

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: **45-016-02-1-5-00239**
Petitioners: **Earl E. & Betty L. Robertson**
Respondent: **Department of Local Government Finance**
Parcel #: **006324800410003**
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 December 15, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners’ property tax assessment for the subject property was \$5300 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 18, 2004, at 10:21 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is a vacant lot located at 2300 Cass Street, Lake Station, Hobart Township in Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property as determined by the DLGF:

Land: \$5,300	Improvements: -0-	Total: \$5,300
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8. The assessed value of the subject property as requested by the Petitioners:

Land: \$1,000	Improvements: -0-	Total: \$1,000
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9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. The following persons were sworn in at the hearing:

For the Petitioners: Earl E. Robertson, Owner
Betty L. Robertson, Owner

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The assessed value established for the subject property is overstated. The subject property is located in a flood zone. The property consequently floods and is unsuitable for building. *Robertson testimony*.
 - b. In support of this contention, the Petitioners submitted eleven photographs of the subject area showing a decline in the neighborhood and flooding of properties in the area. *Petitioner Exhibit 7; Robertson testimony*.
 - c. The Petitioners presented an appraisal prepared on November 1, 2004, estimating the market value of the subject property to be \$750 as of October 22, 2004. The appraisal states that the subject property is located in a flood hazard area and requires flood insurance. *Petitioner Exhibit 6 at e-f*.
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property is valued as an unimproved residential lot based on the 1999 market. A negative twenty percent (-20%) influence factor has been applied to the subject property for being vacant and unimproved. *McKinney testimony*.
 - b. The Respondent testified that properties within Lake County that are deemed to be flooding/wet receive a negative influence factor of twenty-five percent (-25%). *McKinney testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #660.

- c. The following exhibits were presented:

Petitioner Exhibit 1 – Notice of Hearing
Petitioner Exhibit 2 – Notice of Final Assessment
Petitioner Exhibit 3 – Form 139L petition
Petitioner Exhibit 4 – A list of the properties on appeal and their descriptions
Petitioner Exhibit 5 – Summary of Petitioners' argument
Petitioner Exhibit 6 – Appraisal of the subject property, dated November 1, 2004
Petitioner Exhibit 7 – Eleven photographs of the subject area

Respondent Exhibit 1 – Form 139L petition
Respondent Exhibit 2 – Subject property record card

Board Exhibit A – Form 139L petition
Board Exhibit B – Notice of Hearing on Petition
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 provide sufficient evidence to support an error in the assessment. This conclusion was arrived at because:

- a. The Petitioners contend that the assessment is excessive because the subject property is located in a flood zone and that it is subject to seasonal flooding.
- b. The Petitioners offered several documents to support their testimony that the subject property floods periodically. The appraisal submitted by the Petitioners indicates that subject property is “flat, low and wet” is located in a flood plain, and is subject to seasonal flooding. *Petitioner Exhibit 6, at d.* The appraisal also includes what it identifies as a “flood map of the area” showing the subject property’s location in a flood zone. *Id. at f-g.* In addition, the Petitioners submitted several photographs of nearby properties in a flooded condition in 1989 and 1990. *Petitioner Exhibit 7.*
- c. The evidence submitted by the Petitioners, unless contradicted, is sufficient to establish that the subject property is prone to flooding. The Respondent did not offer any evidence to impeach or rebut the Petitioners’ evidence. The Board therefore finds that the subject property is prone to flooding.
- d. However, the Petitioners were also required to quantify the effect that the flooding has on the market value-in-use of the subject property. In an effort to do so, the Petitioners submitted an appraisal estimating the market value of the subject property to be \$750 as of October 22, 2004. *Petitioner Exhibit 6.*
- e. The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003 lacked probative value in an appeal from the 2002 assessment of that property).
- f. The appraisal submitted by the Petitioners estimates the market value of the subject property as of a date nearly five years after the valuation date of 1999. *Petitioner Exhibit 6.* The Petitioners did not explain how the appraisal relates to the subject property’s value as of the relevant valuation date. The appraisal therefore lacks probative value.
- g. However, the Respondent testified that lots within Lake County that are wet and/or experience problems with flooding receive a 25% negative influence factor. *McKinney testimony.* Consequently, the subject property is entitled to the same negative influence factor received by other lots that experience flooding.
- h. Based on the foregoing, the preponderance of the evidence demonstrates that there is an error in the assessment of the subject property, and that a negative influence factor of twenty-five percent (-25%) should be applied to the subject

property. This is in addition to the negative influence factor of twenty percent (-20%) already received by the subject property for being a vacant, unimproved lot.

Conclusion

16. The Petitioners made a *prima facie* case. The Respondent failed to rebut the Petitioners' evidence that the subject property is prone to flooding. In addition, the Respondent testified that lots experiencing problems with flooding receive a negative influence factor of twenty-five percent (-25%). The Board finds in favor of the Petitioners. The assessment should be changed to apply a negative influence factor of twenty-five percent (-25%) to the subject property in addition to the negative influence factor currently applied to the property.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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.