

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00661
Petitioners: Nick & Dalia Spanos
Respondent: Department of Local Government Finance
Parcel #: 001254203340010
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 ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$58,200 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L petition on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated March 14, 2005.
4. A hearing was held on April 14, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

Facts

5. The subject property is a Quonset building on industrial land located at 1531 Benton, Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed value of subject property as determined by the DLGF:
Land \$51,500 Improvements \$6,700 Total \$58,200
8. Assessed value requested by Petitioners on the Form 139L petition:
The Petitioners did not complete this section of the petition.
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Dalia Spanos, Owner

For Respondent: Stephen Yohler, DLGF

Issues

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

- a) The subject property is over assessed and the taxes are too high. *Spanos testimony.*
- b) The Petitioners purchased the subject property in 2002 for \$66,000. The Petitioners have a painting business, and they use the subject property for storage. The subject building has no bathroom or cooking facilities. The subject property has electricity; the building has four lights in it and there are security lights. In the winter, the Petitioners' business is not active, and the Petitioners store their trucks on the subject property. *Spanos testimony.*
- c) The Petitioners presented a hand-drawn map and pictures of the subject area. Ms. Spanos testified that 15th Place (#5 on the map) is not well maintained. There are a lot of garbage, tires, and mattresses dumped along 15th Place. Benton Street, where the subject property is located, is a dirt road and there is no street sign. *Spanos testimony; Pet'r Exs. 5, 6.*
- d) A Gary Sanitation District pump station (#2 on the map) is located to the north of the subject property. Every few hours, station's sirens go off and one can hear the pumping apparatus. The station emits a bad odor. *Spanos testimony; Pet'r Ex. 2.*
- e) The land (#4 on the map) to the south of the subject property is swamp. The land to the east of the subject property (#1 on the map) is forest and swamp. Similarly, there is forest land and a dump area to the west of the subject property (#3 on the map). *Spanos testimony; Pet'r Exs. 1, 3, 4, 6.*
- f) The subject property is in a convenient location near I-65 and the Indiana Toll Road. Nonetheless, the subject area is a dumping place for garbage. There are also two (2) abandoned houses located in the area, which create a potential for crime. The Petitioners erected a fence around the subject property to keep out dogs and for safety reasons. *Spanos testimony.*
- g) Ms. Spanos testified that she pays \$4,000 in taxes for her home in Crown Point. At her home, Ms. Spanos receives amenities and services from the city, her streets are plowed and cleaned, and the schools are good. Ms. Spanos testified that the Petitioners pay \$4,000 in taxes for the subject property in Gary, but that they do not receive any services and the road is full of pot holes. *Spanos testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent presented the property record card for the subject property. The subject land is being assessed as undeveloped usable land at \$39,204 per acre. The subject land is 1.915 acres, which works out to an estimated value of \$64,314. The subject land was given a negative 20% influence factor. Applying the negative 20% influence factor to the estimated value of \$64,314 results in a land value of \$51,450. *Yohler testimony; Resp't Exs. 1, 3.*
 - b) The Respondent noted that the estimated land value of \$64,314 is very close to what the Petitioners paid for the subject property in 2002. *Yohler testimony.*
 - c) The Respondent is concerned with the assessment of the subject property. The Respondent cannot control the taxes. *Yohler 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 BTR #1537.
 - c) Exhibits:
 - Petitioner Exhibit 1: Photos (4) of property east of subject property
 - Petitioner Exhibit 2: Photo of property north of subject property
 - Petitioner Exhibit 3: Photos (2) of property west of subject property
 - Petitioner Exhibit 4: Photos (3) of property south of subject property
 - Petitioner Exhibit 5: Photos (8) of 15th Place
 - Petitioner Exhibit 6: Hand drawn map of subject area

 - Respondent Exhibit 1: Subject Property Record Card (PRC)
 - Respondent Exhibit 2: Plat Map Page
 - Respondent Exhibit 3: Land Calculations/NBHD Land Summary Sheet

 - Board Exhibit A: Form 139L petition
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the subject property is over assessed and that their taxes are too high.
 - b) In support of their position, the Petitioners submitted photographs showing the Gary Sanitary Pump Station and the area surrounding the subject property. The photographs show garbage along the road and around the subject property. *Spanos testimony; Pet'r Exs. 1 -6*. The only evidence presented by the Petitioners aside from the photographs of the area, was Ms. Spanos' testimony that the area was undesirable. *Spanos testimony*.
 - c) The Petitioners, however, did not present any evidence to quantify the effect of the subject property's surroundings on its market value-in-use. Consequently, the Petitioners failed to establish either that the assessment is incorrect or what the correct assessment would be. *See Meridian Towers, supra*, 805 N.E.2d at 478.
 - d) The Petitioners also argue their taxes are too high. The tax rate applied to the subject property, however, is not before the Board. In order to obtain relief, the Petitioners were required to demonstrate that the assessment of the subject property is incorrect. As explained above, the Petitioners failed to introduce probative evidence in that regard.
 - e) Based on the foregoing, the Petitioners failed to establish a prima facie case of error.

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of 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: **March 7, 2006**_

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>>.