

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00473
Petitioners: Alfonso S. & Iris C. Holliday II
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0259-0005
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 13, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$132,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties on July 28, 2004.
4. A hearing was held on September 14, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is a single-family home on 0.287 acres of land located at: 919 N. Union Street, Gary, in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of the subject property as determined by the DLGF:
Land \$30,200 Improvements \$102,600 Total \$132,800
8. Assessed Value requested by the Petitioner during hearing:
Land \$22,660 Improvements \$102,600 Total \$125,260

9. The following persons were present and sworn in at the hearing:

For Petitioners: Alfonso & Iris Holliday, Owners

For Respondent: David Depp, Representing the DLGF

Issues

10. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The Petitioners contend that parcels on the same block as the subject property were given a negative influence factor for traffic flow and that the same adjustment should be applied to the subject property. *A. Holliday testimony; Petitioners' Exhibits 4-8.*
- a. The Petitioners contend that the neighborhood factor applied to the subject property is too high because a property in the same block and on the same side of the street as the subject property was assigned a lower neighborhood factor than the subject property. Petitioners further contend that a property located one block closer to Lake Michigan and a property directly across from the lake were both assigned lower neighborhood factors than the subject property. *A. Holliday testimony; Petitioners' Exhibits 9-11.*

11. Summary of Respondent's contentions in support of assessment:

- a) The Respondent contends the negative influence factors attributed to the properties identified by Petitioners were based upon those properties being vacant lots rather than upon traffic flow. *Depp testimony.* According to the Respondent, it utilized a code of "7" for a negative influence factor associated with vacant land because there was no specific code in the computer system for vacant land. *Depp testimony.* This led to influence factors for vacant land appearing as "traffic flow." *Depp testimony.*
- b) The Respondent presented sales data for three comparable homes of similar utility along with a summary of twenty area sales to support its contention that the property is fairly assessed. *Respondent's Exhibit 4.*

Record

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

- a) The Petition and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake Co. #257.
- c) Exhibits:

Petitioners' Exhibit 1: Exhibit Title Sheet

Petitioners' Exhibit 2: Value adjustments for subject property

Petitioners' Exhibit 3: Property record card (PRC) for subject property

Petitioners' Exhibit 4: Value summary for 001-25-45-0259-0011
Petitioners' Exhibit 5: Value summary for 001-25-45-0259-0012
Petitioners' Exhibit 6: Value summary for 001-25-45-0259-0013
Petitioners' Exhibit 7: Value summary for 001-25-45-0259-0014
Petitioners' Exhibit 8: Value summary for 001-25-45-0259-0015
Petitioners' Exhibit 9: PRC for 001-25-45-0259-0021
Petitioners' Exhibit 10: PRC for 001-25-45-0248-0001
Petitioners' Exhibit 11: PRC for 001-25-45-0247-0040
Petitioners' Exhibit 12: Plat map (Part of N.E. Sec. 33T, 37 N.R. 7W)

Respondent's Exhibit 1: Form 139L
Respondent's Exhibit 2: Subject PRC
Respondent's Exhibit 3: Photograph of the subject property
Respondent's Exhibit 4: PRCs and photographs of three comparable properties and summary sheet entitled "top 20 comparable properties"

d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases and regulations 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*, 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.
- d) Pursuant to REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, all property within a township must be established as part of a neighborhood defined by the township assessor. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 8 (incorporated by reference at 50 IAC 2.3-1-2). Under the GUIDELINES, "[a] township assessor shall define neighborhoods according to: (1) common development characteristics; (2) the average age of the majority of improvements; (3)

the size of lots or tracts; (4) subdivision plats and zoning maps; (5) school and other taxing district boundaries; (6) distinctive geographic boundaries; (7) any manmade improvements that significantly disrupt the cohesion of adjacent properties; (8) sales statistics; and, (9) other characteristics deemed appropriate to assure equitable determinations.” *Id.*

- e) When the township assessor establishes base rates for a neighborhood, the assessor establishes rates for a base lot. GUIDELINES, ch. 2 at 11. The calculated value of this base entity becomes the standard to which all remaining lots within the neighborhood are compared. *Id.* Often there are conditions peculiar to specific lots within a neighborhood that must be analyzed on an individual basis. *Id.* These conditions require the assessor to make an adjustment to the value of the lot. This adjustment is an influence factor. *Id.*
- f) An influence factor represents the composite effect that influences the value of certain lots within the boundaries of an entire neighborhood. An influence factor is determined by comparing the estimated dollar amount of the adjustment to the estimated value of the lot. *Id.* The ratio is then converted to a percentage. *Id.* If the ratio is negative amount, the value of the land is reduced by that percentage. *Id.*

Issue 1- Influence Factor

14. The Petitioners did not provide sufficient evidence to support their contention that they are entitled to a negative influence factor for traffic flow. This conclusion was arrived at because:
- a) The Petitioners do not contend that the assessment of the subject land exceeds its fair market value-in-use. *A. Holliday testimony.* Instead, the Petitioners contend that the subject land was incorrectly assessed because neighboring parcels received a 20% reduction in assessment for traffic flow. *A. Holliday testimony; Petitioners’ Exhibits 4-8.* Petitioners presented evidence that the subject property fronted the same street as the neighboring parcels and experienced the same traffic conditions as those parcels. *A. Holliday Testimony.*
 - b) The Petitioners’ evidence of the differential treatment of properties that are otherwise identically situated with regard to the valuation factor in question is sufficient to present a prima facie case of error in assessment.
 - c) However, the Respondent presented testimony that the parcels in question were given a downward adjustment for being vacant land - not for traffic flow. *Depp testimony.* An influence factor code of “7” was used because there was no specific code in the computer system for vacant land. *Depp testimony.* This led to the negative influence factor appearing as an influence factor for traffic flow rather than for vacant land. *Depp testimony.*¹

¹ The ALJ received an unsolicited contact from the Respondent’s representative after the hearing. The Respondent’s representative stated that his testimony concerning the influence factor code applied to the subject property was

- d) The Respondent did not present neighborhood valuation forms or other documents to show that the code “7” was intended to refer to a negative influence for vacant land. However, it is undisputed that each property receiving the negative influence factor in question was actually vacant. *A. Holliday testimony; Petitioners’ Exhibits 4-8.* There is no evidence demonstrating that parcels with improvements received the negative influence factor in question. Thus, the Respondent has rebutted the Petitioners’ prima facie case, and the weight of the evidence does not support a change in assessment based upon the Respondent’s failure to apply an influence factor for traffic flow to the subject property.

Issue 2- Neighborhood Factor

15. The Petitioners did not provide sufficient evidence to support their claim of entitlement to a reduction in assessed value based upon application of an incorrect neighborhood factor. This conclusion was arrived at because:
- a) The Petitioners do not contend that the assessment of the subject property exceeds its fair market value-in-use. *A. Holliday testimony.* Instead, the Petitioners contend that the subject property was incorrectly assessed because it has a higher neighborhood factor than those of the neighboring properties. *A. Holliday testimony.* The Petitioners offered property record cards for the purportedly comparable properties and an area map in support of their contentions. *Petitioners’ Exhibits 9-12.*
- b) The subject property has a neighborhood factor of 1.18. A property on the same block and the same side of street (901 N. Union Street) as the subject property has a neighborhood factor of 0.80. A property one block closer to the lake and a property directly across from the lake each have a neighborhood factor of 1.02. *Petitioners’ Exhibits 9-12*
- c) However, the properties that the Petitioners allege are comparable to the subject property are not identified as being in the same neighborhood as the subject property for purposes of tax assessment. The subject property is in neighborhood 02513. The 901 N. Union Street property is in neighborhood 02514, and the properties closer to the lake are in neighborhood 02512. *Petitioners’ Exhibits 9-12.*
- d) The most reasonable inference that may be drawn from the evidence is that the boundary between neighborhoods 02513 and 02514 bisects Petitioners’ block at a point between the subject property and 901 Union Street. Of the four properties located between the subject property and 901 N. Union Street for which the Petitioners supplied assessment information, the three closest to the subject property are identified as belonging to 02513. The fourth property, which is closest to 901 N.

correct. The Board will not consider any testimony not presented by parties at the hearing and made available for subjected rebuttal or impeachment. The Board therefore considers only the Respondent’s testimony at the hearing and specifically does not consider or rely upon any post-hearing statement by the Respondent.

Union Street, is identified as belonging to 05214. *See, Petitioners' Exhibits 2, 4-8, 12.*

- e) While it may be unusual for properties situated on the same side of the street within the same block to be assigned to different neighborhoods, the Petitioners did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the applicable administrative rules when drawing the neighborhood boundaries. *See* GUIDELINES, ch. 2 at 8.
- f) Petitioners similarly failed to introduce any evidence to demonstrate that the Respondent applied the wrong neighborhood to the subject property through inadvertence or for other reasons. Even if the fact that the subject property and the 901 N. Union Street property are assigned different neighborhood codes were sufficient to show some error in assessment, it does not show which of the two properties is the one that was correctly assessed.
- g) The Petitioners have therefore failed to present a prima facie case to support their contention that the subject property was incorrectly assessed as the result of the neighborhood code assigned to it.

Conclusion

Issue 1- Influence Factor

- 16. While the Petitioners presented a prima facie case for a reduction in the assessed value due to the subject property not being assigned a negative influence factor for traffic flow, the Respondent has rebutted the Petitioners' evidence. The Board finds in favor of the Respondent.

Issue 2 – Neighborhood Factor

- 17. The Petitioners did not establish a prima facie case for a reduction in the assessed value of the property due to the application of an incorrect neighborhood factor. 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.