

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 41-009-02-1-4-00011
Petitioner: HURRICANE FOOD, INC.
Respondent: FRANKLIN TOWNSHIP ASSESSOR (JOHNSON COUNTY)
Parcel: 5100150100207
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 10, 2003.
2. Notice of the decision of the PTABOA was mailed to the Petitioner on October 10, 2003.
3. The Petitioner filed an appeal to the Indiana Board of Tax Review (IBTR) by filing a Form 131 with the county assessor on November 7, 2003. Petitioner elected to have this case heard in small claims.
4. The IBTR issued a notice of hearing to the parties dated July 15, 2004.
5. The IBTR held an administrative hearing on August 19, 2004 before the duly appointed Administrative Law Judge Jennifer Bippus.

6. Persons present and sworn in at hearing:
 - A. For Petitioner: Milo E. Smith, Petitioner's Representative
 - B. For Respondent: Mark Alexander, Township Representative

Facts

7. The property is classified as a commercial property as is shown on the property record card #5100150100207.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Johnson County PTABOA:
Land \$63,000 Improvements \$304,300
10. Assessed Value requested by Petitioner:
Land \$30,000 Improvements: \$304,300

Contentions

11. Summary of Petitioner's contentions in support of alleged error in assessment is:
 - A. The land is not priced correctly. There is a one hundred forty-foot (140') by fifty-foot (50') drainage and utility easement that has been included in the acreage value. There is also a fifty-foot (50') ingress and egress easement. *Smith Testimony, Petitioner Exhibits 5, 7, & 8.*
 - B. The Petitioner introduced a copy of Ind. Code § 6-1.1-4-14, Adjacent property holders; assessment or exemption of various rights-of-way, which states in relevant part:
Sec.14 (a) Except as provided in subsection (b) of this section, land may not be assessed to an adjacent property holder if it:
(3) is used and occupied as part of a public drainage ditch
(4) is within a right-of-way that is used and occupied as a public highway.
(b) Where land described in subsection (a)(1), (a)(2), or (a)(3) has not been transferred by deed to a person who holds the land for railroad, interurban, street railway, levee, drainage, or public highway purposes, the land shall be assessed to the adjacent property owner. However, the

assessed value of the land so assessed shall be deducted from the assessed value of the land assessed to the adjacent property owner.

(c) If an assessor and a landowner fail to agree on the amount of land described in subsection (a)(1), (a)(2), (a)(3), or (a)(4), the assessor shall have the county surveyor make a survey to determine the amount of land so described. *Smith Testimony, Petitioner Exhibit 7.*

- C. The Petitioner presented a copy of the property record card with the calculations for the fifty-foot (50') ingress and egress easement and the one hundred forty-foot by fifty-foot (140'x50') ditch and utility easement. The assessment value should be \$42,100 for the land. The improvements are not appealed. *Smith Testimony, Petitioner Exhibit 8.*
- D. The issue contesting the influence factor of a positive fifty percent (+50%) has been withdrawn.

12. Summary of Respondent's contentions in support of the assessment:

- A. The drawings are not accurate. *Alexander Testimony.*
- B. The Petitioner's Exhibit 7 refers to easements, not rights-of-way. The Petitioner has tried to construe the two as the same and they are different. Rights-of-way are commonly taken out of the subject property total acreage, but easements are part of the property ownership and can be utilized by the property owner. In this case, the drawings presented by the Petitioner are not accurate and if they were, it is the county's opinion that some of the easement area would be used as pavement for parking. *Alexander Testimony.*
- C. The language in the warranty deed accounts for easements, but not rights-of-way. The County officials may make an adjustment for rights-of-way, but the Petitioner has not presented the evidence in such a way for the County officials to consider doing so. *Alexander Testimony.*

Record

13. The official record for this matter is made up of the following:

- A. The Petition, and all subsequent pre-hearing or post-hearing submissions by either party.
- B. The tape recording of the hearing labeled BTR # 5874.
- C. Exhibits:
 - Petitioner Exhibit 1: Copy of surveyor's drawing of three parcels.
 - Petitioner Exhibit 2: Copy of surveyor's drawing of the subject parcel, part I.

Petitioner Exhibit 3: Copy of surveyor's drawing of the subject parcel, part II.

Petitioner Exhibit 4: Copy of surveyor's drawing of the fifty-foot ingress and egress easement on parcel 51001501002/07.

Petitioner Exhibit 5: Copy of surveyor's drawing of the fifty-foot ingress and egress easement on parcel 51001410046/06.

Petitioner Exhibit 6: Copy of warranty deed for three parcels.

Petitioner Exhibit 7: Copy of IC 6-1.1-4-14, Adjacent property holders; assessment exemption of various rights-of-way.

Petitioner Exhibit 8: Copy of proposed revised property record card for parcel 51001501002/07.

Petitioner Exhibit 9: Copy of proposed revised property record card for parcel 51001501002/08.

Petitioner Exhibit 10: Copy of proposed revised property card for parcel 51001410046/06.

Petitioner Exhibit 11: Copy of letter, dated August 9, 2004, sent to Assessor requesting copies of evidence and witness list.

Respondent Exhibit 1: Authorization for Mark Alexander to represent the Franklin Township Assessor.

D. These Findings and Conclusions.

Analysis

14. The most applicable governing law is:
 - A. The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).

- B. The Board will not change the determination of the County Property Tax Assessment Board of Appeals (PTABOA) unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
15. The Petitioner did not provide sufficient evidence to support Petitioner's contentions. This conclusion was arrived at because:
- A. The warranty deed reads, "Grantors convey and warrant to Grantee a perpetual nonexclusive easement with Phillip A. Leonard and Elizabeth A. Leonard, together with Grantors, for themselves, heirs, personal representatives, devisees, successors and assigns, for purposes of sanitary sewer, storm drainage, utilities and to allow for the free flow pedestrian and vehicular ingress and egress, either as a private easement or future dedicated public right-of-way, through an existing U.S. Highway 31 curb cut into, on over, across and through the property more particularly described as Exhibit B attached hereto." *Petitioner Exhibit 6*.
 - B. The plain language of the warranty deed therefore describes an easement, not a right-of-way. The surveyor drawings also refer to an easement. *Petitioner Exhibits 2, 3, 4, and 5*.
 - C. Land containing easements is properly included in the assessment. However, "if easements reduce the value of the property, influence factors are appropriate for making adjustments to the value of the land encumbered by an easement." *Talesnick v. State Bd. of Tax Commissioners*, 693 N.E.2d 657, 659 (Ind. Tax Ct. 1998); *see also Poracky v. State Board of Tax Commissioners*, 635 N.E.2d 235, 238 (Ind. Tax 1994).
 - D. The Petitioner did not argue the issue of an influence factor in this appeal. Further, the Petitioner presented no market evidence to quantify any loss of value caused by the easement, as required when requesting the application of an influence factor. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E.2d 1099 (Ind. Tax 1999).
 - E. In further support of its position, the Petitioner referred to Ind. Code § 6-1.1-4-14. However, the Petitioner produced no evidence to establish that any portion of the property is used as a public drainage ditch or a right-of way used and occupied as a public highway.¹

Conclusion

16. The Petitioner has not made a prima facie case. The Board finds in favor of the Respondent. There is no change in the assessment as a result of this issue.

¹ Legal drainage ditches are those "established under or made subject to any drainage statute." IC 36-9-27-2. Private ditches are not included in this category.

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

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.