

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

Petition No.: 45-002-04-1-5-00001
Petitioner: Robert D. and Eleanor A. Kahl
Respondent: Cedar Creek Township Assessor, Lake County
Parcel No.: 002-02-03-0066-0004
Assessment Year: 2004

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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document April 12, 2005.
2. The Petitioners received notice of the decision of the PTABOA on August 23, 2006.
3. The Petitioners filed an appeal to the Board by filing Form 131 petition with the county assessor on September 18, 2006. The Petitioners elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated February 25, 2008.
5. The Board held an administrative hearing on April 9, 2008, before the duly appointed Administrative Law Judge Dalene McMillen.
6. Eleanor A. Kahl, one of the Petitioners, was sworn in as a witness at the hearing. No one appeared on behalf of the Respondent.¹

Facts

7. The subject property is .303 acres of vacant land located at 14825 Reeder Road, Crown Point, Cedar Creek Township in Lake County.

¹ Notice of Hearing on Petition was mailed to the Lake County Assessor and Cedar Creek Township Assessor on February 25, 2008. The proof of mailing has been entered into the record as Board Exhibit D.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the subject property to be \$700 for the land. There are no improvements on the subject property.
10. The Petitioners requested the land be valued at \$100 on the Form 131 petition. At the hearing, however, Mrs. Kahl stated that the property is worth nothing.

Issue

11. Summary of Petitioners' contentions in support of the alleged error in the assessment:
 - a. The Petitioners contend the assessed value of the subject property is overstated. *Kahl testimony.* Mrs. Kahl testified that the subject property is a sloping area of grass with a creek running along one side. *Id.* As such, the Petitioners argue, the property is "landlocked". *Id.* In support of this contention, the Petitioners submitted a photograph of the property to show that there is no proper access to the parcel. *Board Exhibit A.*
 - b. The Petitioners further contend that due to erosion, the adjoining creek continues to expand and therefore the subject property is unbuildable. *Kahl testimony.*
12. The Respondent did not appear or submit evidence in this matter.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The digital recording of the hearing,
 - c. Exhibits:

Board Exhibit A – Form 131 petition with attachments,²
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Proof of mailing.

² During the hearing, the Petitioner referred to a photograph in her testimony which is attached to the Form 131 petition. The photograph has been entered into the record as part of Board Exhibit A.

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. The Petitioners contend the subject property is incorrectly valued based on the condition of the property. According to the Petitioners, the property is a sloping grassy area that is landlocked. *Kahl testimony*.
 - b. 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 Board of Tax Commissioners*, 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 OF 2002, glossary at 10. The 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 Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- c. Real property is assessed based “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, for the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. While any alleged limitations on the use of the property may be relevant to the issue of whether a negative influence factor should apply, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject property or to show the actual market value-in-use of the property.
- d. The Petitioners’ allegations regarding the property’s sloping area and “landlocked” status are similarly unsupported by evidence. In fact, Mrs. Kahl testified that the subject property was purchased as a single property with an adjoining parcel containing approximately one and one-third acres on which the Kahl’s home is located. The Petitioners discovered after the purchase that the subject parcel is located in Cedar Creek Township, while the remainder of the parcel is located in Center Township. Thus, while the subject parcel in isolation may lack access, the Kahl’s property as a whole is accessible. A Petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by probative evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 1230 (Ind. Tax 1998).
- e. 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*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner 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: June 23, 2008

Commissioner,
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.