

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-5-00190
Petitioner: Rose Brozovic
Respondent: Department of Local Government Finance
Parcel #: 005-05-06-0010-0023
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 October 20, 2003, 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 \$4,000 and notified the Petitioner on March 25, 2004.
2. The Petitioner filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated October 22, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 29, 2004.

Facts

5. The subject property is located at 11905 Wicker Avenue, Cedar Lake. The location is in Hanover Township.
6. The subject property is a 1.836-acre parcel valued as excess residential acreage.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$4,000 Improvements \$0 Total \$4,000.
9. Assessed value requested by Petitioner:
Not specified.

10. Persons sworn in as witnesses at the hearing:
Rose Brozovic, Homeowner
Everett Davis, DLGF

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The Petitioner is contesting the value placed on the parcel due to the land flooding. Photographs were provided to show the flooding over a period of 23 years. *Petitioner Exhibits 1 – 4; Brozovic testimony.*
 - b. The Petitioner's house is located on a parcel adjacent to the subject parcel and the subject parcel is valued as excess residential acreage. The Petitioner testified that she could not sell the subject property and could not give it away. There is no access to it. *Brozovic testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent said that he saw the pictures of the flooding and knows that it does flood. *Davis testimony.*
 - b. The Respondent stated that he had seen no indication of the value of the property, except for the Petitioner's opinion. *Davis 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 Co. 834,
 - c. Exhibits:
 - Petitioner Exhibit 1: Photographs of property in 1981,
 - Petitioner Exhibit 2: Aerial photographs of property in 2004,
 - Petitioner Exhibit 3: Photographs of property in 2004,
 - Petitioner Exhibit 4: Photographs of property in 1990,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - 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 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 provided sufficient evidence to support the Petitioner’s contentions. The Respondent did not rebut the Petitioner’s evidence. This conclusion was arrived at because:
- a. The Petitioner provided photographs to show that the subject parcel has flooded over a period of years.
 - b. The Respondent agreed that the parcel floods.
 - c. Land influence factors used in the 2002 Lake County reassessment include an influence factor of “1” for flooding, wet. The influence factor of “1” designates a 25% negative adjustment.
 - d. The Petitioner and Respondent have agreed that the parcel floods. The Board finds that an influence factor for flooding, wetland should be applied to the subject parcel reducing the assessed value to \$3,000.

Conclusion

16. The Petitioner made a prima facie case. 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 to \$3,000.

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>.