

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00813
Petitioners: J. Edward & Monica A. Johnston
Respondent: The Department of Local Government Finance
Parcel #: 001-25-43-0411-0009
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 on February 23, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$2,500 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 10, 2005.
4. Special Master Ellen Yuhan held the hearing on March 14, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 3249 Carolina Street, Gary in Calumet Township.
6. The subject property is a vacant lot measuring 40' by 137'.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of subject property is \$2,500 for the land. There are no improvements on the subject property.
9. The Petitioners requested that the assessment be changed to \$100 for the land.
10. Monica A. Johnston, one of the owners of the property, and Stephen H. Yohler, with the DLGF, appeared at the hearing and were sworn as witnesses.

J. Edward & Monica A. Johnston
45-001-02-1-5-00813
Findings & Conclusions
Page 1 of 5

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The property is a vacant lot on an unpaved street with no sidewalks or curbs. The water line for 3252 Carolina runs through the middle of the property. Moreover, the Little Calumet River Basin Development Commission purchased the flooding rights to this property and prohibits construction. The property abuts a lot owned by a motorcycle gang. *Petitioner Exhibits 5, 6a, 6b; Johnston testimony.*
 - b. The lot size is below the minimum required by the City of Gary for construction. *Johnston testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent testified that the subject lot was originally assessed at \$315 per front foot but it was adjusted down to \$75 per front foot as a result of equalization. *Yohler testimony.*
 - b. Because the lot is vacant, it receives a negative 20% influence factor. The assessed value of \$2,500 is fair. *Respondent Exhibit 2; Yohler 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 1205.
 - c. Exhibits:

Petitioners Exhibit 1 - Map,¹
Petitioners Exhibits 2-6 - Photographs of the appealed properties,
Petitioners Exhibits 6a-6b - Flowage Easement for 3249 Carolina Street,
Petitioners Exhibit 7 - Photograph,
Petitioners Exhibit 8 - Quitclaim deed for 3314 Delaware,

Respondent Exhibit 1 - Form 139L petition,
Respondent Exhibit 2 - Subject property record card
Respondent Exhibit 3 - Plat map,

¹ Petitioners Exhibits 1, 2-6, 7 and 8 are for petitions 45-001-02-1-5-00811, 45-001-02-1-5-00812, 45-001-02-1-5-00813, 45-001-02-1-5-00814, and 45-001-02-1-815.

Board Exhibit A - Form 139L petition,
Board Exhibit B - Notice 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 Petitioners did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners contend that the property is unbuildable. The lot is not the minimum size required by the City of Gary zoning ordinances. Further, the Little Calumet River Basin Development Commission purchased the flood right. Finally, the Petitioners testified, a water line runs through the middle of the property. *Petitioners Exhibits 5, 6a, 6b; Johnston testimony*.
 - b. The Respondent testified that the property was assessed as a vacant lot with a 20% negative influence factor applied and that the value of \$2,500 was fair.
 - c. Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for

characteristics of a particular parcel of land that are peculiar to that parcel.”
PROPERTY ASSESSMENT GUIDELINES FOR 2002, glossary at 10. Petitioners have the burden to produce "probative evidence that would support an application of a negative influence factor *and* a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001) (emphasis added). This is a two prong test. Petitioners must prove that a property warrants the imposition of an influence factor and, also, what that influence factor should be.

- d. The DLGF testified that a 20% negative adjustment factor was applied to the property to reflect the unimproved nature of the lot. However, there is a difference between an unimproved lot and one that cannot be improved due to legal or physical barriers. While the Petitioners have raised a prima facie case that the lot is undevelopable, they have not met their burden of showing what the “quantification” of the influence factor should be. *See Talesnick* at 1108.
- e. For the reasons set forth, the Petitioner has failed to make a prima facie case that the assessment of the subject property is incorrect.

Conclusion

- 16. The Petitioner did not make a prima facie case. The Board finds in favor of 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>.