

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00076
Petitioner: Dick F. Duncan
Respondent: Department of Local Government Finance
Parcel #: 002-02-03-0003-0018
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$152,400 and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties on October 7, 2004.
4. A hearing was held on November 10, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 6405 West 245th Avenue, Lowell, in Cedar Creek Township.
6. The subject property is a single-family residence located on an agricultural plot consisting of 73.50 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$45,600 Improvements \$106,200 Total \$152,400
 - b) The Petitioner did not request a specific Assessed Value.

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Dick F. Duncan, Owner
For Respondent: John Toumey, Representing the DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The neighborhood factor of 1.18 used for the assessment of the subject property is too high. *Duncan testimony*. The neighborhood factor should not be applied to agricultural property at all, since it is a business. *Duncan argument*. Other types of businesses do not have neighborhood factors. *Id*.
 - b) Two new subdivisions in the area of the subject have neighborhood factors of .77 and .78, respectively. *Duncan testimony*.
 - d) The property requires mortgage insurance, because it is in a flood plain and wetlands. *Id*. Approximately one acre floods two times per year. *Id*. A large portion of the property has flooded 5 times in the last 40 years. *Id; Pet'r Ex. 1*.
11. Summary of Respondent's contentions in support of assessment:
 - a) Aerial maps show that the subject property experiences minimal flooding. *Toumey testimony*. It is not in a wetlands area, as land must be severely flooded five times or more in ten years to be considered wetlands. *Id*. Only one acre of the 73 total acres of the subject are in a flood zone. *Id*.
 - b) Neighborhood factors are correctly applied to residential and agricultural properties. *Id; Resp't Ex. 6*. The "neighborhood factor" is merely an adjustment to market value. *Toumey testimony*.
 - c) An analysis of comparable properties, absent any market data from the Petitioner, show the property is accurately assessed. *Id; Resp't Ex. 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 - 685.

c) Exhibits:

Petitioner's Exhibit 1:	Photographs of Subject Property
Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Property Photograph
Respondent's Exhibit 4:	Neighborhood Summary Sheet
Respondent's Exhibit 5:	Comparable Property Record Cards
Respondent's Exhibit 6:	Handout-Real Property Assessment Guidelines
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. 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 at 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.
14. The Petitioner did not provide sufficient testimony to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the neighborhood factor is too high, and that it should not be applied at all to an agricultural property.
 - b) A neighborhood is defined as a geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and

housing characteristics. The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood. An assessing official must apply the neighborhood factor to all residential and agricultural improvements within the neighborhood as indicated on the property record card. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 8-9.

- b) The Petitioner provided no market data concerning the subject property or its neighborhood, but merely made a conclusory statement that the neighborhood factor is too high. Conclusory statements are not sufficient to prove error in the assessment. See *Clark*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- c) As stated above, a neighborhood factor is properly applied to the Petitioner’s agricultural property, in accordance with the Real Property Assessment Guidelines.
- d) While the Petitioner testified that his property floods, the Petitioner failed to show how this condition affects the market value-in-use of the property, or specifically what the correct assessment should be. See *Meridian Towers East & West*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003).
- e) For the reasons set forth, the Petitioner failed to make a prima facie case.

Conclusion

- 15. The Petitioner did not make 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>.