

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 84-005-02-1-5-00010
Petitioners: Daniel T. & Carolyn J. Ives
Respondent: Honey Creek Township Assessor (Vigo County)
Parcel: 119-09-02-226-006
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 24, 2003.
2. The decision of the PTABOA is dated July 26, 2004.
3. Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on August 25, 2004. Petitioners elected to have the case heard according to small claim procedures.
4. The Board issued a Notice of Hearing to the parties dated February 1, 2005.
5. The Board held an administrative hearing on March 9, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. The persons present and sworn as witnesses at the hearing were:
Carolyn J. Ives, Petitioner,
Jenny Becker, Vigo County Assessor's Representative,
Shari Arvin, Vigo County Assessor's Representative, and
Susan McCarty, Vigo County Assessor's Representative.

Facts

7. The property is classified as residential. It includes a one-acre home site and 1.3180 acres of residential excess acreage.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The assessed value of the property as determined by the Vigo County PTABOA is:
Land \$32,100 Improvements \$55,600 Total \$87,700.

10. The assessed value requested by Petitioners is:
Land \$26,000 Improvements \$55,600 Total \$81,600.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) Petitioners request a negative influence factor of 65% to 80% for the residential excess acreage to adjust for the area that cannot be utilized due to adverse topography, restrictions, soil conditions and drainage. *Ives testimony; Petitioners Exhibit 2.*
- b) Although the location is desirable, a large portion of the excess acreage is an unsafe and unusable ravine. Field tiles drain directly into the ravine, which receives the chemical runoff from the nearby agricultural land. The ravine also is a dumping area for debris such as broken concrete, which would be a deterrent to the marketability of the property. *Id.*
- c) Petitioners submitted four photographs of the ravine. The upper left photograph demonstrates the proximity of the ravine to the house (estimated at 15 to 25 feet) and the depth of the ravine. The lower left photograph shows an area where there appears to be no growth. In the opinion of Petitioners, this lack of growth is the result of chemical runoff from adjacent farmland and, after a rain, the site of "black, mucky stuff." The lower right photograph shows that the ravine is a dumping site for broken concrete. The upper right photograph shows large trees have fallen and remain within the ravine. *Ives testimony; Petitioners Exhibit 3.*
- d) There is a 25-foot-by-206-foot strip across the parcel that is used as ingress/egress and for utility easements. *Ives testimony; Petitioners Exhibits 3-6.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The 1.3180 portion of the subject property is currently valued as residential excess acreage at the rate established by the county land order, which is \$6,900 per acre and results in an assessed value of \$9,100. The residential excess acreage rate represents the 1999 acreage value of the land purchased for residential purposes in this neighborhood. *Becker testimony; Respondent Exhibit 1.*
- b) The strip of the parcel that is reported as 25-feet-by-206-feet and being used as an ingress/egress easement equals 5,150 square feet, or .11823 acres. That amount is equal to 9% of the total area. The county officials propose a 9% negative influence factor of the residential excess acreage portion of the subject, which would result in an adjusted assessed value on that portion of \$8,270. The

remainder of Petitioners' requested negative influence factor is unsupported by valuation evidence. *Becker testimony; Respondent Exhibit 1.*

- c) The property is assessed in a uniform and equal manner as compared to similar properties, the land order and assessment guidelines. *Becker testimony; Respondent Exhibit 1.*

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 IBTR 6194,
- c) Petitioners Exhibit 1: Form 115,
Petitioners Exhibit 2: Form 131 petition,
Petitioners Exhibit 3: Copies of four photographs of parcel #119-09-02-226-006,
Petitioners Exhibit 4: Copy of a photograph of the lane,
Petitioners Exhibit 5: Sketch of subject and adjacent parcels,
Petitioners Exhibit 6: Copy of section of a plat map with subject outlined,
Respondent Exhibit 1: Summary of Respondent's contentions,
Respondent Exhibit 2: Form 115,
Respondent Exhibit 3: Property record card for parcel #119-09-02-226-006,
Respondent Exhibit 4: Form 130 appeal to PTABOA,
Board Exhibit A: Form 131,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Notice of County Assessor representation,
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing statutes and 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. Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) An influence factor refers to a "multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, glossary at 10.
 - b) To establish a prima facie case that an influence factor is warranted Petitioners must present evidence that would support the application of a negative influence factor, and present a quantification of the influence factor. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).
 - c) Assuming *arguendo* that Petitioners presented evidence to support some negative influence factor, they failed to meet their burden of tying those causes to an actual loss in value and properly quantifying the influence factor they seek. Petitioners presented no market evidence supporting their contention the claimed adverse characteristics of the parcel have created a loss of value of 65% - 80%.
 - d) On the Form 130 petition, Petitioners requested "an influence factor of 30% to be assigned to the excess acreage to adjust for the area than [sic] cannot be utilized due to adverse topography, restrictions, soil conditions and drainage." On the Form 131 petition, Petitioners requested "an influence factor of minus 65% to minus 80% ... to be assigned to the excess acreage to adjust for the area that cannot be utilized due to adverse topography, restrictions, soil conditions and drainage." Petitioners offered no explanation for the proposed increase in the influence factor from 30% at the PTABOA hearing to between 65% and 80% at the Board hearing. These inconsistent proposed values are further indication that Petitioners failed to quantify their request for a negative influence factor.
 - e) Petitioners' unsupported, inconsistent assertions that the parcel should receive a negative influence factor of 30%, 65% or 80% are merely conclusory statements that do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

16. Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>>.