

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-4-00254  
**Petitioner:** South Shore Country Club  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 003-31-25-0009-0001  
**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 in March 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 is \$296,700 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 May 19, 2005.
4. Special Master Kathy J. Clark held a hearing at 12:30 P. M. on June 21, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 14400 Lake Shore Drive, Cedar Lake in Center Township.
6. The subject property consists of 79.49 acres with yard improvements.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$278,100 for the land and \$18,600 for the improvements for a total assessed value of \$296,700.
9. The Petitioner requested an assessed value of \$83,500 for the land and \$18,600 for the improvements for a total assessed value of \$102,100.

10. John R. Hays, Vice President of South Shore Country Club, and Robert G. White, Petitioner's tax representative, and Joseph Lukomski, Jr, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. According to the Petitioner, all 79.49 acres of the subject property are used as golf course and should have the base land price of \$1,050 that is normally applied for golf course land. Only the 1<sup>st</sup> and 18<sup>th</sup> holes and the clubhouse are located across 145<sup>th</sup> Street on a separate legal parcel. *Petitioner Exhibits 1 and 4; Hays and White testimony.*
  - b. The Petitioner argued that the property should have a lower assessed value because there is a 20 foot wide utility easement that runs east to west along the bottom portion of the subject property. The City of Cedar Lake is currently running a sewer line along this easement. *Petitioner Exhibits 1, 4, 5; Hays and White testimony.*
  - c. Finally, the Petitioner argued that the property should be give a negative influence factor. According to the Petitioner, because the main area of the golf course is intersected by 145<sup>th</sup> Street, the golf course land should receive a 25% to 30% negative discount for the traffic, busy intersection, and business disruption caused by the road's existence. *Petitioner Exhibits 1, 4, 5; Hays and White testimony.*
12. The Respondent contends that only 50 acres are used as golf course and the remaining 29.49 acres are correctly priced as useable/undeveloped is correct. *Lukomski 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 County 1164,
  - c. Exhibits:
    - Petitioner Exhibit 1: Issues,
    - Petitioner Exhibit 2: Property record card prior to informal hearing,
    - Petitioner Exhibit 3: Property record card after informal hearing,
    - Petitioner Exhibit 4: Plat,
    - Petitioner Exhibit 5: Five photographs showing road interruption and utility easement work,
    - Petitioner Exhibit 6: 139L Petition,
    - Petitioner Exhibit 7: Power of Attorney,

Petitioner Exhibit 8: Course score card showing hole layout,

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2: Plat map/Aerial photographs,

Respondent Exhibit 3: Incremental/Decremental land pricing sheet,

Board Exhibit A: Form 139L,

Board Exhibit B: Notice of Hearing,

Board Exhibit C: Hearing 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 establish a prima facie case that a portion of the subject property was incorrectly assessed. This conclusion was arrived at because:
- a. The Petitioner contends that the entire 79.49 acres is golf course and the current assessment, which shows 29.49 acres as useable undeveloped, is incorrect. In support of this contention, the Petitioner submitted a plat map and a drawing of the golf course layout showing that the entire parcel is golf course. *Petitioner Exhibits 1 and 4*. In addition, the aerial map supplied as Respondent Exhibit 2, page 3, shows that the entire 79.49 acres is covered by the golf course tees, holes and fairways. *Id.*; *Hays testimony*; *White testimony*. Also, the memorandum section of the property record card shows that 79.49 acres on this key is golf course. *Petitioner Exhibit 3*; *Respondent Exhibit 1*. Therefore, the Board holds that the Petitioner has raised a

- prima facie case that the entire 79.49 acre parcel is golf course land and should be assessed accordingly.
- b. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent merely alleged the assessment was correct and that 29.49 acres of the subject property are useable undeveloped land. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Thus, the Board finds that the Respondent failed to rebut Petitioner's case.
  - c. The Petitioner established a prima facie case that the assessment was incorrect. The Respondent failed to rebut the Petitioner's evidence as to the use of the land. Thus, the Board finds that the entire parcel of 79.49 acres should be priced as golf course.
  - d. The Petitioner also contends that the existence of 145<sup>th</sup> Street, which runs between two legal parcels used for the golf course, creates an inconvenience for both golfers and for drivers and that it also has a negative impact on the parking lot. The Petitioner testified that golf membership had dropped and that, if the golf course were to be sold, these characteristics would be considered in the pricing. The Petitioner requests that a 25% to 30% negative influence factor be applied. *White testimony*; *Hayes testimony*. Further, the Petitioner alleges that a utility easement that runs across the property lessens the value of the parcel.<sup>1</sup> *Id.*
  - e. Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
  - f. While the existence of a utility easement or a golf course's bisection by a street may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value-in-use of

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<sup>1</sup> The Petitioner also testified that work was being done on the easement causing a disruption to the golf course. However, the Petitioner testified that the work shown in Petitioner Exhibits 5-4 and 5-5 began about two years ago. This would have been after the March 1, 2002 assessment and has no relevance for this appeal.

the subject property, or show what the actual market value of the property is. See *Talesnick*, 756 N.E.2d at 1108. Petitioner's request for a 25 – 30% reduction is unsupported by any evidence and, thus, is not probative. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998). Further, Petitioner failed to show that membership is dropping due to the inconvenience of the street running through the property. In fact, Petitioner testified that six other golf courses are now located in the area. This increased competition, more than any other factor, is likely to be the cause of the decrease in membership. Thus, even if the Petitioner produced "probative evidence that would support an application of a negative influence factor," the Petitioner failed to provide evidence of "quantification of that influence factor." *Talesnick*, 756 N.E.2d at 1108. Therefore, the Board finds that the Petitioner failed to raise a prima facie case that a negative influence factor should apply to the property.

- g. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 18. The Petitioner established a prima facie case that all 79.49 acres of the subject property should be valued as golf course. The Respondent failed to rebut this evidence. The Board, therefore, determines that all 79.49 acres should be classified as golf course land and valued at \$1,050 per acre. The Petitioner failed to raise a prima facie case on all other matters.

### **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: \_\_\_\_\_

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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](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>.