

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-002-02-1-5-00021
45-002-02-1-5-00022
Petitioner: Mike Benninghoff
Respondent: Department of Local Government Finance
Parcels #: 002020301620059
002020301620058
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 Notices of Assessment of Land and Structures (Forms 11) were issued by the Department of Local Government Finance (DLGF) on October 17, 2003. On March 31, 2004, the DLGF issued an administrative Notice of Department Assessed Value Determination that determined the Petitioner's property tax assessment for the subject properties were \$4,300 each.
2. The Petitioner filed Form 139L petitions on April 27, 2004.
3. The Board issued Notices of the Hearing to the parties dated July 16, 2004.
4. A hearing was held on August 24, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject properties are vacant lots located at 5405 West Appr 249th, Lowell, Cedar Creek Township in Lake County.
6. The Special Master did not conduct an on-site inspection of the property.

7. The assessed value of the subject property as determined by the DLGF:
Petition #45-002-02-1-5-00021 Parcel #002020301620059
Land: \$4,300 Improvements: -0- Total: \$4,300

Petition #45-002-02-1-5-00022 Parcel #002020301620058
Land: \$4,300 Improvements: -0- Total: \$4,300

8. The assessed value of the subject property as requested by the Petitioner:
Petition #45-002-02-1-5-00021 Parcel #002020301620059
Land: \$1,200 Improvements: -0- Total: \$1,200

Petition #45-002-02-1-5-00022 Parcel #002020301620058
Land: \$1,200 Improvements: -0- Total: \$1,200

9. The following persons were present and sworn in at the hearing:

For the Petitioner: Michael Benninghoff, Owner

For the DLGF: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:

- a. The Petitioner contends the subject properties are less than one acre and are basically swamp land. They are only accessible by boat and are land locked by the surrounding properties. Also, according to the Lake County Engineer, the properties would never be granted a sewer permit to build because the land level is too low. *Petitioner Exhibits 1, 2 & 5; Benninghoff testimony.*
- b. An aerial map of the subject properties shows that the area was never developed. The property has no roads, no bridge and no service from electric or water utilities. *Petitioner Exhibit 6; Benninghoff testimony.*
- c. The original Form 11 issued by the DLGF indicated that each parcel of land was being assessed for \$1,200; the DLGF subsequently issued a Notice of Department Assessed Value Determination changing the value of each parcel to \$4,300. The lots have not changed since the original assessment. *Petitioner Exhibit 3.*

11. Summary of Respondent's contentions in support of assessment:

- a. The Petitioner's evidence was accurate; the subject parcels appear to be unbuildable. *Elliott testimony.*

- b. The Respondent testified that lots located in Lake County that are deemed to be unbuildable would receive a negative influence factor of ninety percent (90%).
Elliott testimony.

Record

- 12. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #105.
 - c. Exhibits:
 - For the Petitioner:
 - Petitioner Exhibit 1 – A plat map of the subject area.
 - Petitioner Exhibit 2 – Two photographs of the subject properties.
 - Petitioner Exhibit 3 – A copy of the Notice of Department Assessed Value Determination for parcel #002020301620058, dated March 31, 2004.
 - Petitioner Exhibit 4 – A copy of the Notice of Department Assessed Value Determination for parcel #002020301620059, dated March 31, 2004.
 - Petitioner Exhibit 5 – A United States Geological Survey map, dated August 24, 2004.
 - Petitioner Exhibit 6 – An aerial map of the subject area.
 - For the Respondent:
 - Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 27, 2004.
 - Respondent Exhibit 2 – The subject properties’ 2002 property record cards.
 - Respondent Exhibit 3 - A plat map and aerial map of the subject area.
 - d. These Findings & Conclusions

Analysis

- 13. The most applicable governing cases are:
 - 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. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - b. The Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct.

Blackbird Farms Apartment, LP v. Department of Local Government Finance, 765 N.E.2d 711 (Ind. Tax 2002).

- c. In the event the Petitioner sustains his burden, the burden then shifts to the Respondent to rebut Petitioner's evidence with substantial evidence. Should the Respondent fail to rebut Petitioner's evidence, the Board will find for the Petitioner. *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475 (Ind. Tax 2003).
14. The Petitioner did provide sufficient evidence to support the Petitioner's contention. This conclusion was arrived at because:
- a. The Petitioner submitted two photographs, a map from the United States Geological Survey, and aerial map that established the subject properties are in an undeveloped area and the land is underwater swampland only accessible by boat. *Petitioner Exhibits 2, 5 & 6*.
 - b. The Respondent testified the Petitioner's evidence was accurate and that the subject properties are unusable for building. The Respondent further testified that any lots within Lake County determined to be unbuildable receive a negative influence factor of ninety percent (90%). *Elliott testimony*.
 - c. The Board finds the Petitioner has sufficiently established that the subject lots are unusable for building. Each parcel's current estimated value should therefore be reduced by a negative ninety percent (90%) influence factor.

Conclusion

15. The Petitioner made a prima facie case that the subject lots should receive a negative ninety percent (90%) influence factor for being unbuildable. The Respondent did not rebut the Petitioner's evidence. 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.

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.