

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-013-02-1-5-00124
45-013-02-1-5-00125
Petitioners: Theodore & Mari Hunter
Respondent: Department of Local Government Finance
Parcel #s: 005-40-52-0001-0030
005-40-52-0001-0031
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. Informal hearings as described in Ind. Code § 6-1.1-4-33 were held in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$12,000 and \$32,900 respectively. The DLGF's Notices of Final Assessments were sent to the Petitioners on March 23 and March 25, 2004.
2. The Petitioners filed Form 139Ls on April 30, 2004.
3. The Board issued notices of hearings to the parties dated January 27, 2005.
4. The Board held a consolidated hearing on the above referenced petitions on March 4, 2005, in Crown Point, Indiana before its duly authorized Special Master Barbara Wiggins.

Facts

5. The subject properties are located at: Hedwig Drive, St. John, Hanover Township, Lake County, Indiana.
6. Parcel #005-40-52-0001-0030 is 2.047 acres of vacant land. Parcel # 005-40-52-0001-0031 is 5.62 acres of vacant land.

7. The Special Master did not conduct an on-site visit of the properties
 - a) Assessed Values of subject properties as determined by the DLGF:

Petition # 45-013-02-1-5-00124 Parcel # 005-40-52-0001-0030
Land: \$12,000 Improvements: -0-

Petition # 45-013-02-1-5-00125 Parcel # 005-40-52-0001-0031
Land: \$32,900 Improvements: -0-
 - b) Assessed Values requested by Petitioners per the Form 139L Petitions:

Petition # 45-013-02-1-5-00124 Parcel # 005-40-52-0001-0030
Land: \$4,196 Improvements: -0-

Petition # 45-013-02-1-5-00125 Parcel # 005-40-52-0001-0031
Land: \$11,521 Improvements: -0-
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearings.
9. Persons sworn in at hearings:

For Petitioners: Mari & Theodore Hunter, Petitioners

For Respondent: Steve Yohler, representing the DLGF

Issues

10. Summary of Petitioners' contentions in support of an alleged errors in the assessments:
 - a) The subject properties are assessed as residential excess acreage. The properties should be assessed as undeveloped acreage. *M. Hunter testimony.*
 - b) The subject properties are located in a flood zone and contain wetlands. These factors negatively affect the value of the properties. The Army Corps of Engineers has classified a total of 2.37 acres of the subject properties as wetlands. *M. Hunter testimony; Petitioners Exhibit 5 (No. 1025).*
 - c) In order to fill-in the wetlands and make them usable, the Petitioners would have to purchase a piece of land double the size of the original wetland acreage and turn that property into wetlands. This would be costly and would require approval from the Army Corps of Engineers. *Id.* The Petitioners cannot construct improvements on the subject properties because they are located in a flood zone and contain wetlands. *Id.*
 - d) Two similar properties that are undeveloped, are not in a flood plain, and have a lower percentage of wetlands than the subject property, are valued at \$2,235.19 per

acre and \$3,109.21 per acre, respectively. The subject properties are valued at \$5,854.09 per acre. *M. Hunter testimony; Petitioners Exhibit 6 (Nos. 0124 & 0125).*

- e) If it were not for Parcel # 005-40-52-0001-0031, Parcel # 005-40-52-0001-0030 would be landlocked. *M. Hunter testimony.*

11. Summary of Respondent's contentions in support of the assessments:

- a) Residential excess acreage is the lowest classification for residential land. *Yohler testimony.*
- b) The Respondent was not aware of the existence of wetlands on the subject properties. Normally there is not a wetland adjustment on residential property. Should wetlands exist, an adjustment should be considered. *Id.*
- c) The Respondent recommended that the portions of the subject properties that are wetlands (2.37 acres) should be designated as "unbuildable" and should receive a 90% negative influence factor. *Id.*

Record

12. 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 #1213.
- c) Exhibits:

Petition No. 45-013-02-1-5-00124 ("No. 0124")

Petitioners Exhibit 1: Form 139L Petitions
Petitioners Exhibit 2: Notices of Final Assessments
Petitioners Exhibit 3: Outline of Evidence and Relevance
Petitioners Exhibit 4: Summary of Petitioners' arguments
Petitioners Exhibit 5: Wetland Determination¹
Petitioners Exhibit 6: Comparable Properties
Petitioners Exhibit 7: Property Record Card (PRC)

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subjects PRC

Board Exhibit A: Form 139 L Petitions
Board Exhibit B: Notice of Hearings on Petitions

¹ The Petitioners did not submit a separate copy of the Wetlands Determination for Petition No. 0124. They instead referred to the Wetlands Determination submitted as Exhibit 5 for Petition No. 0125.

Board Exhibit C: Sign in Sheets

Petition No. 45-013-02-1-5-00125 (“No. 0125”)

Petitioners Exhibit 1: Form 139L Petitions
Petitioners Exhibit 2: Notices of Final Assessments
Petitioners Exhibit 3: Outline of Evidence and Relevance
Petitioners Exhibit 4: Summary of Petitioners’ arguments
Petitioners Exhibit 5: Wetland Determination
Petitioners Exhibit 6: Comparable Properties
Petitioners Exhibit 7: Property Record Card (PRC)

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subjects PRC

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearings on Petition
Board Exhibit C: Sign in Sheets

d) These Findings and Conclusions.

Analysis

13. 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.

14. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the subject properties should be assessed as undeveloped land rather than as residential excess acreage. The Petitioners further contend that properties that are more desirable than the subject properties are assessed at a lower rate per acre than the subject properties. Finally, the Petitioners contend that the subject properties are over-assessed in light of the fact that they contain wetlands and are located in a flood zone.
 - b) With regard to the Petitioners' first contention, the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) provide that tracts exceeding one (1) acre that are purchased for residential purposes and do not contain a homesite should be valued using the excess acreage rate for the neighborhood in which they are situated. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 69 (incorporated by reference at 50 IAC 2.3-1-2). The subject properties each exceed one acre and have no homesite. *Petitioners Exhibit 7 (Nos. 124 & 0125)*. Thus, it appears that the Respondent correctly valued the subject properties as excess acreage.
 - c) The Petitioners, however, request that the subject properties be classified as “undeveloped” land. *M. Hunter testimony; Petitioners Exhibit 4*. While both the Guidelines and the property record cards for the subject properties refer to “undeveloped land” as a specific land type (Type 3) for valuation purposes, they do not discuss the circumstances under which a property should be classified as Type 3 undeveloped land. Moreover, it is not entirely clear to what the Petitioners refer to when they describe the subject properties as “undeveloped.” To the extent that the Petitioners contend that the subject properties do not have site improvements, such as access to water and sewer services, they did not provide any evidence which quantifier the effect of the lack of such site improvements on the market value-in-use of the subject properties.
 - d) Based on the foregoing, the Petitioners failed to establish a prima facie case of error based upon the subject properties being valued as excess acreage.
 - e) The Petitioners also contend that two vacant properties, neither of which is in a flood zone or contains as high a percentage of wetlands as the subject properties contain, are assessed at a lower rate per acre than are the subject properties. *M. Hunter testimony; Petitioners Exhibit 6 (No. 0124 & 0125)*.
 - f) The Petitioners failed to explain adequately how the properties upon which they rely compare to the subject properties. The evidence submitted by the Petitioners consisted of two printouts with six (6) lines of information for each property: parcel number, owner name, property address, total land value, total structure value, and total assessed value. *Id.* The Petitioners did not submit property record cards for either of the purportedly comparable properties. Mari Hunter did testify that one of the properties, a 37-acre tract, is located near the subject property. That tract,

- however, is significantly larger than either of the subject properties. The Petitioners did not explain how that difference in size affects the relative market values-in-use of the respective properties. With regard to the other purportedly comparable property, the Petitioners did not establish that the property is located within the same neighborhood as the subject property for assessment purposes.
- g) In light of the foregoing, the Petitioners failed to establish a prima facie case of error based upon the assessments of comparable properties.
 - h) Finally, Mari Hunter testified that the Army Corps of Engineers certified a total of 2.37 acres of the subject properties as wetlands. *M. Hunter testimony; Petitioners Exhibit 5.* The Wetland Determination Report submitted by the Petitioners supports Ms. Hunter's testimony. *Petitioners Exhibit 5.*
 - i) While Mari Hunter testified that the Petitioners are prohibited from constructing improvements on the portions of the subject properties classified as wetlands, the Petitioners did not demonstrate that they were restricted from constructing improvements on the remaining portions of those properties. Similarly, the Petitioners did not present any evidence to quantify the amount by which the wetlands designation affects the market value-in-use of the subject properties.
 - j) Nonetheless, the Respondent's representative recommended that the portions of subject properties classified as wetlands be designated as "unbuildable." The Respondent's representative further recommended that a negative 90% influence factor be applied to the wetlands to account for that fact. *Yohler testimony.* The Board views the testimony of the Respondent's representative as a concession that application of a negative influence factor of 90% to a total of 2.37 acres of the subject properties is necessary to reflect the reduction in value caused by the classification of those areas as wetlands.
 - k) Consequently, the Petitioners demonstrated, by a preponderance of the evidence, that a negative influence factor of ninety percent (90%) should be applied to a total of 2.37 acres of the subject properties. Given that neither of the parties provided any evidence from which to determine how to allocate that 2.37-acre portion between the respective properties, the Board leaves that decision to the discretion of the assessing official charged with making the corrections specified in this final determination.

Conclusion

- 15. The Petitioners established that 2.37 acres of the subject property are entitled to a negative influence factor of ninety percent (90%). The Petitioners failed to establish a prima facie case for any further reduction in value.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessments should be changed to reflect an application of a negative 90% influence factor to 2.37 acres of the subject properties.

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>>.