

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01069
Petitioner: Broadway Area Com. Dev. Corp.
Respondent: Department of Local Government Finance
Parcel #: 001-25-40-0047-0003
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 February 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner’s property tax assessment for the subject property was \$700, and notified the Petitioner on April 2, 2004.
2. Petitioner filed the Form 139L petition on May 5, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. A hearing was held on April 4, 2005, and then continued on April 8, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located on Adams Street, Gary, Calumet Township, Lake County.
6. The subject property is vacant land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property;

As determined by the DLGF:

Land: \$700 Improvements: \$0

As requested by the Petitioner:

Land: \$200 Improvements: \$0

(At the hearing, Petitioner requested an assessed value of zero.)

9. The following persons were present and sworn in at the hearing:

For Petitioner: Vernita Leslie, Executive Director, Broadway Area Com.
Dev. Corp.

For Respondent: Steve McKinney, Assessor/Auditor, DLGF

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The Petitioner contends the subject property is a vacated public street that was owned by the City of Gary, and is not currently being used. The Petitioner would have to remove the existing street in order to build upon the land. *Petitioner Exhibit 4; Leslie testimony.*
- b. The Petitioner requests the subject parcel not be assessed. *Leslie testimony.*

11. Summary of Respondent's contentions in support of assessment:

- a. The Respondent testified the subject property is accurately assessed at \$700. *Respondent Exhibit 2; McKinney testimony.*
- b. The subject property record card shows the land is currently receiving a negative ninety percent (90%) influence factor for shape, and for being unbuildable. *Respondent Exhibit 2.*

Record

12. The official record for this matter is made up of the following:
- a. The Petition and all subsequent submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #1443.
 - c. The following Exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – A copy of the Form 139L petition.

Petitioner Exhibit 2 – Subject property record card for parcel #001-25-40-0047-0003.

Petitioner Exhibit 3 – Plat map of the subject area.

Petitioner Exhibit 4 – A letter containing the Petitioner’s argument.

Petitioner Exhibit 5 – Notice of Final Assessment on a comparable property located at 2084 Washington Street.

For the DLGF:

Respondent Exhibit 1 – A copy of the Form 139L petition.

Respondent Exhibit 2 – A copy of the subject property record card.

Respondent Exhibit 3 – Two plat maps of the subject area.

For the Board:

Board Exhibit A – Form 139L petition, dated May 5, 2004.

Board Exhibit B – Notice of Hearing on Petition, dated March 3, 2005.

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

13. The most applicable cases are:
- a. A Petitioner seeking review of a determination of assessing officials 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 Board of Tax Commissioners*, 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 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.
14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the assessment of the subject parcel is excessive, and concludes that the assessed value should be \$0.
 - b. Taxpayers may offer evidence relevant to the fair market value-in-use of a subject property to rebut their assessment and to establish the actual true tax value of the property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2). The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
 - c. The Petitioner did not present any probative evidence showing that the current assessment is incorrect. Petitioner merely made conclusory statements that the current assessment is excessive due to the land being a vacated street once owned by the City of Gary.
 - d. Conclusory statements do not constitute probative evidence and are not sufficient to establish a prima facie case. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax. Ct. 1998); *CDI, Inc. v. State Board of Tax Commissioners*, 725 N.E.2d 1015, 1019 (Ind. Tax Ct. 2000).
 - e. The Petitioner did not submit any of the above described types of market evidence to support its contentions.
 - f. A negative ninety (90%) percent influence factor was given to the parcel to account for the shape and being unbuildable. *Respondent Exhibit 2*. The Petitioner did not present any documentation or testimony to support her claim that the amount of this negative influence factor is wrong or that

a greater adjustment is necessary. *See Whitley Products v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- g. Where the Petitioner fail to make a prima facie case, the Respondent's burden of proof is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement).

Conclusion

- 15. The Petitioner failed to make a prima facie case The Board finds in favor of the 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: _____

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