

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-037-02-1-4-00130
Petitioners: Steven & Patricia Strong
Respondent: Department of Local Government Finance
Parcels: 010-10-01-0070-0011
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 the tax assessment for the subject property and notified the Petitioners on March 23, 2004.
2. The Petitioners filed the Form 139L on April 23, 2004.
3. The Board issued the notice of hearing to the parties dated March 3, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 5, 2005.

Facts

5. The subject property is located at 18030 Wicker Avenue in Lowell.
6. The subject property is a commercial retail operation on 2.106 acres of land.
7. The Special Master did not conduct an on-site visit of the properties.
8. The assessed value of subject property as determined by the DLGF:
Land \$154,600 Improvements \$308,100 Total \$462,700.
9. The assessed value requested by Petitioners:
Petitioners did not request a specific value, but did request a land base rate of \$25,000 per acre.

10. Persons present and sworn as witnesses at the hearing:
For Petitioners – Steven Strong, taxpayer,
– David J. Wietbrook,
– Rick Niemeyer, West Creek Township Assessor,¹
For Respondent – Lori Harmon, DLGF.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The current land value of \$154,600 is excessive. The land value should be based on a base rate of \$25,000 per acre. *Strong testimony.*
 - b) Similar land owned by the Petitioners is currently valued at \$25,000 per acre as a result of the informal hearing process. The initial land value was based on a base rate of \$72,000 an acre. *Strong testimony.*
 - c) Properties similar to the subject property sold in December 1997 for \$86,000 and in February 2001 for \$105,000. *Niemeyer testimony; Petitioner Exhibit 1, 2.*
 - d) Petitioners own another property in the same location as the subject property. It has the same frontage as the subject property. It is 1.99 acres, which is similar in size to the subject property. Both are commercial retail properties. The other property, however, is assessed at only \$25,000 per acre. *Niemeyer testimony.*
 - e) The subject property does not have access to utilities, such as water and sewer. The properties offered as comparables represent bare land sales without utilities. *Niemeyer testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The land base rate for the area is \$87,120 per acre. After adjusting the base rate for the size of the subject property, the land base rate is \$73,000 per acre. This is a rate that was used for other properties in the same area. *Harmon testimony.*
 - b) Apparently the rate used for the Petitioners' other nearby property is an exception if it was lowered because of the informal hearing. Without the property record card for the property valued at \$25,000 per acre, it is not possible to determine why the land assessment was reduced from \$72,000 per acre to \$25,000 per acre. *Harmon testimony.*
 - c) The sales presented by the Petitioners are for bare land without sewer or water. The sales prices of the bare land must be adjusted to reflect the cost of sewer and water necessary for the development of the land. *Harmon testimony.*

¹ Mr. Neimeyer stated for the record that his role in the proceedings was as a supporter of the taxpayer. Mr. Strong agreed to allow Mr. Neimeyer to speak on his behalf.

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 County 1428,
 - c) Exhibits:
 - Petitioner Exhibit 1 – A copy of a sales disclosure form for Parcel 10-1-70-25,
 - Petitioner Exhibit 2 – Settlement statement for 1800 Wicker Avenue,
 - Respondent Exhibit 1 – A copy of the Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Photographs of the subject property,
 - Respondent Exhibit 4 – Land calculations and neighborhood summary sheet,
 - 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. The Petitioners failed to provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners did not present evidence or argument that the land order was applied incorrectly or that their land should have a negative influence factor. The Petitioners claim that the current value is excessive in relation to nearby comparable properties.
 - b) The Petitioners offered a sales disclosure for a December 1997 sale of a property on Wicker Avenue for \$86,000 and a settlement statement for a February 2001 sale of a property on Wicker Avenue for \$105,000 as evidence of what the land value of the subject property should be. *Niemeyer testimony; Petitioner Exhibit 1, 2*. Petitioners offered no probative evidence or explanation of how these properties are comparable to the subject property other than stating that all the properties are located in the same area. Mere allegations or conclusions that properties are comparable do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E. 466, 470-471 (Ind. Tax Ct. 2005). Additionally, the Petitioners failed to establish how those values relate to the value of their property as of January 1, 1999. This failure is another reason that evidence lacks probative value. *Id.* at 471.
 - c) The assessment of Petitioners' other property, while substantially lower than the subject property, is not, by itself, sufficient to have probative value in this case. The undisputed evidence established that the comparable is similar to the subject in location, size, road frontage and use. It also established that the land assessment of that comparable was reduced from \$72,000 per acre to \$25,000 per acre as a result of the informal hearing process. The basis for that change, however, was not established with any probative evidence. The reason for that change is an essential step for any possibility relevance to this case, but the Petitioners failed to walk the Board through that part of their case. That failure leaves the evidence with no probative value. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
 - d) Furthermore, an agreed reduction for one other property resulting from the informal hearing process does not provide substantial evidence in support of the requested value in this case.

The law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount. Ind. Evidence Rule 408. It provides that settlement is neither a judgment nor an admission of liability. The Tax Court pointed out a strong policy justification for denying settlements precedential effect in property tax cases: 'to allow the Taxpayers to use the settlement would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom.'

Dep't of Local Gov't Fin. v. Commonwealth Edison Co., 820 N.E.2d 1222, 1227-1228 (Ind. 2005) (internal citations omitted).

- e) In this case the evidence establishes that the subject property and other nearby properties (except one) are assessed for land with the same base rate. While the Respondent did not provide evidence or an explanation justifying a reason for assessing the Petitioners' other property with a base rate of \$25,000 per acre, in this case it was not the Respondent's obligation to do so. Where a petitioner fails to support a claim with probative evidence, a respondent's obligation to support its assessment determination with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of the Petitioners.

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

- 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>.