

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-037-02-1-5-00108
Petitioner: George Corman
Respondent: The Department of Local Government Finance
Parcel: 007-28-29-0037-0014
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$40,100 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated January 24, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on March 1, 2005.

Facts

5. The subject property is located at 1863 Indianapolis Boulevard, Whiting. The location is in North Township.
6. The subject property consists of a commercial lot containing 3,125 square feet (25' by 125') with a chain link fence.
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 \$40,000 Improvements \$100 Total \$40,100.
9. Assessed value requested by Petitioner is:
Land \$15,000 Improvements \$100 Total \$15,100.

10. The persons sworn as witnesses at the hearing were George Corman, owner, and James Hemming, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. The property immediately across the street at 1862 Indianapolis Boulevard is the same size as the subject lot with a small house. It is only assessed at \$10,300 for the land. *Petitioner Exhibit 1; Corman testimony.*
 - b. A lot one block away from the subject at 2000 Indianapolis Boulevard is 50' by 120'. Its assessment is only \$13,300. It is used as a parking lot for a tavern next door. *Petitioner Exhibit 2; Corman testimony.*
12. Summary of Respondent's testimony:
- a. The subject lot is contiguous to a two-lot property that Petitioner also owns. That property has a commercial building. At the time of the assessment, the contiguous property housed a plumbing business. That business used the subject lot for parking. Therefore, it is prime commercial land according to the Real Property Assessment Guidelines. *Respondent Exhibits 2, 3, 4; Hemming testimony.*
 - b. The standard lot size for the subject's neighborhood is 5,000 square feet. *Respondent Exhibit 6 at 2.* The subject lot is only 3,125 square feet. *Respondent Exhibit 2.* The lot located at 1865-67 Indianapolis Boulevard (not under appeal) is 6,250 square feet. *Respondent Exhibit 6 at 4; Hemming testimony.*
 - c. Based on the land pricing method used in Lake County, the total assessed value for land for the two prime parcels (007-28-29-0037-0014 and 007-28-29-0037-0015) should be \$92,300. *Respondent Exhibit 6 at 5; Hemming testimony.* The current assessment of these two parcels has an incorrect, multiple parcel adjustment factor of only 14% on each, which results in a total assessed land value of \$97,800. The correct adjustment on each should have been 19%. *Respondent Exhibit 2; Respondent Exhibit 6 at 4; Hemming testimony.*
 - d. To be fair to the Petitioner, and because parcel 007-28-29-0037-0015 is not under appeal, a higher adjustment should be made to the subject parcel so that the total land value of both parcels equals no more than \$92,400. The current assessed land value of the subject, prior to multi-parcel pricing adjustments, is \$46,500. A negative land influence factor of 26% should be applied to the land value. This change would result in a new assessed land value of \$34,400 for the subject parcel. Adding the corrected land value of the subject to the current land value of the contiguous parcel (\$57,800) would result in a total land value of \$92,200 for both parcels. *Respondent Exhibit 6 at 4; Hemming testimony.*

- f. The lot located at 1862 Indianapolis Boulevard is not comparable to the subject. The size is actually 25' by 75' and its current assessment reflects that it is a residential property with a small dwelling, not a commercial property. *Respondent Exhibit 5 at 1-2; Hemming testimony.*
- g. The lot located at 2000 Indianapolis Boulevard, also offered by the Petitioner as comparable, is only 25' by 125', not 50' by 125'. *Respondent Exhibit 5 at 3.* It appears from the information provided by the Petitioner that two parcels make up a commercial parking lot on that property. Based on the evidence provided during this hearing, it appears that one or both of the lots used as parking for The Dew Drop Inn (as noted on the property record card), which is located next door, have been incorrectly assessed as residential lots. They should have been valued as primary commercial land. *Petitioner Exhibit 2; Corman testimony; Hemming 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 672,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Photograph and Internet listing for comparable,
 - Petitioner Exhibit 2 - Photographs and Internet listing for comparable,
 - Petitioner Exhibit 3 - Photograph of the subject property,
 - Petitioner Exhibit 4 - Form 139L,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Plat maps,
 - Respondent Exhibit 4 - Land definitions,
 - Respondent Exhibit 5 - Property record cards for Petitioner's comparables,
 - Respondent Exhibit 6 - Land value calculations and summary information,
 - Board Exhibit A - Form 139L,
 - 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 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 Insurance Company 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 Petitioner's did not provide sufficient evidence to establish that the assessment should be changed. Nevertheless, the Respondent testified that there was an error in the valuation. This conclusion was arrived at because:
 - a. The Petitioner had the duty to demonstrate how the properties he offered as comparables actually compare to the subject property. He was responsible for explaining the characteristics of his own property, how those characteristics compared to the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - b. The Petitioner offered two lots located near or across the street from the subject lot as comparables, but failed to offer probative evidence to form a basis for comparing those properties with his own. *Id.* The Respondent submitted evidence that these two lots are not comparable to the subject. The lot at 1862 Indianapolis Boulevard is smaller than the subject and is a residential property, not a commercial property like the subject. The lot at 2000 Indianapolis Boulevard also is assessed as a residential property, not a commercial property. Though the second lot's current assessment may appear to be in error, this has no bearing on the subject's assessment. Neither of these properties proves that the assessment of the subject property is wrong. Furthermore, the Petitioner failed to prove what he believed the correct assessment should be.
 - c. While the Petitioner failed to establish a prima facie case, the Respondent testified that the subject's current assessment is incorrect and should be changed because the

multi-parcel adjustment was calculated at 14%, which is incorrect. The Respondent admitted that the correct adjustment (applied as a negative influence factor) should be 19%.

- d. Accepting the Lake County land valuation information provided by the Respondent, along with the Respondent's testimony that the subject's assessment is incorrect, the Board finds that the subject's land assessment should be changed. The land on this parcel should be valued with a 19% negative influence factor. Although the Respondent testified that the same error had been made regarding the land assessment on the Petitioner's contiguous parcel (which was not appealed) and that a larger negative adjustment on the subject parcel would bring the overall assessed value for both parcels down to what the Respondent considered to be fair, the Board will not accept or approve a greater negative influence factor for the subject property under such circumstances. The Petitioner did not appeal the other parcel, and consequently, its assessed value is not a matter that is before the Board. There is no authority for the Board to knowingly set or approve an assessed value for the subject parcel at a lower value simply to balance the overall value of both properties.

Conclusion

16. The Petitioner did not make a prima facie case regarding the land value, but the Respondent testified that the multi-parcel adjustment was incorrect. The Board accepts the Respondent's admission and determines that the land assessment should be reduced by allowing a 19% negative influence factor.

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. 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.