

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00626
Parcel #: 001-01-39-0070-0002
Petition #: 45-001-02-1-5-00627
Parcel #: 001-01-39-0070-0003
Petition #: 45-001-02-1-5-00628
Parcel #: 001-01-39-0070-0004
Petition #: 45-001-02-1-5-00629
Parcel #: 001-01-39-0070-0005
Petition #: 45-001-02-1-5-00630
Parcel #: 001-01-39-0070-0006
Petition #: 45-001-02-1-5-00652
Parcel #: 001-01-39-0070-0001
Petitioner: IN Construction Service, Inc.
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent on February 17, 2004. The Department of Local Government Finance (DLGF) determined the Petitioner's property tax assessment for the subject properties and notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L petitions on April 30, 2004.
3. The Board issued a notice of hearing to the parties on October 8, 2004.
4. A hearing was held on November 15, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject properties are vacant residential lots located at 4401-4431 Hayes Street, Gary, in Calumet Township.

6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value for each of these subject properties as determined by the DLGF:

 For parcels: 001-01-39-0070-0002, 001-01-39-0070-0003, 001-01-39-0070-0004, and 001-01-39-0070-0005:
 Land: \$5,500 Improvements: \$200 Total: \$5,700

 For parcels: 001-01-39-0070-0006 and 001-01-39-0070-0001:
 Land: \$5,500 Improvements: \$600 Total: \$6,100

 Assessed Value requested verbally by the Petitioner for these parcels during hearing:
 Land \$1,000 Improvements \$0¹ Total \$1,000
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

 For Petitioner: Jeff Cleary, President of IN Construction Service, Inc.
 For Respondent: Anthony Garrison, Representing the DLGF
10. Persons present at hearing but not sworn:

 For Petitioner: George Carberry, attorney for Petitioner

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the subject parcels have not had electrical or gas lines extended onto them. There is no water or sewer service available to the subject parcels. *Cleary testimony; Petitioner Exhibit 2.*
 - b. The Petitioner assumes the subject parcels are too small for improvements under Lake County’s zoning ordinance. *Cleary testimony; Petitioner Exhibits 2, 4.*
 - c. The Petitioner contends that the area surrounding the subject parcels has experienced severe and widespread economic depression, which has negatively affected the value of the subject parcels. *Cleary testimony; Petitioner Exhibit 2.*

¹ The Petitioner did not present any evidence or make any argument addressing its request for a zero value for improvements.

- d. The parcels are contiguous and the perimeter of the properties is fenced. *Cleary testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a. The Respondent contends that the subject parcels were correctly valued as commercial land. *Garrison testimony; Respondent Exhibit 2.*
 - b. The commercial land valuation form gives the base lot size and the rate. The calculation of the subject parcels' values is explained in detail in Respondent Exhibits 3-5.

Record

13. The official record for this matter is made up of the following:
- a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #702.
 - c. Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Summary of Petitioner's Arguments
- Petitioner Exhibit 3: Property Record Cards
- Petitioner Exhibit 4: Section 5.1 of The Lake County, Indiana Zoning Ordinance
- Petitioner Exhibit 5: Not submitted²

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject property record card
- Respondent Exhibit 3: Land Valuation Form
- Respondent Exhibit 4: Explanation of rate calculation
- Respondent Exhibit 5: Explanation of the multi-parcel incremental/decremental land pricing in Lake County
- Respondent Exhibit 6: Plat map and aerial map

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

² The Petitioner listed an Exhibit 5 on its exhibit coversheet indicating that the exhibit contained photographs of the surrounding parcels. However, the Petitioner did not submit such photographs or any other documents labeled as Exhibit 5.

- 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 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.
- 15. The Petitioner did not provide sufficient evidence and testimony to support the Petitioner's contentions. This conclusion was arrived at because:
 - a. The Petitioner pointed to essentially three factors demonstrating that the subject properties were assessed erroneously: (1) the lack of electric and gas lines extending onto the subject properties and the lack of access to sewer services; (2) the severe and widespread economic depression affecting the area in which the subject properties are located; and (3) Lake County's zoning ordinance, which the Petitioner asserts prohibits improvements from being constructed upon the subject properties.
 - b. As an initial matter, the Petitioner did not demonstrate that the applicable zoning ordinance prohibits construction of improvements upon the subject properties. The Petitioner contends that every zoning classification under the ordinance requires a lot to be at least 6000 square feet in order to permit the construction of a residential dwelling upon it. *Cleary testimony; Petitioner Exhibit 2*. However, the Petitioner did not explain whether the ordinance would prohibit the construction of a residential development where, as is the case with the Petitioner, the entity proposing the construction owns multiple contiguous parcels, which when combined exceed the minimum square footage requirements.

- c. Regardless, even if the Petitioner is correct that the subject properties lack access to sewer service, are located in an economically depressed area and cannot have improvements constructed upon them, the Petitioner failed to present any evidence to quantify the effect of those factors upon the market value-in-use of the subject properties. Instead, the Petitioner simply asserts that the factors it identified combine to render the value of the subject properties no more than \$1,000 per lot. The Petitioner's assertions in that regard amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- d. Based on the foregoing, the Petitioner did not establish either that the assessment was incorrect or what the correct assessment should be.

Conclusion

- 16. The Petitioner did not establish 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.