

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01141
Petitioners: Tod M. & Erlinda Florek
Respondent: Department of Local Government Finance
Parcel #: 007-26-35-0118-0013
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 in Lake County, Indiana on February 24, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$5,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Peter Salveson held a hearing on December 14, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 4325 Hickory, Hammond. The location is in North Township
6. The subject property is a vacant residential lot consisting of 0.073 acres of land.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$ 5,900.
9. Assessed value requested by Petitioners at the hearing:
Land \$ 1,000.

10. Persons sworn in as witnesses at the hearing:
Tod and Erlina Florek, Owners,
Diane Spenos, Hearing Officer, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend that the subject property and the adjacent property were purchased together on June 14, 1999, for \$41,000. The combined current assessment for both parcels is \$48,300, which exceeds the purchase price. *Florek testimony; Petitioner Exhibit 1-3.*
 - b. The Petitioners contend that the property cannot be built on according to city code and the inability to place a structure on this lot greatly reduces its value. *Florek testimony; Petitioner Exhibit 5.*
12. The Respondent contends that the subject property has properly received an adjustment for being a vacant lot. *Spenos testimony.*

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 1124,
 - c. Exhibits:
Petitioner Exhibit 1: Notice of Final Assessment for 007-26-35-0118-0013,
Petitioner Exhibit 2: Notice of Final Assessment for 007-26-25-0118-0014,
Petitioner Exhibit 3: Closing Statement dated June 14, 1999,
Petitioner Exhibit 4: Survey dated June 4, 1999,
Petitioner Exhibit 5: Hammond Ordinance Number 8514,
Petitioner Exhibit 6: Summary of Evidence,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Maps,
Board Exhibit A: Form 139L Petition,
Board Exhibit B: Notice of Hearing,
Board 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 an assessing official has the burden to establish a prima facie case proving, by preponderance of the evidence, 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 did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a. The Petitioners contend the subject parcel is over-valued. The combined current assessment for both parcels is \$48,300, which exceeds the \$41,000 purchase price. The adjacent lot with the dwelling is assessed at \$42,400. Even with a reduction to \$1,000 for the subject lot, the valuation will be higher than the purchase price.
 - b. The Petitioners failed to show what portion of the purchase price was for the subject property. It is possible that the adjacent property is valued too high, but because that property is not under appeal, the Board is unable to verify that.
 - c. The Petitioners' contention that the subject property is not a buildable lot does not necessarily effect the value of the property since the adjacent property is also owned by the Petitioner. The subject property still has value in conjunction with the adjacent lot as shown by the fact that the Petitioners purchased both lots at the same time. *Florek testimony*.
 - d. The Petitioners' assertion that the property is worth \$1,000 amounts to nothing more than a conclusory statement. Such statements do not constitute probative evidence. *See SSk Co. v. Dep't of Local Gov't Finance*, 779 N.E.2d 125 (Ind. Tax Ct. 2002)(holding that the record was devoid of evidence concerning the appropriate adjustment to land value other than the taxpayer's conclusion that the land was entitled to a 50% negative influence factor).
 - e. Consequently, the Petitioners have not demonstrated either that the current assessment, which applies a negative twenty percent (20%) influence factor to the subject land, is incorrect, or what the correct assessment would be. As a result, the Petitioners have failed to establish a prima facie case.
 - f. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners did not 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. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.