

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-035-02-1-5-00056
Petitioners: Alan J. & Claudia L. Dubowski
Respondent: The Department of Local Government Finance
Parcel #: 010-10-01-0022-0001
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$185,200 and notified the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated November 9, 2004.
4. Special Master Barbara Wiggins held a hearing on December 9, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 9201 W. 205th Avenue, Lowell. The location is in West Creek Township.
6. The subject property is a single-family residence on 1.112 acres.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$36,600 Improvements \$148,600 Total: \$185, 200.
9. The Petitioners did not request a specific assessed value.
10. Persons sworn in as witnesses at the hearing:

Claudia Dubowski, Owner,
Rick Niemeyer, West Creek Township Assessor,
Sharon Elliott, Staff Appraiser, DLGF,
Phillip E. Raskosky, II, Assessor/Auditor, DLGF.

Issues

11. Summary of the Petitioners' contentions in support of an error in the assessment:
 - a. The land value of \$36,600 is excessive because of the stone quarry that sits directly south and adjacent to the property. *Petitioner Exhibit 1; Dubowski testimony.*
 - b. The weekly and, sometimes twice weekly, blasting shakes the entire house. *Id.*
 - c. The water table and the quality of water have changed so much that the four houses in the immediate area have had to dig new, deeper wells. The previous well gave spring water; the new well has water that contains rust and smells. *Id.*
 - d. The dirt, dust, blasting, and water quality have directly affected the value of the house and land. *Id.*
 - e. There are probably 200 trucks a day in what was once a residential area. This drastically reduces the value. *Niemeyer testimony.*
 - f. The neighborhood factor of 1.23 is unsupportable. This is a rural area with few houses, so there is a lack of data. Across U.S. 41, they have a lower factor; he will be changing this during the trending for 2003 and on. *Id.*
 - g. CLT probably didn't know about the quarry or the DNR restrictions. An influence factor should be applied. *Id.*

12. Summary of Respondent's contentions:
 - a. At the informal hearing, the Petitioners contended the value was \$180,000; the assessed value is \$185,200. *Elliott testimony.*
 - b. Sales disclosures were used for the value. Only one sale was found in the subject neighborhood. That sale was on the north side, not adjacent to the quarry. *Id.; Respondent Exhibits 4 and 5.*
 - c. The taxpayer needed to provide an appraisal or opinion of value. *Elliott 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 1007,
 - c. Exhibits:
 - Petitioner Exhibit 1: Summary of arguments,
 - Petitioner Exhibit 2: Photographs,
 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Respondent Exhibit 4: Top 20 comparables and statistics,
 - Respondent Exhibit 5: Property record card and photograph of one comparable,
 - Board Exhibit A: Form 139L Petition,

- Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing 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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners contend that the land value is excessive because of the property’s location adjacent to a stone quarry. The activity at the quarry has resulted in increased traffic, excessive dirt and noise, and diminished water quality. All of these factors affect the value of the land and an influence factor should be applied. *Petitioner Exhibit 1; Dubowski and Niemeyer testimony.*
 - b. An influence factor refers to an aspect of a lot’s condition that is different from the base lot on which the base unit land value for the subject neighborhood is based. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch.2 at 78 (incorporated by reference at 40 IAC 2.3-1-2).
 - c. The Petitioners did not provide any evidence showing that the subject lot varied from the base lot established for the neighborhood.
 - d. The Petitioners contend the neighborhood factor is excessive and unsupportable due to the lack of sales data. *Niemeyer testimony.* The Petitioner did not submit any comparisons of other neighborhoods affected by the same concerns to show that the neighborhood factor was excessive. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in the assessment. In addition, the Petitioner did not present any evidence as to what the neighborhood factor should be. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d at 1119 (Ind. Tax 1998).
 - e. Furthermore, one would assume that the application of the neighborhood factor took into account the existence of the stone quarry and the impact of that quarry on the

- neighborhood. No verifiable information was given into evidence to support the Petitioners' assertion that the stone quarry lowered the value of the properties in the subject neighborhood.
- f. The Petitioners have failed to present probative evidence of error in the assessment.
 - g. 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 did not provide sufficient evidence to establish a prima facie case. The Board finds for the 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>.