

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

Petition No.: 48-026-02-1-5-00140
Petitioners: Eric and Sherry Stewart
Respondent: Pipe Creek Township Assessor (Madison County)
Parcel No(s): 26 456-1 through 26 456-16
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 Petitioners initiated an assessment appeal with the Madison County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 4, 2003.
2. The PTABOA’s Notifications of Final Assessment Determinations were mailed to the Petitioners on March 25, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition with the county assessor on April 7, 2004. That petition included all 16 parcels at issue in this case. Petitioners elected to have these cases heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 24, 2004.
5. The Board held an administrative hearing on January 13, 2005, before the duly appointed Administrative Law Judge (ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Eric Stewart, Petitioner
 - b) For Respondent: Cheryl Heath, First Deputy County Assessor
Dave Simmons, Pipe Creek Township Representative

Facts

7. The Petitioners' Form 131 petition included 16 parcels that are contiguous to one another. Only one (1) parcel (26 456-4) has an improvement and that is the Petitioners' residence.
8. The properties are classified as residential, as is shown on the property record cards (PRCs) for Parcel Nos. 26 456-1 through 26 456-16.
9. The ALJ did not conduct an inspection of the property.
10. Assessed Values of subject property as determined by the Madison County PTABOA are:

Land \$56,700 Improvements \$ 114,900 Total \$171,600
 (Total Assessed Values of all 16 properties)
11. Assessed Value requested by Petitioners: \$124,000
 (Total value for all 16 properties)

Issues

12. Summary of the Petitioners' contentions in support of alleged error in assessment:
 - a) The assessed values for the land (16 contiguous parcels) are the values being appealed in this petition. The improvement value is not under appeal. *Stewart testimony.*
 - b) The land values are too high. The assessor valued the parcels as if they were capable of being building sites rather than lots located in a flood plain. *Stewart testimony.*
 - c) Four (4) photographs the subject lots taken the day before the hearing show the lots under water with water almost surrounding the subject dwelling. *Stewart testimony; Petitioners Exhibit 1.* Water has reached within three (3) feet of the dwelling and has flooded the crawl space. *Stewart testimony.*
 - d) A flood map of the immediate area shows the subject property to be in a flood plain. *Stewart testimony; Petitioners Exhibit 2.*
 - e) A negative influence factor of 50% was given to all lots within the township. *Stewart testimony.*
 - f) Lots previously owned by the Petitioner, which are located across the street from the subject lots and which are not in a flood plain, were valued at \$3,200 per lot compared to the \$3,400 assigned to the subject lots. *Stewart testimony.*

- g) The Petitioners attached to their Form 131 petition a portion of what purports to be an appraisal of the subject properties, including the Petitioners' dwelling. *Board Exhibit A*. The Petitioners did not offer the appraisal into evidence and did not explain its significance. *Stewart testimony*.

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

- a) The Respondent assigned a negative influence factor of 50% to each of the subject lots. *Simmons testimony*. This was sufficient to account for their flooding and any lack of desirability. *Id.* The Petitioners did not provide any information to support their assertion that all lots within the township receive a negative influence factor of 50%. *Id.*
- b) Eric Stewart was unable to specify how often water on the subject lots rises to the level shown in his photographs. *Simmons argument; Stewart testimony; Petitioner Exhibit 1*.
- c) The portion of the appraisal attached to the Petitioners' Form 131 petition does not specify whether all of the subject properties were included in its estimation of value. *Simmons testimony; Board Exhibit A*. The appraisal also fails to separately allocate portions of the total value estimate to land and improvements. *Id.*

Record

14. 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 BTR # 5955.
- c) Exhibits:

Petitioners Exhibit 1: Four (4) photos of the subject property showing
flooding
Petitioners Exhibit 2: Flood map

Respondent Exhibits: No evidence submitted

Board Exhibit A: Form 131 Petition and attachments
Board Exhibit B: Notice of Hearing on Petition

- d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:

- a) A petitioner seeking review of a determination of the local officials 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 Petitioner’s evidence. *See American United Life Ins. 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.

16. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioners failed to present probative evidence to support their requested reduction in the assessment of the subject properties.
- b) The Petitioners primarily contend that the Respondent erroneously valued the subject lots as if those lots were capable of having improvements built upon them. *Stewart argument*. The Petitioners contend that improvements cannot be built upon the subject lots because they are situated in a flood plain. *Stewart testimony*.
- c) In support of their position, the Petitioners submitted what Eric Stewart identified as a “flood map.” *Petitioners Exhibit 2*. Eric Stewart testified that the subject lots are located within one of the flood plains depicted on that map. *Id.*; *Stewart testimony*. The Petitioners also submitted photographs of the subject lots taken the day before the hearing. *Stewart testimony; Petitioners Exhibit 1*. The photographs depict at least some of the subject lots as being completely underwater. *Id.*
- d) It may be true, as the Petitioners claim, that improvements cannot be constructed on the subject lots due to their location in a flood plain. However, the Petitioners have not presented any evidence to quantify how the inability to improve the subject lots impacts their market values-in-use. Thus, the Petitioners have failed

to demonstrate either that the current assessment is incorrect, or what the correct assessment would be. *See Meridian Towers*, 805 N.E.2d at 475.

- e) Eric Stewart's testimony that he previously owned lots across the street, which are not in the flood plain, but which were assessed for less than the subject lots likewise is insufficient to support the Petitioners' request for a reduced assessment. While Stewart did not completely articulate his argument concerning the significance of this testimony, the Board understands him to be arguing that the subject lots are assessed at a higher value than comparable lots across the street.
- f) To successfully make a case based upon the sale or assessment of comparable properties, a Petitioner must establish that the properties upon which he relies are truly comparable. *See Blackbird Farms Apartments, LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002). The determination of whether properties are similar enough to be considered comparable depends upon numerous factors, including, among other things, size, shape, topography, accessibility, and use. *Id.*
- g) Here, the Petitioners did not provide any information about the size, topography or other features of the purportedly comparable lots identified by Stewart. In fact, Stewart did not even identify the lots in question other than to say that he previously owned them and that they were located across the street from the subject lots. Consequently, Stewart's testimony is insufficient to establish a prima facie case for a reduction in assessment.
- h) Finally, the Petitioners attached a portion of an appraisal to their Form 131 petition. *Board Exhibit A*. The Petitioners did not explain the significance of the appraisal to their appeal or explain why they only included a portion of the document. Appraisals conducted in accordance with generally accepted appraisal practices may qualify as probative evidence in property tax appeals. However, it is not possible to determine from the portion of the document submitted by the Petitioners whether the appraisal was conducted in conformance with generally accepted appraisal practices. The appraisal therefore lacks probative value.
- i) Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in assessment.

Conclusion

17. The Petitioner failed to 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.