

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00494
Petitioner: Theodore Pajor
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0008-0157
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 January 28, 2004, 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 \$7,000 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated January 26, 2005.
4. Special Master S. Sue Mayes held the hearing in Crown Point on March 2, 2005.

Facts

5. The subject property is located at 2001 Meadow Lane, Schererville. The location is St. John Township.
6. The subject property is a vacant 1.986-acre parcel.
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 \$7,000.
9. Assessed value requested by Petitioner:
Land \$2,400.

10. Persons sworn in as witnesses at the hearing:
Theodore Pajor, Owner
Stephen H. Yohler, Assessor/Auditor, DLGF

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- The subject parcel is considered lowlands. Developers of the apartments on the south dug out soil to use as fill. *Pajor testimony.*
 - The subject parcel is over assessed because it has no value unless you pour a lot of money into developing it. The top 5 to 6 feet of soil is bad. Soil sample showed the soil in the area is unstable and contains heavy peat. *Petitioner Exhibits 1 & 2; Pajor testimony.*
 - West of the property, an office complex was built, the land was filled in about 3 to 4 feet, and a large area was blacktopped. The builder never installed a retention pond and as a result, they dump all their storm water on the subject land. In aerial views from 1980, 1990 and 2000, you can see the water problems. *Petitioner Exhibit 5; Pajor testimony.*
12. Summary of Respondent's contentions in support of the assessment:
The property is commercial property. It was assessed at \$3,500 per acre as residential excess acreage and that is the lowest rate they could put on property in that area. The assessment would have been much higher as undeveloped or unusable commercial land. The low assessment recognizes all the problems and is fair. *Respondent Exhibit 2: Yohler testimony.*

Record

13. The official record for this matter is made up of the following:
- The Petition,
 - The tape recording of the hearing labeled Lake Co. 1161,
 - Exhibits:
 - Petitioner Exhibit 1: Report--Subsurface Soil Exploration,
 - Petitioner Exhibit 2: Report--Engineering,
 - Petitioner Exhibit 3: Sketches of properties and legal descriptions,
 - Petitioner Exhibit 4: 139L Petitions,
 - Petitioner Exhibit 5: Aerial maps 1980, 1990 & 2000,¹
 - Petitioner Exhibit 6: Proposed subdivision plan showing Meadow Lane,²
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Aerial map,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Notice of Hearing,

¹ Petitioner displayed the maps during his presentation. Copies were not provided for the file.

² Petitioner included this on his exhibit list but did not refer to this exhibit in his presentation or provide a copy for the file.

- 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 did not provide sufficient evidence to support his contentions that the assessment is erroneous. This conclusion was arrived at because:
- a. The Petitioner stated that the land is not farmland and is useless unless it is developed. The Petitioner said the land is zoned for multiunit buildings. The subject’s property record card states the property is surrounded by commercial property.
 - b. The Petitioner submitted a soil sample report and engineering report for an adjoining parcel containing an apartment building. The report indicated that the unstable soil was the cause of the apartment building cracking. The Petitioner contended that the bad soil and the presence of peat would require a lot of front money to develop the subject land. In order to put in a foundation, the land would need to be excavated, retested, filled with sand or clay and compacted. A soil engineer would be required on site during construction.
 - c. The Petitioner stated that storm water, from an adjoining parcel with an office complex, drains across the property. The subject land is starting to get a wetland growth. The presence of wetland creates more problems with litigations and permits, all requiring front money before you can develop the land.
 - d. Petitioner provided no market value data to support his contention that the property is worth \$2,400. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Rather, Petitioner stated that he looked at what he could afford to carry.
 - e. Where the petitioner has not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make 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: August 15, 2005

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>.