

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-01168, 45-001-02-1-4-01169, 45-001-02-1-4-01171
Petitioners: Albert & Lois Harper
Respondent: Department of Local Government Finance
Parcel #: 001-25-40-0032-0002, 001-25-40-0032-0066, 001-25-40-0032-0038
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 on February 2, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$32,300 for parcel # 001-25-40-0032-0002, \$27,300 for parcel # 001-25-40-0032-0066, and \$9,400 for parcel # 001-25-40-0032-0038 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 dated June 6, 2005.
4. Special Master Peter Salveson held a hearing on July 7, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 3520, 3620, and 3660 5th Avenue in Gary. The location is in Calumet Township.
6. The subject properties are unimproved commercial lots consisting of a total of 1.393 acres of land.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject properties as determined by the DLGF:
Total land \$69,000.

9. Assessed value requested by Petitioners:
Total land \$29,670.
10. Persons sworn in as witnesses at the hearing:
Albert Harper, Owner,
Cornell Collins, Attorney,
Robert G. White, Certified Tax Representative,
Lori Harmon, Asst. Director Assessment Division, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend that the assessment is incorrect because the subject properties are in an area that is declining and is heavily wooded. The Representative for the Petitioner gave a brief history of parcels in the area and argued that the land in the area has no value in use. *White testimony; Petitioner Exhibit 4.*
 - b. The Petitioners contend that the subject properties should have the same negative 57% influence factor as one of the parcels adjacent to the subject property. The Petitioners did not know why the influence factor had been applied to the comparable property, which is also owned by the Petitioners. *White testimony; Petitioner Exhibit 5.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent presented information regarding the land calculations for the subject properties and contends that these land values had been properly applied. The Respondent testified that a review of the files indicated that the influence factor for the adjacent parcel had not been calculated correctly and should be lower. *Harmon testimony; Respondent Exhibit 5.*
 - b. The Respondent contends that the assessed values should not be changed because they are lower than would be if all the parcels had been valued as contiguous parcels. *Harmon testimony.*
 - c. The Respondent contends that the Petitioners did not provide any evidence as to the market value of the subject properties. *Harmon 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 1901,

- c. Exhibits:
 - Petitioner Exhibit 1: Issues,
 - Petitioner Exhibit 2: Property record cards,
 - Petitioner Exhibit 3: Plat (photo locations),
 - Petitioner Exhibit 4: Photos (14),
 - Petitioner Exhibit 5: Property record card of adjacent property,
 - Respondent Exhibit 1: Aerial photograph of area,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Land Calculations/NBHD Land Summary Sheet,
 - Respondent Exhibit 4: Proposed change to land classification and positive influence factor calculations,¹
 - Board Exhibit A: Form 139L Petitions,
 - Board Exhibit B: Notice of Hearings,
 - 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 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 did not provide sufficient evidence to support the Petitioners’ contentions. The Respondent was not required to rebut the Petitioners’ evidence. This conclusion was arrived at because:
 - a. The Petitioners discussed the characteristics and history of parcels located near the subject properties. However, the Petitioners provided no evidence as to the value of

¹ Respondent Exhibit 4 is for petition #45-001-02-1-4-01169.

the subject properties or that the characteristics of the neighborhood had not been considered in the current assessment. *White testimony; Petitioner Exhibit 1 and 3.*

- b. The Petitioners requested that the three subject properties receive a 57% negative influence factor similar to that given to an adjacent parcel owned by the Petitioners. However, the Petitioners failed to show any reason why the 57% negative influence factor should be applied to the subject properties. In fact, the Representative for the Petitioners stated that he had no idea why the 57% influence factor had been applied. Furthermore, one comparable assessment cannot be considered sufficient evidence that the three subject properties were incorrectly assessed or that there is an error in assessment. *White testimony; Petitioner Exhibit 5*
- c. The Petitioners failed to make a prima facie case. 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 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. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.