

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00160
Petitioner: Elena Pocius Family Trust
Parcel #: 007-26-35-0115-0017
Respondent: Department of Local Government Finance
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 February 9, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$1,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. Special Master Peter Salveson held a hearing on November 19, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 4403 Ash, Hammond. The location is in North Township.
6. The subject property is vacant residential lot on .010 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$1,500.
9. Assessed value requested by Petitioner:
Land \$150.

10. Persons sworn in as witnesses at the hearing:
Kestutis Pocius, Son of Owner,
Steven R. McKinney, Assessor/Auditor, DLGF,
Lori Harmon, Assistant Director, Assessment Division, DLGF.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that the assessment is incorrect since the property record card shows that the parcel measures seven front feet. The Petitioner stated that the legal description on the property record card reads ". . . N. 1 FT of E 65 FT L. 16. . .".
Pocius testimony; Petitioner Exhibit.2.
 - b. The parcel fronts on an alley. *Pocius testimony; Respondent Exhibit 3.*
12. Summary of Respondent's testimony in support of the assessment:
 - a. The Respondent contends that Petitioner has only read a partial description and that the entire description actually indicates that the subject property is seven feet wide. The Respondent stated that in addition to the north one foot of the east 65 feet of Lot 16, the subject property also includes the six south feet of the east 65 feet of Lot 17. The plat map also shows the parcel is seven feet. *Harmon testimony; Respondent Exhibits 2 & 3.*
 - b. The Respondent stated that the subject property is correctly valued as a seven foot wide rear lot. *Harmon testimony; Respondent Exhibit 2.*

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 806,
 - c. Exhibits:
Petitioner Exhibit 1: Summary Statement,
Petitioner Exhibit 2: Legal Description,
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Maps,
Board Exhibit A: Form 139L Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-in sheet,
 - 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, by preponderance of the evidence, 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. 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 did not provide sufficient evidence to support the Petitioner’s contention. This conclusion was arrived at because:
- a. The Petitioner contends that the subject property is only one foot wide, not seven.
 - b. The Petitioner’s contention is based on a partial legal description. The full legal description indicates a one foot by 65 foot area from Lot 16 and a six foot by 65 foot area from Lot 17.
 - c. The Respondent testified that the lot was properly assessed as a seven foot rear lot, as the property record card shows land type “R”.
 - d. In actuality, the property, while showing the correct land type, has not been correctly valued as a rear lot. The subject property record card shows an actual frontage of seven feet. The actual frontage on a rear lot is “0”. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002- VERSION A, ch.2 at 50 (incorporated by reference at 50 IAC 2.3-1-2).
 - e. While the Petitioner did not establish a prima facie case that the lot size was incorrect, examination of the property record card indicates the parcel is not correctly assessed as a rear lot.

Conclusions

16. The Petitioner failed to establish a prima facie case. However, the Board determines that the error brought to its attention should be corrected and the subject parcel correctly valued as a rear lot.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.