INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: **16-016-04-1-4-00006A**
Petitioner: **BP M Crossing, Inc.**
Respondent: **Washington Township Assessor (Decatur County)**
Parcel #: **09510090223903**
Assessment Year: **2004**

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 Petitioner initiated an assessment appeal with the Decatur County Property Tax Assessment Board of Appeals ("PTABOA") by written document dated May 18, 2005.

2. The Petitioner received notice of the decision of the PTABOA on February 27, 2006. While the Form 115, Notification of Final Assessment Determination ("Form 115") shows the date of mailing as January 22, 2006, the PTABOA members signed and dated the Form 115 on February 24, 2006. The Petitioner provided the mailing envelope for the Form 115 showing a post mark date of February 27, 2006.

3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Decatur County Assessor on March 15, 2006. The Petitioner elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated May 9, 2006.

5. The Board held an administrative hearing on June 29, 2006, before the duly appointed Administrative Law Judge Alyson Kunack.

6. Persons present and sworn in at hearing:

    a) For Petitioner: Milo Smith, Taxpayer Representative

b) For Respondent: Robin Nobbe, Decatur County Assessor[1]
Helen Wagener, Witness

Facts

7. The property is located at 915 Kathy's Way, Greensburg, and it is classified as commercial, as is shown on the property record card for parcel #09510090223903.

8. The Administrative Law Judge ("ALJ") did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the PTABOA:
Land $325,800 Improvements $348,100 Total $673,900.

10. Assessed Value requested by Petitioner on the Form 131 petition:
Land $225,000 Improvements $348,100 Total $ 573,100.

Issues

11. On its Form 131 petition, the Petitioner raised an issue regarding the assessment date under appeal. At the hearing, the parties agreed that the appeal is for the March 1, 2004, assessment date. *Wagener testimony; Smith testimony*.

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

a) A .66-acre section of the subject property is within a "road right-of-way." That portion of the subject property should not be assessed to the Petitioner. *Smith testimony.* Mr. Smith testified that he has visited the subject property and observed that the road exists. *Id.* The Petitioner also presented an aerial photograph of subject property. *Pet'r Ex. 6*. The photograph shows that the road exists and leads to a YMCA and other parcels. *Smith testimony; Pet'r Ex. 6.* The Petitioner further submitted a plan map and property ownership records from the Decatur County Auditor's office. The records show that a .66-acre roadway was dedicated (presumably to the City of Greensburg) on April 13, 2004. *Smith testimony; Pet'r Ex. 8.*

[1] Ms. Nobbe did not provide written authorization to represent the Washington Township Assessor in this matter, although she did provide such authorization with regard to another hearing conducted on the same day. *Thomas & Asuncion Maliekal-Kunen v. Washington Twp. Assessor*, Pet. No. 16-016-04-1-4-0006. *See* Ind. Admin. Code tit. 52, r. 2-3-(b)(requiring authorized representatives to file notice with the Board). Ms. Nobbe similarly did not appear as a party in her capacity as the Decatur County Assessor. *See* Ind. Admin. Code tit. 52, r. 2-3-2(b)(requiring county assessor to file notice of appearance as additional party within thirty (30) days of the filing of the petition). Given the fact that the Petitioner did not object to Ms. Nobbe's apparent participation as the Washington Township Assessor's representative as well as her authorization to do so in the companion case, the Board shall proceed as if Ms. Nobbe had properly appeared in this case.

b) The City of Greensburg[2] annexed the subject property on August 4, 1997. *Smith testimony*; *Pet'r Ex. 3*. The Petitioner submitted a survey map showing the territory annexed. *Id.* The Petitioner highlighted the border of the subject property as well as the .66-acre portion of the property that it contends is within the road right-of-way. *Id.* According to the Petitioner, the term "annex" means, "[t]o incorporate (territory) into an existing political unit such a country, state, county, or city." *Smith testimony; Pet'r Exs. 3, 4.*

c) The Petitioner points to Ind. Code § 6-1.1-4-14 and the Real Property Assessment Guidelines for 2002 – Version A, ch. 2 p. 28 for the proposition that, while land within a right of way that is used and occupied as a public highway may be assessed to the adjacent property holder if the land has not been transferred by deed to the holder of the right-of-way, the value of the land within the right-of-way must be subtracted from the adjacent property holder's assessment. *Pet'r Exs. 5, 7. Smith testimony; Pet'r Ex. 5.*

d) The Petitioner submitted a proposed revised property record property record card reflecting a value for the subject land of $246,600 after subtracting the value of the .66-acre right-of-way. *Smith testimony; Pet'r Ex. 10.*

13. Summary of Respondent's contentions in support of the assessment:

a) The Respondent agrees that the .66 acres at issue currently are within a right-of-way for a public road. As of the March 1, 2004, assessment date, however, the Petitioner had not transferred that land by deed. Neither the annexation of land nor its proposed use as a right-of-way means that the land has been transferred legally. Until such a transfer occurs, the land is assessable to the adjacent property holder. *See Wagener testimony.* The Respondent believes that the "State" has contradicted itself by indicating that a right-of-way shall be assessed to the adjacent property holder and then providing that the value of the land subject to the right-of-way shall be deducted from the assessment. *Id.*

b) Because the Petitioner did not transfer the .66 acres at issue until April 13, 2004, the land must be assessed to the Petitioner. *Wagener testimony; Resp't Ex. 2.*

c) As a result of the informal conference, the parties agreed to change the pricing of the subject building. The parties further agreed to change the adjusted base rate for the undeveloped unusable portion of the subject land. *Wagener testimony; Resp't Ex. 3.*

Record

14. The official record for this matter is made up of the following:

a) The Petition

[2] The Petitioner did not identify the governmental entity that annexed the subject property. The survey map submitted by the Petitioner, however, refers to the City of Greensburg. *See Pet'r Ex. 3.*

b) The digital recording of the hearing

c) Exhibits:

Petitioner Exhibit 1: Petition Summary
Petitioner Exhibit 2: Subject Property Record Card ("PRC")
Petitioner Exhibit 3: Gorman Survey dated 8/4/97
Petitioner Exhibit 4: Definition of "annexed"
Petitioner Exhibit 5: Ind. Code § 6-1.1-4-14
Petitioner Exhibit 6: Google Earth Map showing the subject property
Petitioner Exhibit 7: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 VERSION A, Chapter 2, p. 28
Petitioner Exhibit 8: Map and Property Ownership Records from Auditor's Plat Book
Petitioner Exhibit 9: Map detailing measurements of the subject right-of-way
Petitioner Exhibit 10: Subject PRC with requested assessment

Respondent Exhibit 1: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chapter 2, p. 28
Respondent Exhibit 2: Property Ownership Record
Respondent Exhibit 3: Subject PRC

Board Exhibit 1: Form 131 Petition
Board Exhibit 2: Notice of Hearing
Board Exhibit 3: Hearing Sign In Sheet

d) These Findings and Conclusions.

Analysis

15. 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.

16. The Petitioner did not provide sufficient evidence to support its contentions. The Board reaches this conclusion because:

a) The sole issue before the Board is whether the Respondent erroneously assessed a .66-acre portion of the subject land to the Petitioner. Both parties rely upon Ind. Code § 6-1.1-4-14 and Real Property Assessment Guidelines for 2002 – Version A to support their respective positions.

b) Ind. Code § 6-1.1-4-14 provides, in relevant part:

> (a) Except as provided in subsection (b) of this section, land may not be assessed to an adjacent property holder if it:
>
> * * * * *
>
> (4) is within a right-of-way that is used and occupied as a public highway.
>
> (b) Where land described in (a)(1), (a)(2) or (a)(3) has not been transferred by deed to a person who holds that land for railroad, interurban, street railway, levee, drainage, or public highway purposes, the land shall be assessed to the adjacent property owner. However, the assessed value of the land so assessed shall be deducted from the assessed value of the land assessed to the adjacent property owner. . . .

The Guidelines contain an almost identical provision. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 28 (incorporated by reference at 50 IAC 2.3-1-2).

c) Both Ind. Code § 6-1.1-4-14 and Guidelines clearly provide that an adjacent property holder shall not be assessed for the value of land located within a right-of-way that is used and occupied as a public highway. Moreover, contrary to the Respondent's contentions, this is true regardless of whether the adjacent property holder has transferred legal title to land within the right-of-way. Thus, the mere fact that the Petitioner had not conveyed fee simple title to the .66 acres as of the March 1, 2004, assessment date is not dispositive of the issue before the Board. The relevant question is whether the .66-acre tract was subject to an easement in favor of the public to use the land as a public highway as of the assessment date. It is with that question in mind that the Board turns to the facts presented by the parties.

d) Larry and Cynthia McCamment transferred the subject property to the Petitioner on December 30, 2002. *See Pet'r Ex. 8; Resp't Ex. 2*. The next transfer reflected by the "ownership records" of the Decatur County Auditor is an entry of "DED" for April

13, 2004, which appears to refer to the .66-acre tract at issue. *Id.* While neither party explained the import of the abbreviation "DED," the most likely interpretation is that such entry reflects a dedication of the tract for public use. In any event, given the Respondent's concession that the tract currently is being used as a public road, the Board finds that such entry is sufficient to show that the tract was within a right-of-way that was used and occupied as a public highway as of April 13, 2004.

e) The Petitioner, however, submitted virtually no evidence regarding whether the land at issue was burdened by a "right-of-way" or other easement for use as a public highway prior to April 13, 2004. The Petitioner did not present evidence that it or the prior owners of the subject property conveyed an easement for public use prior to the April 13, 2004, dedication. The Petitioner likewise did not present evidence that members of the public had used the .66 acres in a manner sufficient to create a public highway prior to the April 13, 2004, dedication. *See Chaja v. Smith*, 755 N.E.2d 611, 614-17 (Ind. Ct. App. 2001) (holding that, under prior language of Ind. Code § 8-1-20-15, usage of road by members of the pubic for twenty years constituted public acceptance of dedication).

f) At most, the annexation survey map submitted by the Petitioners reflects that the .66-acres at issue were subject to "access and utility easements." *Pet'r Ex. 3*. The map, however, does not describe the extent of the rights conveyed by such easements or indicate whether the right of "access" benefited specific properties or the public generally. While Ind. Code 6-1.1 does not contain a statutory definition of the term "public highway,"[3] the Board interprets that term to contemplate something more than a private road over which members of the public may travel. Thus, to be within a "right-of-way" used and occupied as a "public highway," there must be an enforceable interest in the land running in favor of the public at large. Typically, that interest will be held in trust by governmental entities, as when land is dedicated and accepted for public use. *See Beaman v. Smith*, 685 N.E.2d 143, 147 (Ind. Ct. App. 1997)(quoting *Interstate Iron & Steel Co. v. East Chicago*, 187 Ind. 506, 118 N.E. 958, 959 (1918)("The long-standing statutory dedication scheme in Indiana has been that the owner who 'plats a street and acknowledges the plat and has it approved and recorded grants to the municipality, in trust for the public, title to an easement for a street . . . .'"). In such cases, although an adjacent property holder may maintain a fee interest in the land, an indefeasible interest vests in the public, and the fee owner cannot convey good title. *Chaja v. Smith*, 755 N.E.2d 611, 616 (Ind. Ct. App. 2001). The fee holder's remaining interest in the property is, in a sense, illusory. This differs

[3] The term is defined in various ways throughout the Indiana Code. *See, e.g.,* Ind. Code § 9-25-2-4 (defining "public highway" "a street, an alley, a road, a highway, or a thoroughfare in Indiana, including a privately owned business parking lot and drive, that is used by the public or open to use by the public," for purposes of statutes dealing with motorists' financial liability); Ind. Code § 6-6-2.5-18 (defining the "public highway" to mean "the entire width between boundary lines of each publicly maintained way in Indiana, including streets and alleys in cities and towns, when any part of the way is open to the public use for motor vehicle travel," for purposes of statute dealing with special fuel taxes). The Board, however, does not find these statutory definitions to be controlling. They arise in contexts unique to the policy concerns behind the statutes in which they arise and into which they are incorporated, and they do not necessarily reflect the policy concerns underlying Ind. Code § 6-1.1-4-14.

from other easements benefiting neighboring properties. In those instances, the fee holder of the servient estate may convey title, although the possessory interest conveyed will be subject to the easement. *Kammerling v. Grover*, 9 Ind. App. 628, 36 N.E. 922, 923 (1894).

g) The above interpretation of Ind. Code § 6-1.1-4-14 makes sense in light of Indiana's general statutory and regulatory scheme of assessment. Real property is assessed based upon its "true tax value," which is defined as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Various factors may affect a given property's market value-in-use, including easements encumbering the property. *See* GUIDELINES, ch. 2 at 56, 61 (indicating that a negative influence factor may be applied to reflect "a decrease based on encumbrances, restrictive covenants or obstructions that limit the use of land); *see also*, *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001) ("The use of influence factors are appropriate for making adjustments to the value of land that is encumbered by an easement."). In valuing the property, assessors must determine the extent to which such easements affect the market value-in-use of the property. *Id*. Similarly, to the extent a taxpayer bases his appeal on the existence of an easement encumbering his property, the taxpayer must quantify the effect of that easement on the market value-in-use of his property. *See Talesnick*, 756 N.E.2d at 1008. Ind. Code § 6-1.1-4-14 effectively removes that burden from assessors and taxpayers in the case of certain narrowly defined easements. One must assume that the General Assembly did so on grounds that such easements, by their very nature, always deprive the property owner of any value from the encumbered portion of the property, or that the public benefit from the easement is manifest.

h) Thus, the Petitioner's reliance on the existence of undefined "access and utility" easements prior to the April 13, 2004, dedication of the .66-acre tract is insufficient to establish a prima facie case of error. The fact that the City of Greensburg annexed territory that included the subject property in 1997 does nothing to alter the Board's conclusion. The Petitioner does not allege that the city condemned the .66 acres at the time of annexation or otherwise explain how the annexation operated to create a right-of-way for use as a public highway. The Petitioner simply points to the following definition of the term "annex" that it obtained from a web site: "to incorporate territory into an existing political unit such as a country, state, county or city." *Pet'r Ex. 4*. The mere fact that a city expands its borders to incorporate territory previously outside of its jurisdiction does not equate to the creation of a right-of-way or other legal or equitable interest burdening the property annexed. The Petitioner points to no authority for such a proposition.

i) Based on the foregoing, the Petitioner failed to present a prima facie case of error with regard to the March 1, 2004, assessment of the subject property.

Conclusion

17. The Petitioner failed to make 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: **September 27, 2006**

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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>.