

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00875
Parcel #: 001-01-39-0345-0006
Petition #: 45-028-02-1-5-00876
Parcel #: 001-01-39-0345-0010
Petition #: 45-028-02-1-5-00877
Parcel #: 001-01-39-0345-0009
Petition #: 45-028-02-1-5-00878
Parcel #: 001-01-39-0345-0011
Petition #: 45-028-02-1-5-00879
Parcel #: 001-01-39-0345-0012
Petition #: 45-028-02-1-5-00881
Parcel #: 001-01-39-0345-0013
Petition #: 45-028-02-1-5-00882
Parcel #: 001-01-39-0345-0005
Petitioners: Virginia & Albert Stincic
Respondent: Department of Local Government Finance
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 February, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment was \$6,300 for all the subject properties, except for parcel 001-01-39-0345-0013, which was \$6,900, and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L for each parcel on April 30, 2004.
3. The Board issued a notice of hearing for each parcel to the parties on October 8, 2004.
4. Special Master Peter Salveson held a hearing on November 16, 2004, in Crown Point, Indiana.

Facts

5. The subject properties are located between 3715 and 3815 W. 48th Place, Gary. The location is in Calumet Township.
6. The subject properties are vacant residential lots each consisting of 0.138 acres of land, except for parcel #001-01-39-0345-0013, which is .15 acres.
7. The Special Master did not conduct an on-site visit of the properties.
8. Assessed value of each subject property except for parcel #001-01-39-0345-0013 as determined by the DLGF:
Land \$ 6,300.

Assessed value for parcel #001-01-39-0345-0013 as determined by the DLGF:
Land \$ 6,900.
9. Assessed value requested for each property by the Petitioners:
Land \$ 2,000.
10. Persons sworn in as witnesses at the hearing:
Virginia & Albert Stincic, Owners,
Diane Spenos, Hearing Officer, DLGF.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that lots 11, 12 and 13 are continually under water and would be unbuildable. Lot 10 also experiences occasional flooding. *V.Stincic testimony; Petitioner Exhibit 1.*
 - b. A realtor offered \$2,000 for the lots that were not under water. The Petitioners chose not to sell the lots separately. *V. Stincic testimony.*
12. Summary of Respondent's contentions regarding assessment:
 - a. Based on the information presented by the Petitioners, the Respondent recommends that lots 5, 6, and 9 receive a minimum of 65% negative influence factor. This includes a 45% adjustment to account for excess frontage and 20% to account for the fact that the subject properties are vacant. *Spenos testimony.*
 - b. The Respondent further recommended that lots 10, 11, 12, and 13 should be valued as unbuildable lots and receive a total of 90% negative influence factor. *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 595,
- c. Exhibits:
 - Petitioner Exhibit 1: Photographs of subject properties,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Map,
 - Board Exhibit A: Form 139L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: 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 provide sufficient testimony to support some of the Petitioners’ contentions. The Respondent did not rebut the Petitioners’ testimony and evidence. This conclusion was arrived at because:
 - a. The Petitioners did not provide documentation to support the Petitioners’ testimony that a purchase offer had been received in the amount of \$2,000 for each property that did not have standing water.
 - b. However, the Petitioners did provide testimony and photographic evidence to show that some of the subject properties had permanently standing water and occasional flooding. *V. Stincic testimony; Petitioner Exhibits 1 and 2.*
 - c. Based on the information presented by the Petitioner, the Respondent recommended that lots 5, 6, and 9 receive a 65% negative influence factor. This includes a 45% adjustment to account for excess frontage and 20% to account for the fact that the subject properties are vacant. *Spenos testimony.*
 - d. The Respondent also recommended that lots 10, 11, 12, and 13 should be valued as unbuildable lots and receive a total of 90% negative influence factor. *Spenos testimony.*

- e. The Petitioners did not provide any evidence to indicate any adjustments greater than those recommended by the Respondent were warranted.

Conclusion

- 16. The Petitioners did establish a prima facie case. The Respondent did not rebut the Petitioners' evidence in this matter and further recommended adjustments to the value of the land of each subject property. The Board finds in favor of the Petitioners and concludes that lots 5, 6, and 9 should each receive a negative influence factor of 65%. In addition, lots 10, 11, 12 and 13 should each receive a negative influence factor of 90%.

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>.