

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

Petition #: 84-003-02-1-5-00008
Petitioner: John F. Kraemer
Respondent: Honey Creek Township Assessor (Vigo County)
Parcel #: 102-09-18-300-017
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 Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 10, 2003.
2. The Petitioner received notice of the decision of the PTABOA on May 21, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on June 17, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 27, 2004.
5. The Board held an administrative hearing on November 4, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. The following persons were present and sworn in at the hearing:
 - a) For Petitioner: John F. Kraemer, Property Owner
 - b) For Respondent: Susan McCarty, Vigo County Assessor's Office
Robert Walls, Vigo County PTABOA member
Gloria Donham, Vigo County PTABOA member

Facts

7. The property is classified as Residential, as is shown on the property record card for parcel # 102-09-18-300-017.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vigo County PTABOA:
Land \$ 11,700 Improvements \$ 81,400 Total: \$ 93,100.
10. Assessed Value requested by Petitioner:
Land \$ 11,700 Improvements \$ 64,463 Total: \$ 76,163.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner contends that the widening of State Road 63 depreciated the value of his property. *Kraemer argument.*
 - b) Local assessing officials applied a 25% negative influence factor to the Petitioner's land for restrictions. His neighbors on either side did not receive the negative influence factor. *Petitioner Exhibit 3; Kraemer testimony.*
 - c) Petitioner contends his property has depreciated because the land-taking put the house closer to the highway and any depreciation should also apply to the improvements, which has the most value. *Kraemer argument.*
 - d) Petitioner argues that since his residence is closest to the road, it qualifies to be the "poor house of the neighborhood." Petitioner contends that the Real Property Guidelines support a "poor" condition rating for a residence that is in a poor location within the neighborhood. *Id; Petitioner Exhibit 4.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The county has the land-taking of .072 acre at no value. *McCarty testimony.*
 - b) The negative 25% influence factor was given to the Petitioner's land for the location closer to the highway. *McCarty testimony.* The neighbors land was not affected by the widening of the highway. *Id.*
 - c) The Petitioner received compensation from the state for the land and damages. *McCarty argument.*
 - d) The Petitioner's house is similar in age and design to the homes in that subdivision. No deferred maintenance or lack of amenities was noted for his property. *Id.*

- e) No market evidence was presented by the Petitioner to show a loss of value in the improvements. *Id.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 6033.
- c) Exhibits:
 - Petitioner Exhibit 1: Form 131 Petition.
 - Petitioner Exhibit 2: Statement of the Basis for Just Compensation.
 - Petitioner Exhibit 3: Property Record Cards for subject and neighboring properties.
 - Petitioner Exhibit 4: Data from “Real Property Assessment Guideline” Book 1.
- Respondent Exhibit 1: Notice of County Assessor Representation.
- 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 Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

- a) The Respondents agree that State Road 63 has caused a lowering of the subject's property value. *McCarty testimony*. They addressed this situation by applying a negative 25% influence factor to the land assessment. *McCarty testimony*.
- b) To show that a further reduction in the assessment is warranted, the Petitioner must prove that there is an additional loss in value, and quantify the alleged loss in value. *See State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. 2001); *Blackbird Farms Apartments, LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).
- c) The Petitioner submitted no evidence of the actual value of the property, and no quantification of a loss in value. The Petitioner merely offered a conclusory statement that the property value suffered when State Road 63 was moved closer to his property. *Kraemer testimony*. Again, the Respondent already recognized this fact by applying a 25% negative influence factor to the land assessment, and asserts that this adjustment is satisfactory. *McCarty testimony*.
- d) Furthermore, Petitioner did not offer sufficient evidence to support his claim that the property should be rated in poor condition. Petitioner offered only a conclusory statement that his property was in the worst location in the neighborhood, and a calculation of assessed value with a condition rating of poor. *Kraemer testimony*. Petitioner argues that the improvement value should be adjusted for proximity to State Road 63. This fact alone does not render the property to be in poor condition under the assessment regulations.
- e) For the reasons stated, the Petitioner failed to make a prima facie case that the assessment should be reduced further due to the close proximity of the property to State Road 63.
- f) Respondent testified that the dwelling does not have deferred maintenance or other characteristics of poor condition buildings. *McCarty testimony*.

Conclusion

16. The Petitioner failed to 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.