

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00059
45-001-02-1-5-00046
Petitioner: Betty Ann Maldonado
Respondent: Department of Local Government Finance
Parcel #s: 001254601090013
001254601090012
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was not held. The Department of Local Government Finance (the "DLGF") determined that, as a result of appeals filed and other information brought to their attention in the appeal process, objective adjustments in assessments were needed to properties that had not been appealed. The DLGF determined that the correct assessed values of the subject properties are 1) \$231,200 and 2) \$66,200. The DLGF notified Petitioner about the changes on March 31, 2004.
2. The Petitioner filed a Form 139L petitions on April 30, 2004.
3. The Board issued notices of hearing to the parties dated October 7, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 10, 2004.

Facts

5. The addresses of the subject parcels are 7707 Lake Shore Drive and 7713 Lake Shore Drive, Gary. The location is in Calumet Township.
6. The subject properties are two contiguous lots. The first one has an effective frontage of 38 feet and a depth of 158 feet. The second has an effective frontage of 25 feet and a depth of 125 feet. A three family dwelling is located on property the first parcel, but the improvements are not under appeal.
7. The Special Master did not conduct an on-site visit of the property.

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8. Assessed value of subject properties as determined by the DLGF:
 - 1) Land \$118,800, Improvements \$112,400, and
 - 2) Land \$66,200.
9. Assessed value requested by Petitioner:
 - 1) Land \$39,600, Improvements \$112,400, and
 - 2) Land \$23,700.
10. Persons sworn as witnesses at the hearing:
 - For Petitioner— Betty Ann Maldonado, Owner
 - For Respondent — C. Kurt Barrow, Assessor/Auditor,
Diane Spenos, Assessor/Auditor.

Issues

11. Summary of Petitioner's contentions in support of alleged error in the land assessment:

Inequitable Assessment Based On View

- a) Due to its elevation, the subject land does not offer any views of Lake Michigan. A city park that consists of high dunes is between the subject property and Lake Michigan, obscuring the lake from even the third story of the dwelling. *Petitioner Exhibit 4; Petitioner Exhibit 6, page 2; Maldonado testimony.* The subject and other properties located on the north side of Pine Avenue/Alley #15, actually sit in the low point between the park dunes and the higher cliff/dunes that make up the south side of Pine Avenue/Alley #15. *Petitioner Exhibit 2, marked 7629, 7637, 7645, 7701, subject/7705, 7721, 7725, 7737; Maldonado testimony.*
- b) Because of the park, the property is not located on Lake Shore Drive and does not have access to Lake Shore Drive. *Petitioner Exhibit 4.* Pine Avenue does not actually exist. *Petitioner Exhibits 3, 4.* Pine Avenue and Alley #15 are actually the same. It serves as the property's only access. Though the post office considers the subject and its neighbors to have Lake Shore Drive mailing addresses, the City of Gary refused to install a street sign with that name at the entrance to Pine Avenue/Alley #15. Some neighboring properties do have a Pine Avenue legal address such as parcel 001254601090020. *Petitioner Exhibit 5 (shown on Petitioner Exhibit 2 as #7629); Maldonado testimony.*
- c) Properties located directly on Lake Shore Drive (*marked 7801 and 7807 on Petitioner Exhibit 2*) along with those that sit on the south side of Pine on top of the high dunes (*marked 7637, 7710, 7714, 7718, 7720, 7736, and 7740 on Petitioner Exhibit 2*) have commanding views of the lake, but their land is assessed for much less. *Petitioner Exhibit 2, photo lower right corner of 7736 view; Petitioner Exhibit 6; Maldonado testimony.*

- d) The Petitioner believes that whoever assessed the land in this neighborhood did not look at the views, but simply assessed them according to having a Lake Shore Drive address. Because of this, the subject's land is assessed at \$20.20 per square foot, which is the second highest per square foot land rate in the neighborhood. *Petitioner Exhibit 2; Maldonado testimony.*

Drainage/Flooding

- e) The subject is located in a hollow and is the lowest lying lot on the street. This situation causes it to suffer from drainage problems. All of the water runs off of the neighboring properties onto the subject. The runoff has resulted in constant flooding of the dwelling crawl space and deep holes in the gravel driveway. *Petitioner Exhibit 7; Maldonado testimony.*

City Sewer verses Septic

- f) None of the lots on Pine Street have city sewer, including the subject. Having a city sewer line is preferable to having a septic system in a selling situation. Lots actually on Lake Shore Drive and those located on Pike Street have city sewer, but they are assessed less than the subject. *Petitioner Exhibit 2; Maldonado testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The issue under appeal is the market value of the total property as of the assessment date of January 1, 1999, as it relates to the lien date of March 1, 2002. The assessed value of the land alone isn't a valid issue. Because this is an improved property, only the total market value can be appealed. *Barrow testimony.*
- b) The Respondent testified that code "7" is a 20 percent deduction applied to an unimproved parcel and that code "0" represents an increase of 200 percent for lots that have lake views. *Barrow testimony.*
- c) Because the Petitioner has not offered any evidence as to an error in the total market value of the property, the Respondent declines to submit other evidence. *Barrow 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 633,

- c) Exhibits:
- Petitioner Exhibit 1: Form 139L Petitions,
 - Petitioner Exhibit 2: Photographic display board to show comparisons of land assessments,
 - Petitioner Exhibit 3: Plat of Survey,
 - Petitioner Exhibit 4: City of Gary Plat,
 - Petitioner Exhibit 5: Ownership records from township (property record card for parcel 001254601090020),
 - Petitioner Exhibit 6: Photographs showing views,
 - Petitioner Exhibit 7: Photographs showing water runoff problems,
 - Respondent Exhibit 1: Form 139L petitions (for both petitions),
 - Respondent Exhibit 2: Subject property record cards (for both petitions),
 - Respondent Exhibit 3: Photograph of subject (45-001-02-1-5-00059),
 - Respondent Exhibit 4: Map (45-001-02-1-5-00059),
 - Board Exhibit A: Form 139 Ls,
 - Board Exhibit B: Notices of Hearing,
 - Board Exhibit C: 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 offered sufficient evidence to establish a prima facie case relative to the subject lots being incorrectly assessed for a lake view. The Respondent failed to rebut the Petitioner's evidence. This conclusion was arrived at because:
- a) The Petitioner presented substantial evidence proving that the subject parcels are over-assessed because they are incorrectly valued as lake view property.
 - b) The Respondent stated that the assessed value of the land alone isn't a valid issue because this is an improved property, only the total market value can be appealed. The Respondent is incorrect. The Guideline seeks to derive the fair market value-in-use of the entire property by determining the fair market value-in-use of separate components and adding them together. Therefore, if one of the components does not reflect the correct market value-in-use this may be an indication that the overall assessment does not reflect the true tax value of the property.
 - c) The Respondent testified that code "7" is a 20 percent deduction for an unimproved parcel and that code "0" represents an increase of 200 percent for lots that have lake views. The subject parcels have been assessed as lake view property.
 - d) The Petitioner established that the subject lots do not have a lake view. The Respondent offered no rebuttal. 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 v. Maley*, 803 N.E.2d 276. The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence.
17. The Petitioner failed to establish a prima facie case relative to drainage/flooding and lack of city sewer service. This conclusion was arrived at because:
- a) The Petitioner testified that because the subject lots have the lowest elevation in the immediate neighborhood they suffer damage from water runoff from neighboring properties. The Petitioner submitted photographs to illustrate the topography.
 - b) While the Petitioner proved that the parcels' topography could be problematic, the Petitioner failed to demonstrate to what degree this would affect the property's value. While some negative influence factor might be justified, none can be allowed in this case because Petitioner failed to prove what it should be. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
 - c) The Petitioner stated that having a city sewer line is preferable to having a septic system. The Petitioner failed to offer any evidence in support of this statement. Therefore, it must be considered conclusory in nature. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (*Ind. Tax 1998*). Furthermore, without probative evidence to establish what the lack of sewer

service does to the market value of the property, no adjustment can be made for that reason.

- 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*, 799 N.E.2d at 1222.

Conclusions

The Petitioner made a prima facie case regarding the land assessment. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of Petitioner. The 200 percent land influence factors applied to the subject properties for lake view should be removed.

18. The Petitioner failed to establish a prima facie case for any other changes.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessed land values of both parcels should 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.