

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00227
Petitioner: Joseph E. Gogolak
Respondent: Department of Local Government Finance
Parcel #: 003030700330022
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 December 2003. The Department of Local Government Finance (the "DLGF") determined that the assessment for the subject property was \$38,000 and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated September 24, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 3, 2004.

Facts

5. The subject property is located at 7813 W. 123rd Avenue in Center Township.
6. The subject property is an undeveloped, wooded, ten-acre parcel of land currently classified as residential.
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 is \$38,000 (land only).
9. Assessed value requested by Petitioner is \$500.
10. Persons sworn as witnesses at the hearing:
For Petitioner — Joseph E. Gogolak,
For Respondent — Anthony Garrison.

Issues

11. Summary of contentions in support of an alleged error in the assessment:
 - a) Petitioner purchased the land at a tax sale, sight unseen, unaware that there was no legal access to the parcel. *Gogolak testimony.*
 - b) As the recorded survey map and the aerial map demonstrate, the parcel is not located on any type of roadway and has no legal easement from any roadway. *Petitioner Exhibits 1, 2; Gogolak testimony.*
 - c) Petitioner does not now own, nor has he ever owned, any parcel of land contiguous to the subject parcel. *Gogolak testimony.*
 - d) Petitioner appealed the value of this parcel to the Center Township Assessor twice before and the landlocked designation was approved. *Gogolak testimony.*

12. Summary of contentions in support of the assessment:
 - a) The Respondent testified that the land was priced according to the Lake County Land Order. *Garrison testimony.*
 - b) The Respondent submitted an aerial map, but stated that he was “not representing that there is access to this parcel.” *Respondent Exhibit 3; Garrison testimony.*

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 272,
 - c) Petitioner Exhibit 1: Center Township Section Map,
Petitioner Exhibit 2: Aerial Map from County Surveyor,
Respondent Exhibit 1: Form 139L petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Aerial map,
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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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. There is sufficient evidence to support the Petitioner’s contentions. The Respondent failed to rebut the Petitioner’s evidence. This conclusion was arrived at because:
- a) The Petitioner submitted a copy of the aerial map prepared by the county surveyor. It shows no roadways or legally recorded easements that might provide access to the subject parcel. The Respondent offered this identical map as an exhibit. There is no access to this parcel.
 - b) The property record card has a clear notation in the memorandum section that states “no access.” This statement substantiates that in the past the Center Township Assessor agreed with the Petitioner about the lack of access.
 - c) The Petitioner has never owned any adjacent property. Respondent did not rebut or impeach that testimony.
 - d) A landlocked parcel, one that allows no access or enjoyment of rights by the legal owner, is unbuildable. In Lake County a negative influence factor of 90 percent is applied to a parcel in that situation. The Board finds the parcel to be unbuildable due to the fact that the legal owner cannot access the parcel. Furthermore, it determines that a negative influence factor of 90 percent must be applied.

Conclusions

17. The Petitioner established a prima facie case. The Respondent failed to rebut the Petitioner's case. The Board finds for the Petitioner that the land value should be reduced with the application of a 90 percent negative influence factor.

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.