

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-1-00413
Petitioners: Robert J. & Rose Mary B. Velligan
Respondent: Department of Local Government Finance
Parcel: 009-22-12-0005-0061
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$117,000 and notified the Petitioners on March 26, 2004.
2. Petitioners filed a Form 139L on April 26, 2004, with the Lake County Assessor.
3. The Board issued a notice of hearing to the parties dated February 28, 2005.
4. Special Master Paul Stultz held the hearing on April 1, 2005, in Crown Point.

Facts

5. The subject property is located at 12420 West 93rd Avenue in St. John.
6. The subject property is a vacant twenty acre parcel of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is:
Land \$117,000 Improvements \$-0- Total \$117,000.
9. The assessed value requested by Petitioners on the 139L Petition is:
Land \$40,000 Improvements \$-0- Total \$40,000.
10. The following persons were present and sworn as witnesses at the hearing:
Robert Velligan, property owner,
Don Adair, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The subject parcel's market value does not equal the assessed value. *Velligan testimony.*
 - b) The parcel is landlocked and has a ten foot easement. *Id.*
 - c) Petitioners expressed dissatisfaction with the assessment process in Lake County. No one explained to them the reason for the increase in the assessed value of their property. *Id.*
 - d) The parcel is not twenty acres. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) The current assessment is correct. *Adair testimony.*
 - b) The aerial photograph of the property does not indicate any farming activity on the parcel. At the informal hearing, the land classification was changed from commercial to residential. *Id.*

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. 1379,
 - c) Petitioner Exhibits: None,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Informal property record card,
Respondent Exhibit 4: Aerial map,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-in sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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. Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The land is currently assessed at \$117,000. Petitioners contend the land should be assessed at \$40,000.
 - b) Residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate. If there is no dwelling on the parcel, the amount of acreage in the entire parcel is multiplied by the excess acreage rate to determine the assessed value of the parcel. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 69 (incorporated by reference at 50 IAC 2.3-1-2).
 - c) Petitioners asserted the current assessed value of the parcel exceeds its market value. Petitioners provided no evidence regarding the market value of their parcel. For example, Petitioners provided no evidence of sales prices for any comparable properties or that similarly situated properties have been assessed differently than their parcel.
 - d) Petitioners claim the parcel is not twenty acres in size. Petitioners did not specify what the correct amount of acreage should be and they presented no probative evidence of what the correct size should be. Further, the legal description on the property record card indicates the size of the parcel is twenty acres. Petitioners’ unsubstantiated conclusion is insufficient to establish any error regarding size of the parcel. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221

(Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- e) Petitioners failed to demonstrate any error regarding the size of the parcel.
- f) Petitioners also contended the property is landlocked. Petitioners made no link between this contention and the proposed revised value. "Landlocked" is a term that means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." BLACK'S LAW DICTIONARY 894 (8th ed. 2004). There is no evidence that there are problems with ingress and egress that would have any effect on the market value of the property. Additionally, the aerial map indicates the property abuts 93rd Avenue. Thus, the evidence shows that the property is not landlocked.
- g) Petitioners have not presented sufficient evidence to establish any error in the assessment.

Conclusion

- 16. Petitioners failed to make 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: _____

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>>.