

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-016-02-1-5-00199
45-016-02-1-5-00200
45-016-02-1-5-00201
Parcels: 006-27-18-0196-0019
006-27-18-0196-0020
006-27-18-0196-0021
Petitioners: Gerald and June Kegebein
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. The Department of Local Government Finance (the DLGF) determined that the total assessment for the three parcels is \$19,500. The DLGF notified Petitioners of the assessed values on March 26, 2004.
2. Petitioners filed a Form 139L for each parcel on April 29, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Peter Salvesson held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject properties are located at 1511 E. North Street in Hobart.
6. Petitioners own four contiguous lots. Petitioners' home is located on three of the parcels, primarily on parcels 006-27-18-0196-0022 (lot 22, which is not under appeal) and 006-27-18-0196-0021 (lot 21). A portion of the home is also located on 06-27-18-0196-0020 (lot 20). The remaining parcel, 006-27-18-0196-0019 (lot 19), is vacant. All of the improvements were assessed as if located on lot 22.
7. The subject properties are residential lots.

8. The Special Master did not conduct an on-site inspection of the property.
9. The assessed values of lots 19 and 20 as determined by the DLGF are \$6,000.¹
10. The assessed land value of lot 21 as determined by the DLGF is \$7,500.
11. At the hearing, Petitioners contended the land value of each of the three parcels should be \$2,000.
12. The following persons were sworn as witnesses at the hearing:
For Petitioners - Gerald A. and June E. Kegebein, owners,
For Respondent - Diane Spenos, assessor/auditor.

Issue

13. Summary of Petitioners' contentions in support of an alleged error in assessment:
 - a) The City of Hobart does not permit building on lots smaller than 60 feet wide. *G. Kegebein testimony.*
 - b) Lot 21, which is 25 feet wide, was the first of the four lots acquired by Petitioners. This lot was a gift from a family member. Petitioners acquired lot 22, which is 35 feet wide, for \$350 in 1960. Petitioners purchased lots 19 and 20, both of which are 25 feet wide, for \$500 each in 1963. Although the four lots have 110 feet of combined frontage, the three lots under appeal are each 25 feet wide and cannot be built upon due to the city code restrictions. *Id.*
 - c) The parcels could not be sold for their current assessed values. *G. Kegebein testimony.*
14. Summary of Respondent's contentions regarding the assessment:
 - a) Lots 20 and 21 do not have a vacant lot adjustment because Petitioners' dwelling is partially located on these lots. *Spenos testimony.*
 - b) The four parcels owned by Petitioners are contiguous and their combined frontage exceeds the typical frontage in the neighborhood. Each of the four parcels should receive a negative adjustment of 24% for excessive frontage. The influence factor for excessive frontage would be in addition to the negative 20% influence factor for vacancy already given to lot 19. *Spenos testimony.*

¹ Respondent contended the value of lot 20 was raised to \$7,500 at the informal hearing. This increase resulted from the removal of a negative 20% influence factor that was originally applied because the lot was believed to be vacant. *Spenos testimony; Respondent Exhibit 2.* The Notice of Final Assessment indicates, however, that the contested value of \$6,000 was not changed. *Respondent Exhibit 1.*

Record

15. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The tape recording of the hearing labeled Lake Co. 959,
 - c) Respondent Exhibit 1 - Form 139L petitions,
Respondent Exhibit 2 - Subject property record cards,
Board Exhibit A - Form 139L petitions,
Board Exhibit B - Notices of Hearing,
Board Exhibit C - Sign-in sheets,
 - d) These Findings and Conclusions.

Analysis

16. 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.
17. Petitioners did not provide sufficient evidence to support their contentions because:
- a) Petitioners presented no evidence of market value, such as an appraisal or sales data of comparable properties, to establish their land is incorrectly valued or to support the proposed revised value of \$2,000 per parcel.
 - b) Instead, Petitioners testified that the subject properties are unbuildable due to city code restrictions. The lots are 25 feet wide and the city building code requires lots to

be 60 feet wide.

- c) In determining the market value of the property, it would be unrealistic to ignore that Petitioners own four contiguous lots. Together the lots have sufficient size to be buildable because they satisfy the minimum frontage requirements established by the City of Hobart. Furthermore, Petitioners have, in fact, built upon two of the three parcels under appeal. Petitioners have failed to make a prima facie case of error.
- d) Respondent asserted that the lots should be considered as a combined unit of four adjacent parcels and that each lot should have a negative 24% influence factor due to the excessive frontage of the combined four lots.
- e) Additionally, lots 19 and 20 initially were assessed with a negative 20% influence factor for vacancy. Respondent contended this influence factor was removed from lot 20 at the informal hearing. Both parties agreed that lot 19 is vacant and should receive a negative 20% influence factor for vacancy, as currently assessed. Both parties also agreed Petitioners' home is partially located on lot 20. Accordingly, the Board concludes lot 20 should not receive a negative influence factor for vacancy.

Conclusion

18. Petitioners did not make a prima facie case that the assessments are incorrect. Respondent, however, admitted an adjustment should be made to each of the subject properties to account for excessive frontage. The Board concludes that each of the three subject properties should receive a negative 24% influence factor for excessive frontage.² Furthermore, lot 19 should also have a negative 20% influence factor for vacancy, but lot 20 should not.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessments should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

² Respondent contended that lot 22 should also receive a negative 24% influence factor for excessive frontage. *Spenos testimony*. Because this parcel was not appealed, the Board has no jurisdiction to review the assessed value of lot 22 or order it to be changed.

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>.