

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-016-02-1-5-00244
Petitioners: Eugene H. & Judith A. Nowak
Respondent: Department of Local Government Finance
Parcel: 006-27-17-0102-0018
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. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in December 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$119,300 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 13, 2004.

Facts

5. The subject property is located at 1230 W. 39th Avenue in Hobart.
6. The subject property consists of a one-story dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF is:
Land \$26,400 Improvements \$92,900 Total \$119,300.
9. Assessed value requested by Petitioners for land is \$17,000 or less.
10. Persons sworn as witnesses at the hearing:
Eugene H. and Judith Nowak, owners,
Phillip E. Raskosky, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a) Lot 17, which is part of the subject property that also includes Lot 18 and the west 20 feet of Lot 19, is pie shaped, has no frontage, and runs along a railroad track. The Petitioners claim that Lot 17 could not be sold to build on because of its shape and because there is no access. *Petitioner Exhibits 1, 4; E. and J. Nowak testimony.*
 - b) The neighbor's land is identical in size to the subject, but is assessed at only \$17,000. *E. Nowak testimony.*

12. The Respondent's contention in support of the assessment:
 - a) Lots 17, 18, and part of 19 are all combined according to the legal description contained on the subject's property record card. Lot 17 could not be sold because a portion of the house is located on it. *Respondent Exhibits 2, 6, 7; Raskosky testimony.* Only one end of the property is pie shaped and abuts the railroad tracks. This circumstance is not a market detriment. *Raskosky testimony.*
 - b) Even though the May 1991 appraisal is outdated, it determines the value of the land in 1991 was \$22,000. Because land tends to appreciate, the appraisal supports the current assessment of \$26,400 even though it is old. *Petitioner Exhibit 5; Respondent Exhibit 2; Raskosky 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 852,
 - c) Exhibits:
 - Petitioner Exhibit 1–Photographs of land in question,
 - Petitioner Exhibit 2–Estimated selling price of subject property in 2002,
 - Petitioner Exhibit 3–Appraisal estimate of subject in spring of 2002,
 - Petitioner Exhibit 4–Plat of Survey,
 - Petitioner Exhibit 5–May 1991 appraisal,
 - Respondent Exhibit 1–Form 139L,
 - Respondent Exhibit 2–Subject property record card,
 - Respondent Exhibit 3–Subject photograph,
 - Respondent Exhibit 4–Comparable analysis,
 - Respondent Exhibit 5–Property record cards and photographs used in analysis,

Respondent Exhibit 6–Plat map,
Respondent Exhibit 7–Aerial map,
Board Exhibit A–Form 139L,
Board Exhibit B–Notice of Hearing,
Board Exhibit C–Sign in Sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and rules 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.
- d) Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12.
- e) A property’s assessment is to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

15. The Petitioners failed to establish a prima facie case. This conclusion was arrived at because:

- a) The appraisal submitted by Petitioners states that the value for the subject property as of May 1, 1991, would range from \$101,000 for a Distress Sale to \$111,900 for an arms-length sale. Although the appraisal was prepared by a licensed, certified

Eugene H & Judith A Nowak
45-016-02-1-5-00244
Findings & Conclusions
Page 3 of 5

appraiser, Indiana's assessment regulations state that for the 2002 general reassessment a property's assessment is to reflect its value as of January 1, 1999. Consequently, Petitioners were required to provide some explanation as to how the 1991 appraisal value is relevant to the value as of January 1, 1999. Because the Petitioners provided no such explanation, the appraisal does not carry any probative value. *Long*, 821 N.E.2d at 471.

- b) Petitioners claim that the neighbor's property is identical to the subject, but is assessed for less. This claim was not supported by probative evidence. Conclusory testimony does not provide sufficient cause for the Board to determine that an error has been made. Unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long*, 821 N.E.2d at 470; *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
- c) The Petitioners' claim that the railroad tracks running along a portion of lot 17 negatively affect the market value was unsupported by probative evidence. Mere allegations will not be considered sufficient to establish an alleged error in the eyes of the Board. *Whitley Products v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998)
- 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 Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- e) The Petitioner's evidence was insufficient to require a change.

Conclusion

16. The Petitioners failed to provide sufficient evidence to establish 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

Eugene H & Judith A Nowak
45-016-02-1-5-00244
Findings & Conclusions
Page 4 of 5

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>.