

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

**Petition #:** 48-027-03-1-5-00038  
**Petitioners:** Stanley and Nancy Durham  
**Respondent:** Pipe Creek Township Assessor (Madison County)  
**Parcel #:** 26-256-20  
**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 Petitioners initiated an assessment appeal with the Madison County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 2004.
2. The PTABOA’s Notification of Final Assessment Determination was sent to the Petitioners on August 12, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on August 31, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 24, 2004.
5. The Board held an administrative hearing on January 13, 2005, before the duly appointed Administrative Law Judge (ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: Nancy Durham, Petitioner
  - b) For Respondent: Cheryl Heath, Representative County Assessor’s Office  
Dave Simmons, Representative for Pipe Creek Township

## Facts

7. The property is classified as residential, as is shown on the property record card (PRC) for parcel # 26-256-20.
8. Petitioners own three (3) adjoining parcels - two (2) vacant lots (Lots 174 and 176) and a lot with a house. The vacant lots are located on either side of the dwelling. The Petitioners appealed the assessment of the other vacant lot under petition no. 48-027-03-1-5-00037. The Petitioners withdrew that appeal on May 11, 2005.
9. The ALJ did not conduct an inspection of the property.
10. Assessed Value of subject property as determined by the Madison County PTABOA:  
Land \$3,300      Improvements \$0
11. Assessed Value requested by Petitioners per the Form 131 petition:  
Land \$1,500      Improvements \$0

## Issues

12. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) The assessed value of the subject property is excessive. Taxes on the subject property increased unreasonably from the previous year making the property less valuable and more difficult to sell. *Durham testimony.*
  - b) There are vacant lots on both sides of the Petitioners' house. The subject parcel is a 40-foot vacant lot that sits between the Petitioners' house and another house. *Durham testimony.*
  - c) The Petitioners cannot build upon the subject parcel due to setback requirements. The Petitioners probably would not sell the subject parcel separately from the adjoining parcel that contains the dwelling. *Durham testimony.*
13. Summary of Respondent's contentions in support of the assessment:
  - a) The three (3) parcels owned by the Petitioners measure 40 feet by 147 feet each. *Simmons testimony.*
  - b) When asked by the Respondent if the Petitioners would sell all three (3) as one parcel, the Nancy Durham responded that she would do so, unless a neighbor on either side wanted to purchase one of the lots. *Simmons Testimony.*

- c) The Petitioners use all three parcels as a single lot. The three (3) lots could be combined into a single parcel. The value for the subject parcel should be considered as a part of the entire site including the adjoining parcel with the dwelling. *Simmons testimony*.
- d) The subject parcel currently receives a negative influence factor of 50%. *Simmons testimony & Board Exhibit A*.

### **Record**

14. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 5957.
- c) Exhibits:  
  
Petitioners: None submitted  
  
Respondent: None submitted  
  
Board Exhibit A: Form 131 petition  
Board Exhibit B: Notice of Hearing on Petition
- d) These Findings and Conclusions.

### **Analysis**

15. The most applicable governing cases/statutes/rules 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.

16. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners did not present any probative evidence to demonstrate that the current assessment is in error or regarding what the correct assessment should be. While Nancy Durham testified that setback requirements prevented the Petitioners from building on the subject parcel, she did not present any evidence from which to quantify the effect of that restriction on the parcel's market value-in-use. The same is true with regard to Ms. Durham's assertion that the Petitioners would not sell the subject property separately from the adjacent parcel containing their dwelling.
- b) The Petitioners relied solely upon Ms. Durham's conclusory testimony that the current assessment is excessive. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- b) Based on the foregoing, the Petitioners failed to establish a prima facie case of error in assessment.

### **Conclusion**

17. The Petitioners failed to make a prima facie case. The Board finds in favor of 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](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>.