

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00128
Petitioner: Daryle Moyer
Respondent: Department of Local Government Finance
Parcel #: 002020300400003
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. An 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 Petitioner's property tax assessment for the subject property is \$160,000 and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties on October 7, 2004.
4. A hearing was held on November 10, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 23304 Colfax Street, Lowell, in Cedar Creek Township.
6. The subject property consists of a single family home with several out buildings on 64 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$69,600 for the land and \$90,400 for the improvements for a total assessed value for \$160,000.
9. The Petitioner requests a total value of \$89,500.

10. Daryle Moyer, the property owner, and John Toumey, representing the DLGF, appeared at the hearing and were sworn as witness.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner testified that he purchased the house, buildings, and 1.67 acres on contract from Mr. Bruce in 1991. According to the Petitioner, the final balloon payment was made on March 27, 2002. *Moyer testimony*.
 - b) The Petitioner stated that he is only contesting the assessment on the house, buildings and 1.67 acres. *Moyer testimony*. According to the Petitioner, the assessment of the subject property is higher than the market value shown in the appraisal dated January 10, 2002. *Id; Pet'r Ex. 6*.
 - c) The Petitioner further contends that the subject property is in a flood plain and flood insurance is required. This is reflected in Petitioner's appraisal. *Moyer testimony; Pet'r Ex. 5*. Also, an underground petroleum pipeline cuts through the subject property and goes within 1,000 feet of the subject house. *Moyer testimony; Pet'r Ex. 7*.
 - d) Finally, the Petitioner alleges that the neighborhood factor of 1.18 is too high. According to Petitioner, there are abandoned houses which are falling down to the north and across the street there is a tool shed falling down. *Moyer testimony*.
12. Summary of Respondent's contentions in support of assessment:
 - a) The property record card (PRC) for the subject parcel (#002020300400003) shows a March 1, 2002 assessment of \$160,000 for a dwelling, 2 utility sheds, and a detached garage on 64 acres. *Toumey testimony; Resp't Ex. 2*.
 - b) The PRC shows a transfer date of March 27, 2002. Prior to the March 1, 2003, assessment date the parcel was split. For the March 1, 2003, assessment date, the Petitioner is assessed for 1.67 acres, house, and buildings on parcel #002020300400014. Mr. Bruce is assessed for the remaining land. *Toumey testimony; Pet'r Ex. 3*.
 - c) The appraisal presented by the Petitioner includes the buildings and 1.67 acres of land. The appraisal does not include the total land assessed as part of parcel #002020300400003 which is on appeal for March 1, 2002. *Toumey testimony; Pet'r Ex. 2*.
 - d) A stipulation agreement had been offered to the Petitioner. The Respondent started with the appraisal value of \$82,000 presented by the Petitioner and time adjusted the value back to January 1, 1999. Based on the appraisal, the Respondent offered a

value of \$73,800 for the improvements and 1.67 acres. The remaining acreage of approximately 62 acres was valued at \$54,500. The total value of the stipulation was \$128,300. The issue became the ownership of the 62 acres land and the stipulation was not completed. *Toumey 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 Co. #682.
- c) Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Notice of Final Assessment
- Petitioner Exhibit 3: Indiana Residential Property Record Card
- Petitioner Exhibit 4: Real Property Maintenance Form
- Petitioner Exhibit 5: Flood Insurance Policy Declarations
- Petitioner Exhibit 6: Uniform Residential Appraisal Report
- Petitioner Exhibit 7: Petroleum Pipelines In Your Community

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card
- Respondent Exhibit 3: Subject Property Photo

- 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 Township 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*

Township 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 Petitioner provided sufficient testimony to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends that part of the subject property, approximately 62 acres, is assessed to the wrong person. *Moyer testimony*. The Petitioner testified that he entered in to an installment contract in 1991 with Mr. Bruce to purchase 1.67 acres and the buildings on it. *Id.* On March 27, 2002, the Petitioner made a balloon payment on the land and legal title was then transferred. *Id.* According to the Petitioner, Mr. Bruce remains the owner of the additional acreage in the parcel. *Id.*
 - b) An installment contract to purchase land vests in the purchaser equitable title, even though legal title is left with the seller for the purpose of securing the debt. *Stark et al. v. Kreyling*, 188 N.E. 680, 682 (Ind. 1934). For purpose of taxation the owner of the land is the holder of equitable title. *Id.* at 683. Here, the Petitioner has been the equitable owner of the house, buildings, and 1.67 acres since 1991. The Petitioner became the legal title owner of the house, buildings and 1.67 acres on March 27, 2002.
 - c) Under the Indiana Code, the county auditor *shall* correct errors discovered in the tax duplicate if the assessment is against the wrong person. Ind. Code § 6-1.1-15-12(a) (emphasis added). Here the Petitioner submitted a 2003 PRC which shows the ownership transfer date of the land to be March 27, 2002. *Petitioner Exhibit 3*. The undisputed evidence shows that the Petitioner was equitable owner of the 1.67 acres prior to the transfer date. Further, the PRC also shows the total acreage of the land to be 1.67 as opposed to the 63 acres stated on the 2002 PRC. *Petitioner Exhibit 3 and Respondent Exhibit 2*. The evidence also shows that the Petitioner has no legal or equitable ownership of the remaining acreage. Thus, the approximately 62 additional acres of land cannot be assessed and taxed to the Petitioner. Pursuant to Indiana Code § 6-1.1-15-12(a), the assessment of the excess land to the Petitioner must be corrected.
 - d) The Petitioner further argues that the subject property is over valued. Based upon a January 2002 appraisal time adjusted to January 1, 1999, the parties agreed that the 1.67 acres with the improvements should be valued at \$73,800. *Moyer and Toumey testimony*.

- e) Based on the foregoing, the Petitioner has established a prima facie case that the Petitioner has no legal or equitable ownership of the full 63 acres assessed to the Petitioner. The burden, therefore, shifted to the Respondent to impeach or rebut the evidence, which the Respondent failed to do. Accordingly, the preponderance of the evidence supports a finding that the Petitioner only owns 1.67 acres with improvements. Further, the parties agreed that the house, buildings and 1.67 acres of land owned by the Petitioner is over-valued. The Board accepts this agreement and, therefore, determines the value of the subject property is \$73,800.

Conclusion

16. The Petitioner made a prima facie case that part of the property was assessed and taxed to the wrong person. The Respondent failed to rebut this evidence. Further, the parties agreed on the assessed value for the house, buildings and 1.67 acres of land. Thus, the Board holds that the assessed value of the subject parcel including a house, buildings and 1.67 acres is \$73,800.

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