

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00928
Petitioners: Ruben D. & Linda M. Vargas
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0550-0004
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioners and the Respondent in March, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$38,900. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties on October 7, 2004.
4. A hearing was held on November 9, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 4187 Hendricks Street, Gary, in Calumet Township.
6. The subject property is a vacant residential tract of land consisting of 16.223 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF assessed the value of the subject property to be \$38,900 for the land. There are no improvements on the subject property.
9. The Petitioners requested a value of \$8,530 for the subject property.

10. The Petitioners, Ruben and Linda Vargas, and their attorney David W. Masse appeared at the hearing. Diane Spenos appeared on behalf of the DLGF. Ruben and Linda Vargas and Diane Spenos were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The original tract of land consisted of 20.73 acres that was later divided into four (4) lots - 17.73 acres (current property record card (PRC) shows 16.223 acres), and three lots of approximately one acre each. *L. Vargas testimony*. The original tract of 20.73 acres was assessed for a total value of \$8,350. There has been no change to the subject property since that time. *L. Vargas testimony & Petitioner's Exhibit 3*.
 - b) The adjacent property to the subject property is also wetlands and is used for wildlife preservation. The neighbors only pay \$1.00 per acre because their property is a wildlife preserve and nothing can be built on it. *L. Vargas testimony*.
 - c) The new assessment only values five acres of the subject property as wetlands. However ten acres of the property should be considered unusable wetlands as had been previously determined. *L. Vargas testimony & Petitioner's Exhibits 2 and 3*.
12. Summary of Respondent's contentions in support of assessment:
- a) Land values determined in the 1995 reassessment were based on 1991 land values. For the 2002 reassessment land values were based on 1999 values. *Spenos testimony*. In addition, the 2002 reassessment changed how assessed values would be determined on properties from a reproduction cost system to market value-in-use. *Id.*
 - b) The property adjacent to the Petitioners' property and the subject property are not comparable properties because the Petitioners' neighbor applied to become a wildlife preserve. *Spenos testimony*. Because the Petitioners did not apply for the property to be certified as a wildlife preserve, the subject property cannot be valued as such. *Spenos testimony*
 - c) The subject property is currently valued as "excess residential acres." Five of those acres are given a 25% negative influence factor due to the wetlands. *Spenos testimony & Respondent's Exhibit 2*. Based on information presented by the Petitioner, the DLGF agrees that the ten acres previously determined to be wetlands should be given a negative influence factor of 25%. *Spenos testimony, Petitioner's Exhibits 2 and 3 & Respondent's Exhibit 2*.

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. #587.
- c) Exhibits:

- Petitioners' Exhibit 1: Petition Form 130 – March 16, 1999
- Petitioners' Exhibit 2: Response from Calumet Township Assessor
- Petitioners' Exhibit 3: Notification of Final Assessment Determination
- Petitioners' Exhibit 4: Notice of Assessment – 4187 Hendricks Street
- Petitioners' Exhibit 5: Notice of Assessment – 3515 West 41st Avenue
- Petitioners' Exhibit 6: Notice of Assessment – 3537 West 41st Avenue
- Petitioners' Exhibit 7: Notice of Assessment – 3569 West 41st Avenue
- Petitioners' Exhibit 8: Copy of Mortgage
- Petitioners' Exhibit 9: Notice of Assessment – 3211 West 41st Avenue
- Petitioners' Exhibit 10: Appraisal of Subject Property
- Petitioners' Exhibit 11: Summary of Petitioner's Arguments

- Respondent's Exhibit 1: Form 139L Petition
- Respondent's Exhibit 2: Subject PRC

- Board's Exhibit A: Form 139L Petition
- Board's Exhibit B: Notice of Hearing on Petition
- Board's Exhibit C: Hearing 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 the DLGF 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 at 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 failed to provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the subject property should be valued in accordance with the amount set forth in the PTABOA's 1999 decision. *L. Vargas testimony & Petitioner's Exhibit 3*. The Petitioners are mistaken in their reliance on the 1999 assessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645,650 (Ind. Tax Ct. 2001)(citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Id.*
 - b) The Petitioners contend that their property should be assessed in accordance with the neighboring property that is valued as a wildlife preserve and assessed at \$1.00 per acre. *L. Vargas testimony*. Indiana Code § 6-1.1-6.5-2 establishes the requirements necessary for classification as a wildlife habitat. One such requirement is to file an application to the Department of Natural Resources. *Id.* When asked if the Petitioners had applied for such a certification, the Petitioners responded that they had not. *Spenos and Vargas testimonies*. Petitioners merely allege that the neighboring property is "comparable" to the subject property, but have not supported these contentions with sufficient evidence. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 470 (Ind. Tax Ct. 2005).
 - c) Finally, the Petitioners contend that the Township Assessor determined that ten acres of the subject property were unusable wetlands. After reviewing the Petitioner's evidence, the Respondent agreed to change the five acres currently shown on the property record card as wetlands to ten acres and apply a 25% negative influence factor to the total ten acres. *Spenos testimony, Petitioner Exhibit 3, & Respondent Exhibit 2*.

Conclusion

16. The Petitioners did not establish a prima facie case to support a change in their assessment. However, the Respondent agreed to value ten acres of the subject property as wetlands and apply a negative 25% influence factor to those ten acres. Thus, the property record card should be changed to reflect ten acres with a negative influence factor of 25%.

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/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.

