

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00449
Petitioner: Lake County Trust #3645 Dorothy Forbes
Respondent: Department of Local Government Finance
Parcel #: 001-25-43-0359-0033
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$3,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 15, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 12, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is a vacant parcel of land located at 3744 Martin Luther King Drive, Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land \$3,400 Improvements \$0 Total \$3,400
8. Assessed Value requested by Petitioner: Not Provided
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Dorothy Forbes, Owner
For Respondent: David Depp, Representing the DLGF

Issues

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:

The Petitioner contends the subject parcel cannot be built upon, because two construction companies filled the property with concrete road debris to a depth of eight to nine feet.
Forbes testimony.

12. Summary of Respondent’s contentions:

After listening to the Petitioner’s testimony, the Respondent agreed that the lot should be deemed unbuildable for assessment purposes and, as such, should have a negative 90% influence factor applied.

Record

13. 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. #239.
- c. Exhibits:

Petitioner Exhibits: None Provided

Respondent Exhibits: None Provided

Board Exhibit A: Form 139 L
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

- d. These Findings and Conclusions.

Analysis

14. The most applicable 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 at 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. Wash. 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 provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a. The Petitioner testified that the subject property was purchased at auction for use by the Petitioner's nearby business as an extra parking area. *Forbes Testimony*.
 - b. The Petitioner then allowed two construction companies performing road construction on the I-65 and Ridge Road project to use the land as storage. In return, the construction companies promised to fill the property with the concrete road debris and level it at the end of the project. *Forbes Testimony*.
 - c. The Petitioner testified that, due to the eight to nine foot depth of the concrete debris, the land is now unbuildable and should not be valued as a buildable lot. *Forbes Testimony*.
 - d. After listening to the Petitioner's testimony, the Respondent agreed the subject lot should be deemed unbuildable for assessment purposes. The Respondent further agreed that the lot should be given a negative influence factor of 90%. *Depp Testimony*.

Conclusion

16. The Petitioner made a prima facie case. The Respondent agreed that the assessment was in error and that a negative influence factor of 90% should be applied to the subject property. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to reflect a negative 90% influence factor.

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.