

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00225
Petitioner: Joseph P. Ulaszek, Jr., et al.
Respondent: Department of Local Government Finance
Parcel #: 003312500260013
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 between the Petitioner and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$15,700 and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties.
4. Special Master Kathy J. Clark held the hearing in Crown Point on September 16, 2004.

Facts

5. The subject property is a vacant lot measuring 35 feet by 85 feet located at 13424 Dewey Street, Cedar Lake, in Center Township.
6. The Special Master did not conduct an on-site inspection of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land \$15,700 Improvements -0- Total \$15,700.
8. Assessed Value requested by the Petitioner:
Land \$3,000 Improvements -0- Total \$3,000.

9. The following persons were sworn in at the hearing:
For Petitioner — Ann Wilson, sister of Joseph P. Ulaszek, Jr.
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble

Issue

10. Summary of Petitioner's contentions in support of alleged error in the assessment:
- a. In 1996 the Petitioner agreed to allow the relocation of Cedar Lake Lift Station 15 (Lift Station) to lot 65 (parcel number 003-31-25-0026-0012), one of four lots owned by the Petitioner. *Wilson testimony.*
 - b. The market value of lot 65 and the adjacent lot 66 (parcel 003-31-25-0026-0013) has been greatly affected by the relocation of the Lift Station and the accompanying easements. *Petitioner Exhibits 3, 4 and 5; Wilson testimony.*
11. Summary of Respondent's contentions in support of the assessment:
- a. During the informal hearing, it was discovered that the Petitioner's lots were being assessed in the incorrect neighborhood. Correcting this error resulted in an increase in the base rate of the land. *Elliott testimony; Respondent Exhibit 2.*
 - b. When the neighborhood number assigned to the parcel under appeal was corrected, however, the appropriate negative influence factors were not applied due to clerical error. The parcel's value should have been discounted for both vacancy (at a rate of 20 percent) and distance from the lake's edge (also at a rate of 20 percent). This would have resulted in a total decrease in the land value of 40 percent. Only one of the 20 percent negative influence factors was applied to the parcel. The parcel should receive an additional 20 percent negative influence factor. *Elliott testimony.*

Record

12. The official record for this matter is made up of the following:
- a. The Petition.
 - b. The tape recording of the hearing labeled Lake Co. tape 136.
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L.
 - Petitioner Exhibit 2: Summary of Petitioner's arguments.
 - Petitioner Exhibit 3: Surveyor Location Report and photograph of two lots.
 - Petitioner Exhibit 4: Photographs of lots showing the Lift Station placed on lot 65.
 - Petitioner Exhibit 5: Correspondence regarding the Lift Station.

Petitioner Exhibit 6: Notices of Assessment of Land and Structures, Form 11/Lake County for each lot.

Petitioner Exhibit 7: Notices of Final Assessment for each lot.

Respondent Exhibit 1: 139L Petition.

Respondent Exhibit 2: Subject property record card before and after correction of the neighborhood codes.

Respondent Exhibit 3: Neighborhood Code map.

Respondent Exhibit 4: Plat map.

d. These Findings and Conclusions.

Analysis

13. The most applicable governing cases:

- 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.

14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contention for a reduction in assessed value. This conclusion was arrived at because:

- a. An influence factor is 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. The factor may be positive or negative and is expressed as a percentage.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.2-1-2). To prevail on the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 (Ind. Tax Ct. 1999).

- b. The DLGF placed a 20 percent negative influence factor on the parcel. The parties are therefore in agreement that there are characteristics peculiar to the parcel sufficient to support an application of a negative influence factor. Accordingly, the first requirement of the two-prong *Phelps Dodge* test has been satisfied, but Petitioner failed to satisfy the second prong of the *Phelps Dodge* test. Petitioner's evidence failed to quantify the market impact of the characteristics supporting the application of the influence factor. For example, no appraisal or evidence of the assessments of similarly situated properties was presented to establish a new value. The Petitioner's unsubstantiated conclusory statements that the current assessment is too high do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c. The Respondent, however, testified that the parcel should receive an additional 20 percent negative influence factor. The parcel should receive a total 40 percent negative influence factor. *Elliott testimony*.

Conclusion

- 15. The Petitioner did not establish a prima facie case. Nevertheless, the Respondent acknowledged that an additional negative influence factor erroneously had been omitted from the property record card. Based on the Respondent's agreement that there was an error, the Board concludes that the parcel should receive a total of 40 percent negative influence factor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to correct the acknowledged error.

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.