

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-041-02-1-5-00147
Petitioner: Troutwine Estate Condo Association
Respondent: Department of Local Government Finance
Parcel: 003-23-09-0503-0433
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 7, 2004. The Department of Local Government Finance (the DLGF) determined that the assessment for the property is \$253,600 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 August 31, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on October 5, 2004.

Facts

5. The subject property is located in Crown Point. The location is in Center Township.
6. The subject property is common area for a condominium complex.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$ 205,600 Improvements \$ 48,000.
9. The assessed value requested by Petitioner on the Form 139L:
Land \$ 36,000 Improvements \$ 48,000.

10. Persons sworn as witnesses at the hearing:
For Petitioner — None,¹
For Respondent — David Depp, Senior Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of alleged error in the assessment:
- a) The Petitioner is being assessed for more land than it owns. The Petitioner provided plats that support its case. *Pet'r Exs. 3-8*. The property has 3.876 acres of common area, not the 15.278 acres currently assessed to the Petitioner as common land. *Barber argument; Pet'r Ex. 18*.
 - b) There are 160 residential units with each owner assessed as having 0.187 acres. Thus, the total land area accessed to individual owners is 29.92 acres, which by itself is more than the total land area in the complex (21.77 acres). *Id.* Assessing an additional 15.278 acres as common area is clearly excessive. For a correct calculation of land, the Petitioner proposes to multiply 80 times 0.187 acres because there are 80 ground floor units. That would assess 14.95 acres to individual owners. Then remove 2.963 acres that are public roads. The remaining balance, 3.857 acres, should be assessed as common land. *Id.*
 - c) The assessed land value has no relation to its true value.
12. The Respondent contends the land area is correct and based on comparable sales the value is correct.

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 BTR 260,
 - c) Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – Notice of Final Assessment,
Petitioner Exhibit 3-8 – Plats,
Petitioner Exhibit 9-12 – Property Record Cards,
Petitioner Exhibit 13 – Omitted,
Petitioner Exhibit 14 – Auditor's Map,
Petitioner Exhibit 15 – 2001 Record Card,
Petitioner Exhibit 16 – Power of Attorney,

¹ Howard Dike and Dan Jordan were present at the hearing, but not sworn, even though they were given the opportunity to do so. Consequently, none of their statements constitutes testimony for the record in this case. Herman Barber, attorney, represented the Petitioner. He was not sworn as a witness at the hearing.

Petitioner Exhibit 17 – 2004 Record Card,
Petitioner Exhibit 18 – Summation of Argument,
Petitioner Exhibit 19 – Unsold Land,²
Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Subject Property Record Card,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 its contentions. This conclusion was arrived at because:

- a) The plats presented by Petitioner appear to be construction plats showing different sections of the complex. The Petitioner failed to explain exactly what these plats are supposed to prove. It is the taxpayer’s duty to walk the Board through every element of its analysis and explain the relevancy of each piece of evidence. *See Racquet Club*, 802 N.E.2d at 1022.

² At the end of the hearing the Petitioner identified an additional document pertaining to unsold land. The Petitioner indicated that it had not brought a copy, but would make a copy after the hearing. No such copy, however, is in the record. As described, the document would not have effected the outcome of this case.

- b) The Petitioner claims that its Exhibit 15 proves the total area in the development is 21.77 acres. It does not. The record contains no probative evidence supporting that figure.
- c) The Petitioner claims that owners of each residential unit are assessed for 0.187 acres. The Petitioner only provided property record cards showing how certain individual units were assessed. There is no probative evidence validating the conclusion that each of the 160 units was assessed for 0.187 acres. Thus, there is no probative evidence supporting the claim that 29.92 acres was assessed to the individual units or that this amount exceeds the total acreage in the development by 8.15 acres. The Petitioner failed to support those conclusory statements with probative evidence. Such conclusory statements as offered by the Petitioner do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d) The Petitioner's claim is based upon mathematical calculations that are not supported by probative evidence. There is no validity to the Petitioner's proposed method of calculating the common area as 3.857 acres. The Petitioner's evidence does not prove that the common land as determined by the Respondent is incorrect.
- e) The Petitioner argues the pricing of the land is in error. The Petitioner argues the excess land should be valued at a total price of \$52,160. That argument is based on redistributing the land allocation and having only 3.876 acres of common area. This argument is an extension of the previous argument. The Petitioner failed to present a prima facie case that there is only 3.876 acres of common area or that the market value is anything less than the assessed value. There is no change to the assessment.

Conclusion

16. The Petitioner failed to make a prima facie case. The burden never shifted to the Respondent to rebut the Petitioner's evidence. The Board finds in favor of 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: October 4, 2005

Commissioner,
Indiana Board of Tax Review

- 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>.