

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-041-02-1-4-00418  
**Petitioner:** Ned Kovachevich  
**Respondent:** Department of Local Government Finance  
**Parcel:** 003-23-09-0522-0017  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

### Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on November 24, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$76,100 and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties on March 3, 2005. The hearing was continued. A rescheduled notice of hearing was issued on June 14, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on July 18, 2005.

### Facts

5. The subject property is located at 1110 East 129<sup>th</sup> Avenue, Crown Point, Indiana.<sup>1</sup>
6. This parcel is assessed as improvements only. The land is assessed as a separate parcel.<sup>2</sup> The improvements include three concrete block buildings, chain link fencing and a crushed stone parking area.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is \$76,100.
9. The assessed value requested by Petitioner on the Form 139L is \$0.

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<sup>1</sup> The Petitioner testified that the subject address listed on the petition as 1198 East 129<sup>th</sup> Avenue, Crown Point does not exist and the correct address is 1110 East 129<sup>th</sup> Avenue, Crown Point.

<sup>2</sup> The land is assessed on parcel number 003-23-09-0522-0015 and has been appealed as petition number 45-041-02-1-4-00183.

10. Ned Kovachevich, owner, and Terry Knee, assessor/auditor were sworn as witnesses at the hearing.

### **Issue**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The assessment of these three buildings, communication towers, and fencing is the responsibility of the utility companies that own them and lease the land. These improvements should not be assessed to the owner of the land on which they are situated. *Kovachevich testimony; Petitioner Exhibit 1.* Petitioner does not own any of the equipment assessed on the subject parcel and the real estate taxes are not his responsibility. *Id.*
  - b) For many years the tax bills were sent directly to the leasing companies. Petitioner does not know why that arrangement has changed. *Kovachevich testimony.* The issue is not whether the improvements are assessed correctly, but why the improvements are now being assessed in Petitioner's name and the tax bill sent to his address. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) No evidence was submitted to show the improvements are valued incorrectly. *Knee testimony.*
  - b) The owner of any real property is liable for tax, unless under a memorandum of lease or other contract is recorded with the county recorder before January 1, 1998. *Respondent Exhibit 3.*

### **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 1640,
  - c) Petitioner Exhibit 1 – A memorandum to various wireless companies from the Petitioner regarding leased improvements,  
Petitioner Exhibit 2 – Copy of an aerial map,  
Petitioner Exhibit 3 – Pre-annexation zoning map,  
Petitioner Exhibit 4 – Annexation data,  
Petitioner Exhibit 5 – Zoning map,  
Petitioner Exhibit 6 –Letter from the Crown Point Director of Planning and Building,

Petitioner Exhibit 7 – Real Property Maintenance Reports for eight other assessments and the subject property,  
Petitioner Exhibit 8 – Aerial map,  
Petitioner Exhibit 9 – Plat map showing Center Township,  
Petitioner Exhibit 10 – Data regarding six sales,  
Respondent Exhibit 1 – Form 139L,  
Respondent Exhibit 2 – Subject property record card,  
Respondent Exhibit 3 – Copy of several statutes regarding imposition of tax, including Ind. Code § 6-1.1-2-4,  
Board Exhibit A – Form 139L,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Rescheduled Notice of Hearing,  
Board Exhibit D – Hearing 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 evidence is not sufficient to support the Petitioner's contentions because:

- a) The Petitioner claims the assessment represents equipment and structures owned by several cellular companies who are responsible for the taxes on the improvements. The Petitioner stated the tax bills were sent to the cellular companies in the past, and he is unaware of any change that would result in the transfer of the assessment back into his name. *Kovachevich testimony*.

- b) Except as otherwise provided by law, all tangible property within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year. Ind. Code § 6-1.1-2-1.
  - c) The owner of any real property on the assessment date of a year is liable for the taxes imposed for that year on the property, unless a person holding, possessing, controlling, or occupying any real property on the assessment date of a year is liable for the taxes imposed for that year on the property under a memorandum of lease or other contract with the owner that is recorded with the county recorder before January 1, 1998. Ind. Code § 6-1.1-2-4(a).
  - d) The Board requested a copy of the lease agreement from the Petitioner during the appeal hearing. The Petitioner did not bring the lease agreement to the appeal hearing. Furthermore, the Petitioner did not provide probative evidence that the lease was recorded with the Lake County Auditor prior to January 1, 1998.
  - e) The Petitioner failed to make a prima facie case that the communication companies are responsible for the assessment and subsequent taxes.
16. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

### **Conclusion**

17. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. There will be no change to the assessment.

### **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: \_\_\_\_\_

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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](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>.