

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-041-02-1-3-00323
45-041-02-1-4-00325
45-041-02-1-4-00324
Petitioner: Southlake Realty/Kathryne Borchert
Respondent: The Department of Local Government Finance
Parcels #: 003-23-09-0452-0006
003-23-09-0452-0007
003-23-09-0452-0004
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 on October 7, 2003, in Crown Point, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were as follows:

- Parcel #003-23-09-0452-0006	\$77,400,
- Parcel #003-23-09-0452-0007	\$75,000,
- Parcel #003-23-09-0452-0004	\$71,000.

The DLGF notified the Petitioner on March 12, 2004.
2. The Petitioner filed Form 139Ls on April 1, 2004.
3. The Board issued a notice of hearing to the parties dated May 19, 2005.
4. Special Master Kathy J. Clark held a consolidated hearing at 8:15 A. M. on June 21, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located 1702 E. Porter Street, 1712 E. Porter Street, and on E. North Street. The location is in Center Township.
6. The subject properties are all vacant, industrial lots.

7. The Special Master did not conduct an on-site visit of the properties.
8. Assessed values of subject properties as determined by the DLGF:
 - Parcel #0006: Land \$77,400,
 - Parcel #0007: Land \$75,000,
 - Parcel #0004: Land \$71,000.
9. The Petitioner contends that each lot should be valued at approximately \$30,000.
10. Persons sworn in as witnesses at the hearing:
 - Kathryne Borchert, Owner Southlake Realty,
 - Joseph Lukomski, Jr, Assessor/ Auditor, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessments:
 - a. When purchased in 1989, the Petitioner asked the County Assessor if parcels #0006 and #0007 should be combined for tax purposes and was told it didn't matter since they were recorded on the same deed. Parcels #0006 and #0007 are contiguous to each other and should be valued as one lot. *Petitioner Exhibit 2 - land 2-3; Borchert testimony.*
 - b. Parcel #0004 is small and of no value to anyone other than the businesses located on either side of it. The Petitioner has had two offers in the past six months to a year; one from Mr. Roger Pace of Century 21 Realtors for \$21,000 and one for \$25,000 from Evorick Company, which is adjacent to the subject parcel. *Borchert testimony*¹.
 - c. The industrial park the subject properties are located in is small and secluded. The properties within the park very rarely change hands; they are closely held. *Id.*
 - d. None of the subject parcels have sewer, water, gas, or electric service. The property owners within the industrial park are responsible for repairing the streets and clearing snow from the streets. The City of Crown Point does not perform these services. *Id.*
 - e. The Petitioner has submitted property record cards and tax information on 18 parcels located within the industrial park to demonstrate the large increases since the last assessment. The subject properties have increased approximately 500%. *Petitioner Exhibit 1; Borchert testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The subject parcels are all priced as being usable undeveloped lots (code S3). The Incremental/Decremental pricing method used in Lake County adjusts the base land rate for size. The method is based on the theory that if one acre would sell for "x",

¹ The Petitioner was given permission by the Special Master, with agreement from the Respondent, to forward any written documents to substantiate the two offers. Petitioner Exhibit 2 – 2 states she was unable to produce the documents. The Petitioner was also allowed to submit old tax records but failed to do so.

- larger parcels would sell for less per square foot (or acre) and parcels smaller than one acre would sell for more per square foot (or acre). *Respondent Exhibits 2, 3; Lukomski testimony.*
- b. All three parcels are priced as separate lots. All are adjusted for their individual size according to the Incremental/Decremental method. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The tape recordings of the hearing labeled Lake County 1570 and 1571,
 - c. Exhibits:
 - Petitioner Exhibit 1: Property record cards and tax information for 18 other Properties in the industrial park,
 - Petitioner Exhibit 2: Plat map showing #0006 and #0007 to be contiguous; 1989 deed showing that all three parcels were purchased together,
 - Respondent Exhibit 1: Form 139L petitions,
 - Respondent Exhibit 2: Subject property record cards,
 - Respondent Exhibit 3: Incremental/Decremental pricing sheets,
 - Board Exhibit A: Form 139L petitions,
 - Board Exhibit B: Notices of Hearings,
 - Board Exhibit C; Hearing Sign In Sheets,
 - 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 Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

- a. The Petitioner presented the property record cards for 18 properties in the industrial park, including the subject parcels. The Petitioner testified that she had also intended to submit the previous assessments for the properties to show how the values had increased, but was unable to obtain them.
- b. The Petitioner did not offer any evidence to show that the other properties were comparable to the subject. In fact, the Petitioner made no comparisons at all, but was concerned with the increase from one assessment year to another. The fact that there was an increase in the assessed value is not probative evidence of an error in the assessment. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001).
- c. The Petitioner claimed that she had received two offers for parcel 003-23-09-0452-0004, one for \$21,000 and one for \$25,000; amounts that are substantially lower than the assessed value. The Petitioner was unable to support this claim with probative evidence. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).
- d. The Petitioner testified to the seclusion of the industrial area where the subject parcels are located, to the lack of utilities, and to the burden of street maintenance placed on the property owners. The Petitioner did not attempt to quantify the effect that these characteristics had on the market value-in-use. Such statements, unsupported by factual evidence, are not sufficient to establish an alleged error. *Id.*
- e. 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 Petitioner failed 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 assessments should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

Southlake Realty/ Kathryn Borchert
45-041-02-1-3-00323, 45-041-02-1-4-00325, and
45-041-02-1-4-00324
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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>.