

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petitions: 1) 45-041-02-1-4-00002
2) 45-041-02-1-4-00003
Petitioner: Crown Point Bulk Plant
Respondent: Department of Local Government Finance
Parcels: 1) 003-23-09-0062-0007
2) 003-23-09-0062-0008
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. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County on November 11, 2003. The Department of Local Government Finance (the DLGF) determined that property tax assessments for the subject properties and notified Petitioner on March 12, 2004.
2. Petitioner filed Form 139L petitions on March 26, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 13, 2004.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner - Russell S. Rudenga, Accounting Department Manager, Superior Petroleum Products, Inc., owner/employee,
- Mathew E. Tucker, Tax Manager for DuCharme, McMillen & Associates, Inc. acting as representative for Owner,
For Respondent - James S. Hemming, assessor/auditor.

Facts

6. Subject properties are 1) .20 acres of industrial land with oil storage tanks and industrial accessory buildings and paving, and 2) .30 acres of industrial land with an industrial building having multiple uses and paving located at 409 Thomas Street in Crown Point.
7. The Special Master did not conduct an on-site inspection of the property.

8. Assessed value as determined by the DLGF:
- | | | |
|------------------|------------------------|-----------------|
| 1) Land \$28,900 | Improvements \$108,000 | Total \$136,900 |
| 2) Land \$31,200 | Improvements \$ 22,200 | Total \$ 53,400 |
9. Assessed value requested by Petitioner:
- | | | |
|------------------|------------------------|-----------------|
| 1) Land \$13,930 | Improvements \$108,000 | Total \$121,930 |
| 2) Land \$20,980 | Improvements \$ 22,200 | Total \$ 43,180 |

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Petitioner owns nine contiguous parcels in this area. All parcels should be valued with this fact in mind. Though parcel 003-23-09-0062-0007 contains only .20 acres and parcel 003-23-09-0062-0008 contains only .30 acres, Petitioner's total contiguous holdings are 4.26 acres. *Tucker testimony.*
 - b) "The Notice of Final Assessments received from the DLGF states a change in assessed values of the land due to a negative influence factor and their assigned property classes; however the land values for the two subject properties remained the same. The subject parcels are contiguous with other industrial land parcels that were subsequently reduced based on results from a preliminary hearing held with CLT on November 11th, 2003. The adjoining parcels along with the appealed subject properties were *supposed* to be changed from commercial to industrial at a significantly lower per square foot rate. All neighboring parcels along with the appealed subject parcels were to receive negative influences factors based on required contamination clean-up, shape and size, limited access and the inability to build on top of existing buried fiber-optic cable and city water lines." *Petitioner Exhibit 1.*
 - c) "We are requesting that the appealed subject properties along with their adjoining parcels be combined and priced all as Industrial land and have the appropriate negative influence factors applied. We contend that when considering an acceptable 'Market Value' for the above for [sic.] mentioned parcels and their negative influences, the total combined current assessed land value of four hundred and seventy-one thousand four hundred (\$471,400) dollars for four point two six (4.26) acres could never be obtained." *Petitioner Exhibit 1.*
 - d) These properties are now correctly identified. They were changed from commercial to industrial. That point is no longer an issue. *Tucker testimony.*
 - e) The properties should get a negative influence factor, but the fiber optic line and the city water line do not run through either of these two parcels. *Tucker testimony.*
 - f) There may be some environmental contamination on the properties. *Rudenga testimony.*

11. Summary of Respondent's contentions in support of the assessment:
- a) Respondent was only aware of the contiguous ownership of three parcels, which are the two under appeal and parcel 003-23-09-0053-0002. The value calculated for those three parcels using the pricing method formulated for Lake County is actually \$10,000 more than the assessment made by Cole-Layer-Trumble. *Hemming testimony, Respondent Exhibit 3.*
 - b) Because Petitioner appealed only two of the nine parcels, it is evident that the new values assessed resulting from the informal hearing must be satisfactory, but Petitioner did not submit those values. *Hemming testimony.*
 - c) The values shown on Petitioner Exhibit 2 are suspect because they may not be the values that resulted from the informal hearing. An example is the parcel at 818 E. Porter, which the Petitioner shows at \$69,200. The correct value for it is \$17,700. *Hemming testimony; Petitioner Exhibits 2, 14; Respondent Exhibit 3.*
 - d) These two parcels already have 52% negative influence factors. *Hemming testimony; Respondent Exhibit 2.*

Record

12. 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 477,
 - c) Exhibits:
 - Petitioner Exhibit 1 - Introduction of issues,
 - Petitioner Exhibit 2 - Land calculation breakdown,
 - Petitioner Exhibit 3 - Aerial photograph,
 - Petitioner Exhibit 4 - Crown Point Zoning Map legend,
 - Petitioner Exhibit 5 - Crown Point Zoning Map – subject area,
 - Petitioner Exhibit 6 - Subject property record card 1) 003-23-09-0062-0007,
 - Petitioner Exhibit 7 - Subject property record card 2) 003-23-09-0062-0008,
 - Petitioner Exhibit 8 – PRC for adjoining parcel 003-23-09-0054-0009,
 - Petitioner Exhibit 9 – PRC for adjoining parcel 003-23-09-0054-0007,
 - Petitioner Exhibit 10 – PRC for adjoining parcel 003-23-09-0054-0006,
 - Petitioner Exhibit 11 – PRC for adjoining parcel 003-23-09-0028-0040,
 - Petitioner Exhibit 12 – PRC for adjoining parcel 003-23-09-0028-0036,
 - Petitioner Exhibit 13 – PRC for adjoining parcel 003-23-09-0028-0039,
 - Petitioner Exhibit 14 – PRC for adjoining parcel 003-23-09-0053-0002,
 - Petitioner Exhibit 15 - Hearing Notice,
 - Petitioner Exhibit 16 - Hearing Notice,
 - Petitioner Exhibit 17 – Form 139L,

Petitioner Exhibit 18 – Form 139L,
Petitioner Exhibit 19 - Power of Attorney,
Petitioner Exhibit 20 - Disclosure Form,
Petitioner Exhibit 21 - Certification Letter,
Petitioner Supplemental Exhibit 1 - Current market vacant industrial lot sales,
Respondent Exhibit 1 - Form 139L for both parcels,
Respondent Exhibit 2 - Subject property record card for both parcels,
Respondent Exhibit 3 - Written land calculations for subject parcels including
explanation of incremental and decremental land pricing
method,
Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign in Sheet,

d) These Findings and Conclusions.

Analysis

13. 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.

14. Petitioner did not make a prima facie case for any assessment change. This conclusion was arrived at because:

Combined Value Of Entire Facility

- a) Petitioner seeks an assessment that values the entire facility, rather than individual parcels. Petitioners, however, failed to explain or present any authority to support how the Board might consider and assess its entire facility, which consists of nine parcels and 4.26 acres, when Petitioner only filed appeal petitions for a .2 acre parcel

and a .3 acre parcel. The Board lacks jurisdiction to make any determination regarding parcels that Petitioner failed to properly bring before it.

- b) Petitioner presented a land calculation for all nine parcels that shows the total land value of \$471,400, which would be \$110,657 per acre. Petitioner opined that this value is too high. Such conclusory statements, however, do not qualify as probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
- c) Respondent correctly pointed out that Petitioner's calculation of total value is incorrect because Petitioner used the original assessed values, not the adjusted values determined because of the informal hearing. Such a mistake reflects adversely on the credibility of Petitioner's evidence, but that error probably is not its most critical fault.
- d) More significantly, Petitioner failed to establish the relevance or any probative value for the total land value or average price per acre. Petitioner failed to identify specifically where the subject parcels are within their entire property. Petitioner failed to compare the characteristics of the subject parcels with the other seven or with allegedly comparable properties. Therefore, evidence regarding the entire 4.26 acres does not help to establish what the assessed value for the subject parcels should be.

Negative Influence Factors

- e) Petitioner also claims that the parcels should have negative influence factors. The evidence indicates these two parcels already have 52% negative influence factors. Apparently Petitioner takes the position that a greater allowance should be made. Petitioner offered testimony that it could not build on parts of the property because a fiber optic line and a city water line run through the property. When asked whether these lines run through these two particular parcels, however, Petitioner admitted that they did not. Petitioner failed to demonstrate how those lines are relevant to the value of the two subject parcels.
- f) Petitioner also offered testimony that there may be environmental contamination. The statement was not supported by probative evidence and remained merely a conclusion. As such, it lacks probative value. *Id.*
- g) The record does not establish that the currently allowed negative influence factor is wrong or what a greater factor should be. There is no reason to change the assessment on that basis.
- h) Petitioner failed to show that the current assessment is incorrect and did not provide any evidence showing what the correct assessment would be.

Conclusions

15. Petitioner did not make a prima facie case for a reduction in the assessed value of the property. 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 value 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 petitioner'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 the 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>.