

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition #: 45-032-02-1-3-00635
Petitioners: Steve Smith/Howard Smith
Respondent: Department of Local Government Finance
Parcel #: 009-22-12-0001-0006
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 not held because Petitioners never received a Form 11, Notice of Assessment. The Department of Local Government Finance (the DLGF) determined that Petitioners' property tax assessment for the subject property is \$145,300.
2. Petitioners filed a Form 139L on August 5, 2004.
3. The Board issued a notice of hearing to the parties dated March 14, 2005.
4. Special Master Joseph Stanford held a hearing on April 12, 2005, in Crown Point.

Facts

5. Subject property is an undeveloped 7.35-acre parcel located north of 91st and east of Wicker Avenue, St. John, in St. John Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The DLGF determined the assessed value of the subject property to be \$145,300 for the land. There are no improvements on the property.
9. The Petitioners requested an assessed value of \$16,850 for the land.
8. Howard and Steve Smith, the property owners, and Tommy Bennington, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

9. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The Petitioners contend that the subject parcel is landlocked. There is no usable frontage and no access to the parcel. *Howard Smith testimony.*
 - b) Access to the property could be gained through Lake Central School Corporation property. However, the school corporation is not interested in buying the property, and it recently denied access to the property to Sun Crest Christian Church, a potential buyer of the subject property. *Howard Smith testimony; Petitioner Exhibits 4 and 5.*
 - c) Paying for an easement to gain access to subject parcel would cost more than the parcel is worth. *Howard Smith testimony.*
 - d) A real estate company recently determined that a market value could not be determined because there is no access to the property. *Howard Smith testimony, Petitioner Exhibit 7.*
 - e) Subject parcel was purchased at a tax sale in 1995 or 1996 for approximately \$3,000. *Howard Smith testimony.*
 - f) Petitioners only value for the land is a \$16,850 tax deduction gained by donating the land to the school system. *Howard Smith testimony.*
10. Summary of Respondent's contentions in support of the assessment:
- a) A Neighborhood Land Value Summary Sheet showing how the assessed value of the subject parcel was determined. *Bennington testimony, Respondent Exhibit 3.*

Record

11. 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 1526,
 - c) Exhibits:
 - Petitioners Exhibit 1 - Form 139L Petition,
 - Petitioners Exhibit 2 – Summary of Petitioners' argument,
 - Petitioners Exhibit 3 – Plat map,
 - Petitioners Exhibit 4 – Letter from Lake Central School Corporation,

Petitioners Exhibit 5 – Contact information from Sun Crest Christian Church,
Petitioners Exhibit 6 – Interest letter from Diversified Commercial,
Petitioners Exhibit 7 – Follow-up letter from Diversified Commercial,
Petitioners Exhibit 8 - Tax records showing incorrect addresses,
Petitioners Exhibit 9 - Tax records showing incorrect addresses,
Petitioners Exhibit 10 - Tax records showing incorrect addresses,
Petitioners Exhibit 11 - Photographs supporting Petitioners’ argument,
Petitioners Exhibit 12 - Photographs supporting Petitioners’ argument,
Petitioners Exhibit 13 - Photographs supporting Petitioners’ argument,
Petitioners Exhibit 14 - Photographs supporting Petitioners’ argument,
Petitioners Exhibit 15 - Photographs supporting Petitioners’ argument,

Respondent Exhibit 1 - Subject property record card,
Respondent Exhibit 2 - Plat map,
Respondent Exhibit 3 - Neighborhood Land Value Summary Sheet,

Board Exhibit A - Form 139 L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign in Sheet,

d) These Findings and Conclusions.

Analysis

12. The most applicable governing cases are:
- a) A Petitioner seeking a review of a determination of the Department of Local Government Finance 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 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 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 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 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.
13. Petitioners provided sufficient evidence to support Petitioners’ contentions. This conclusion was arrived at because:

- a) Petitioners allege that the subject parcel is landlocked and cannot be accessed by normal means. *Howard Smith 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 Bd. of Tax Comm'rs*, 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 Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- c) Here, the Petitioners have shown that the subject parcel is presently inaccessible and, therefore, undevelopable. *Howard Smith testimony*. Further, Petitioners testified that they have requested and been denied access by neighboring property owners or that access to the property was not feasible due to existing conditions such as a limited access highway and railroad tracks. Thus, Petitioners have produced probative evidence supporting the application of a negative influence factor. Further Petitioners provided evidence quantifying this negative influence. According to Petitioners, the only value the parcel has is to donate the property. The resulting tax savings would equal approximately \$16,850 to the Petitioners. Thus, Petitioners have raised a prima facie case that the current assessment of \$145,300 is incorrect.
- d) Where a 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 2004). Here, the Respondent did not impeach or rebut Petitioners' calculation of value or impeach or rebut evidence concerning the lack of access to the property or the value of the subject parcel. Thus, Respondent failed to rebut Petitioners' evidence concerning the characteristics of the property.
- e) The Board finds that the property is over-assessed due to the lack of access to the property. As the only evidence on the record to place a reasonable value on the subject property was provided by Petitioners, the Board accepts the Petitioners' calculated \$16,850 tax savings from donating this land to the Lake Central School Corporation as the value of the subject parcel.

Conclusion

14. Petitioners raised a prima facie case that their property is over-assessed. Respondent did not rebut Petitioners' evidence. Therefore, Board finds in favor of Petitioners and holds that the value of the subject property is \$16,850.

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 petitioner'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 the 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> .