

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00501
Petitioners: Ralph V. & Dona D. Ochs
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0115-0010
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 Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$108,500 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 1, 2004.

Facts

5. The subject property is located at 12801 77th Avenue, Dyer, in St. John Township.
6. The subject property is a single-family dwelling located on a 100 by 435 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$43,700 Improvements \$64,800 Total \$108,500.
9. Assessed value requested by Petitioners:
Land \$28,000 to \$30,000 Improvements \$64,800 Total \$92,800 to 94,800.

10. Persons sworn in as witnesses at the hearing:
Ralph V. and Dona D. Ochs, Owners
Everett Davis, Assessor/Auditor, DLGF

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The subject property has a water problem. When it rains an inch or inch and one-half, water runs off about 50 to 60 feet behind the house. The water is 12 to 18 inches deep and sometimes 150 to 200 feet wide. *Petitioner Exhibits 26 & 27; R. Ochs testimony.*
 - b. The land is overvalued at \$43,700. Other lots measuring about one acre are valued from \$26,000 to \$38,000. The deed shows the subject lot to be an acre. *Petitioner Exhibits 1-25; R. Ochs tetimony.*
 - c. The subject property has been assessed in Saratoga Subdivision instead of in the field that is being farmed for production crops. *Petitioner Exhibit 26; R. Ochs testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Concerning the water problem, some proof of loss is needed to show how the water problem affects value. *Davis testimony.*
 - b. In Petitioners' alleged comparable properties, one parcel shown as Petitioners' Exhibit 15 is reasonably comparable, but it is 100 by 175 feet and the subject parcel is 105 by 475 feet. *Davis testimony.*
 - c. From the information presented, it is not possible to tell if the subject has been assessed in the wrong neighborhood. *Davis testimony.*
 - d. The sale of a comparable property tends to show that the subject is not over-assessed. *Respondent Exhibit 4 & 5; Davis 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 Co. 843,
 - c. Exhibits:
 - Petitioner Exhibit 1-25: Printouts of assessments for parcels of land,
 - Petitioner Exhibit 26: Map showing proposed subdivision,
 - Petitioner Exhibit 27: Copies of four photographs showing flooding,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Photograph of the subject property,
 - Respondent Exhibit 4: Comparable sales worksheet,
 - Respondent Exhibit 5: Photograph and property record card for a comparable property.
- Board Exhibit A: Form 139 L,
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 provide sufficient evidence to support their contentions that there is an error in their current assessment. This conclusion was arrived at because:
- a. The Petitioners said that the subject land was overstated because other one-acre lots were assessed at between \$26,000 and \$38,000. Petitioners submitted 25 computer printouts for vacant parcels. Four of the parcels are in the same neighborhood as the subject. These parcels are assessed using the base rate of \$380 per foot front that was used for the subject. However, those lots are either 100’ by 175’ or 90’ by 175’; the subject lot is actually 100’ by 435.6’. Furthermore, the legal description on the property record shows the parcel to be one acre. *Petitioner Exhibits 15-17, 20, 25; Respondent Exhibit 2; Ochs testimony.*
 - b. The subject property’s neighborhood is shown as “02015 Know as Saratoga.” Petitioners contend that they are erroneously assessed in Saratoga Subdivision but failed to provide probative evidence to show that they were assessed in the wrong neighborhood.
 - c. The Respondent testified that he did not know if the neighborhood was correct, but stated that the subject parcel was valued the same as other parcels in the neighborhood. *Davis testimony.*
 - d. The Petitioners testified that the subject parcel flooded and supported their testimony with photographs. *Petitioner Exhibit 27; Ochs testimony.*
 - e. The Respondent did not rebut the Petitioners’ evidence concerning flooding but stated that proof was needed to show how the water problem affected value. *Davis testimony.*
 - f. The Petitioners presented no market value data to show a causal link between the alleged deficiency in the property and a reduction in property value. *Talesnick v. State Bd of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax 2001).

- g. While the Petitioners' were unable to prove a loss in value due to flooding or that the neighborhood was incorrect, they did establish that the subject parcel was one acre. The Lake County Land Order provides acreage pricing for this neighborhood at a base value of \$37,800.
- h. The subject parcel should be assessed on an acreage basis at a value of \$37,800.

Conclusion

- 16. The Petitioners established a prima facie case. The Respondent failed to rebut the Petitioners' case with substantial evidence. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.