id.*
 - b. The Petitioner also contends that the land assessment is excessive on the Dwelling Lot. *Cox testimony*. According to the Petitioner, it has no back yard because of a cliff and the front yard is approximately ten feet to a busy street. *Id.* The Petitioner further testified that the lot has no sidewalk and the City of Monticello has underground storm drains and sewers on the property. *Id.* The Petitioner asserts that if this home were destroyed, the lot does not meet setback requirements for a building permit. *Id.* The Petitioner argues that a higher influence factor for topography needs to be applied. *Id.*
14. Summary of Respondent's contentions in support of the assessments:
 - a. The Respondent contends that the Petitioner failed to appear before the White County PTABOA. *Respondent Summary of Testimony; Potts testimony*.
 - b. The Respondent further argues that the Petitioner failed to raise a prima facie case. *Potts testimony*. According to the Respondent, the Petitioner never presented any evidence to support his claim the assessments are excessive. *Id.* Further, the Respondent contends, the subject properties have similar topographical characteristics as surrounding properties. *Id.*
 - c. Finally, the Respondent contends that the assessment is correct. *Potts testimony*. According to the Respondent, two sales in the same neighborhood with the same topographical conditions were sold for .95% and 1.02% of their assessed values

respectively. *Id.*; *Respondent Exhibit 4*. The Respondent argues that these sales ratios show that the neighborhood assessments are within an acceptable range. *Id.*

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 BTR # 6217,
- c. Exhibits:¹

Respondent Exhibit 1: Form 131 Petition filed by Petitioner,
Respondent Exhibit 2: Property record cards (PRC)
Respondent Exhibit 3: Transcripts of PTABOA hearing,
Respondent Exhibit 4: Residential Sales File,
Respondent Exhibit 5: Aerial map of subject property and two sale properties,

Board Exhibit 1: Form 131 Petition with attachments,
Board Exhibit 2: Notice of Hearing,
Board Exhibit 3: Hearing Sign-In Sheet,
Board Exhibit 4: Notice of Appearance of Consultant on behalf of assessor,

- d. These Findings and Conclusions.

Analysis

16. 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. Wash. 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*,

¹ The Petitioner presented no exhibits at hearing.

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 Petitioner failed to raise a prima facie case that the subject properties were over-assessed. This conclusion was arrived at because:
- a. The Petitioner contends that the assessment of the subject lots is excessive because the lots are classified as unbuildable. In support of this contention, the Petitioner testified that the lots would not meet set back requirements and a building permit would not be issued. Also the hill on which the property sits is eroding and the location of city sewers on the properties further limits the use. *Cox testimony*.
 - b. Generally, land values in a given neighborhood are 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 Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). Properties' homeowners 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, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). 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. While the alleged use limitations on the properties may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property or to show what is the actual market value of the property. *See Talesnick*, 756 N.E.2d at 1108. In fact, the Petitioner presented no evidence to establish the market value-in-use of the lots under appeal or to show that the subject lots are assessed differently than neighboring lots with the same characteristics. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
 - d. The Petitioner failed to establish a prima facie case that an error was made in the assessment of the subject properties. 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).

Conclusion

18. The Petitioner failed 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>>. 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 days of the date of this notice.