

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-1-00252
Petitioner: South Shore Country Club
Respondent: The Department of Local Government Finance
Parcel #: 003-31-25-0009-0003
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 was \$32,800 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 31.213 acres assessed as golf course land.
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 \$32,800 for the land. There are no improvements.
9. The Petitioner requested an assessed value of \$13,800.

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. Presently, all 31.23 acres in the subject property are assessed as golf course with a base land price of \$1,050. According to the Petitioner, however, of the total 31.23 acres in the subject parcel, only 4.213 acres are used as golf course. *Petitioner Exhibits 1-4; Hays and White testimony.* The remaining 27 acres are heavily wooded with some wet areas. The Petitioner contends that this land should be priced as agricultural and should receive the standard 80% soil typing discount normally applied to such land. *Id.*
 - b. Further, the Petitioner alleges 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 running a sewer line along this easement. The Petitioner argued that a discount should be given for the easement. *Id.*
 - c. Finally, the Petitioner argued, because the main area of the golf course located on two other parcels is intersected by 145th Street, the 4.213 acres of golf course land should receive a negative discount for the traffic, busy intersection, and business disruption caused by the road's existence. *Id.*
12. The Respondent testified that the land should be priced with a portion as golf course and the rest as unusable/undeveloped at \$7,350 per acre. *Lukomski testimony.* Correcting the assessment of the subject property to reflect that only 4.213 acres are golf course then, according to the Respondent, would actually increase the assessment on the subject property.

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,
 - Petitioner Exhibit 3: Plat,
 - Petitioner Exhibit 4: Thirteen (13) photographs,

Petitioner Exhibit 5: 139L Petition,
Petitioner Exhibit 6: Power of Attorney,

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Plat map/Aerial photographs,

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 failed to raise a prima facie case that the assessment on the subject property is incorrect. This conclusion was arrived at because:
- a. The Petitioner contends that only 4.213 acres of the subject land is used for the tee and part of the playing area for the 13th hole. *Petitioner Exhibit 1; Hays and White testimony*. The Petitioner requested the remaining 27 acres be valued as agricultural land with an 80% negative influence factor applied for woodland. *Id.*
 - b. Property classification and pricing are determined by the property’s use. Some commercial and industrial zoned acreage tracts devote a portion of the parcel to an agricultural use. The portion of land devoted to agricultural use should be valued using the agricultural land assessment formula. Portions not used for agricultural purposes would be valued using the commercial and industrial acreage guidelines.

- c. Here, the Petitioner did not submit any probative evidence to support the argument that any portion of the subject property has been put to agricultural use. Petitioner's testimony that the property is contiguous to or surrounded by agricultural properties is not evidence that the parcel at issue is agricultural land. The property is zoned commercial and the photographs submitted show no evidence supporting agricultural use. Thus, the Board finds that the Petitioner failed to raise a prima facie case that the property is zoned incorrectly.
- d. The Petitioner also contends that the existence of 145th Street, which runs between the two 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.¹ *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 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

¹ 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.

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).

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: _____

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>.