

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-002-02-1-5-00086
45-002-02-1-5-00087
Petitioners: Donald & Angela McLean
Respondent: Department of Local Government Finance
Parcels #: 002-02-03-0159-0012
002-02-03-0159-0013
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 held in November 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject properties and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L for each parcel on April 19, 2004.
3. The Board issued a Notice of Hearing for each parcel to the parties dated July 16, 2004.
4. Special Master Dalene McMillen a hearing for each parcel in Crown Point on August 25, 2004.

Facts

5. The subject properties are located at 5815 and 5821 West 250th Avenue, Lowell, Cedar Creek Township.
6. The subject properties are a one-story frame 1,270 square foot dwelling and pool located on one lot and a 600 square foot dwelling on the other lot. The lot on parcel 002-02-03-0159-0012 was assessed as 75 feet by 187 feet. The lot on parcel 002-02-03-0159-0013 was assessed as 75 feet by 200 feet.
7. The Special Master did not conduct an on-site inspection of the property.

8. Parcel 002-02-03-0159-0012

a. Assessed value as determined by the DLGF is:
Land: \$15,700 Improvements: \$20,900 Total: \$36,600

b. Assessed value requested by the Petitioners:
Land: \$7,000 Improvements: \$7,000 Total: \$14,000

9. Parcel 002-02-03-0159-0013

a. Assessed value as determined by the DLGF:
Land: \$16,000 Improvements: \$46,900 Total: \$62,900

b. Assessed value requested by the Petitioners:
Land: \$7,000 Improvements: \$46,900 Total: \$53,900

10. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners — Donald and Angela McLean, Owners,
For the Respondent — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issue

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

- a. The improvements are listed on the wrong parcels. They should be reversed. The home and pool are on parcel 002-02-03-0159-0012. The smaller cabin is on parcel 002-02-03-0159-0013. *A. McLean testimony.*
- b. The lots are not measured correctly. On parcel 002-02-03-0159-0012 the lot is only 155 feet deep. On parcel 002-02-03-0159-0013 the lot is only 170 feet deep. Further, the Petitioners contend the assessed value of each lot exceeds the market value of the property. The Petitioners requested that each lot be assessed at \$7,000. In support of this contention, the Petitioners submitted a plat map of the area and a newspaper article from 1996 to demonstrate that the property has flooded on occasion. *A. McLean testimony; Petitioners' Exhibits 1, 2.*
- c. The Petitioners sandbagged the land 5 times during the past 21 years. *D. McLean testimony.*

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

- a. If the improvements were listed on the wrong lots, local assessing officials must correct that kind of error. Such matters were not considered in making these assessments. *Elliott testimony.*

- b. The subject properties were assessed in accordance with the replacement cost schedules in the Real Property Assessment Guidelines for 2002-Version A. *Elliott testimony.*
- c. The Respondent submitted comparable properties demonstrating that the subject properties are valued fairly and accurately for the subject area. *Respondent's Exhibit 3.*
- d. The subject land is valued with the same land base rate as the adjoining lots and has received a negative influence factor of 20 percent for being located away from the lake. *Respondent's Exhibit 2; Elliott testimony.*

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition for each parcel,
 - b. The tape recordings of the hearings labeled Lake Co. 108 and 138.
 - c. Exhibits:
 - Petitioners' Exhibit 1 – A plat map of the subject area,
 - Petitioners' Exhibit 2 – A newspaper article from 1996 about area flooding,
 - Respondent's Exhibit 1 – A copy of the Form 139L petitions,
 - Respondent's Exhibit 2 – The Petitioners' 2002 property record cards and photographs,
 - Respondent's Exhibit 3 – Property record cards and photographs for comparable properties,
 - Respondent's Exhibit 4 – A plat map of the subject area,
 - d. These Findings & 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 Petitioners provided sufficient evidence to support their contentions that there are errors on both parcels. This conclusion was arrived at because:
- b. The Petitioners presented no market evidence in support of the requested value of \$7,000. The conclusory testimony about market value of each lot does not constitute probative evidence. *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - c. The Petitioners submitted a newspaper article describing flooding on the property in 1996. This article failed, however, to establish the effect the flooding had on the value of the subject properties for the 2002 general reassessment.
 - d. The Petitioners’ conclusory statements that the property occasionally floods and the land is overvalued are insufficient to establish the current assessment for the subject property is in error. *Id.*
 - e. The lots are not measured correctly. On parcel 002-02-03-0159-0012 the lot is only 155 feet deep. On parcel 002-02-03-0159-0013 the lot is only 170 feet deep. Petitioners offered a plat map that clearly supports these measurements. Respondent offered a different plat map as evidence supporting the existing measurements, but the measurements upon which Respondent relies are not shown on that map. There is no support for Respondent’s conclusory statements about the proper measurement and they carry no weight as evidence. *Id.* Accordingly, the record clearly establishes that the measurements for the depth of each lot must be corrected.
 - f. Although Petitioners have not presented any probative evidence that the assessments for their house or their cabin are wrong, the record establishes without material contradiction that those improvements have been assessed on the opposite parcels. Such an error must be corrected.

Conclusion

16. The Petitioners made a prima facie case. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the land assessments should be changed to correct the lot size of each parcel. The improvements should be listed on the correct parcels by using the values already established and simply moving them to the opposite parcels.

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.