

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition #: 45-032-02-1-4-00441
Petitioner: Phillip C. Nowak
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0553-0001
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 February 2004. The Department of Local Government Finance (the DLGF) determined that Petitioner's tax assessment for the subject property is \$372,900 and notified Petitioner on March 26, 2004.
2. Petitioner filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. Special Master Joseph Stanford held the hearing in Crown Point on April 11, 2005.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner - Phillip C. Nowak, property owner,
For Respondent - Tommy Bennington, assessor/auditor.

Facts

6. Subject property is a 9,349 square-foot building on 1.787 acres of commercial/industrial land located at 1530 West Lincoln Highway in Schererville.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the property as determined by the DLGF:
Land \$156,700 Improvements \$216,200 Total \$372,900
9. Assessed value requested by Petitioner:
Land \$85,000 Improvements \$216,200 Total \$301,200

Issue

10. Summary of Petitioner's contentions in support of alleged error in the assessment:
 - a) The neighboring lot, a double lot, sold for \$225,000 on March 31, 2000. *Nowak testimony, Petitioner Exhibit 1.*
 - b) The subject property needs a lift station. This represents an extra cost to Petitioner or the person that buys the lot and brings the value down. *Nowak testimony.*
 - c) The neighboring lot is assessed as residential even though no one lives there. A vending business is being run from it. The subject property is assessed as commercial. *Nowak testimony.*
11. Respondent contends the assessment is correct according to the neighborhood land value summary sheet. *Bennington testimony, Respondent Exhibit 3.*

Record

12. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled Lake Co 1510,
 - c) Exhibits:
 - Petitioner Exhibit 1 - Neighboring property sales disclosure,
 - Petitioner Exhibit 2 - Neighboring property photograph,
 - Petitioner Exhibit 3 - Neighboring property photograph,
 - Petitioner Exhibit 4 - Neighboring property record card,
 - Respondent Exhibit 1 - Subject property card,
 - Respondent Exhibit 2 - Subject property photograph,
 - Respondent Exhibit 3 - Neighborhood land value summary sheet,
 - Board Exhibit A - Form 139 petition,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Sign-in Sheet,
 - d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:
 - a) A Petitioner seeking a review of an assessment determination 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 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 Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
 - a) Petitioner failed to establish comparability between the subject and neighboring property. While the properties are similarly situated, the subject property contains a commercial building (*see Respondent Exhibit 2*), but the neighboring property contains a residential dwelling (*see Petitioner Exhibits 2, 3*). Petitioner failed to provide probative evidence or explanation of a basis for comparison. His conclusory statements are not 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).
 - b) Petitioner testified that the fact his property needs a lift station for the sewer brings the value of the property down. He did not present probative evidence to substantiate that conclusion. Again, his conclusory statements are not probative evidence. *Id.*
 - c) Petitioner submitted no probative evidence regarding the subject’s market value and no evidence to support his contention that the land should be valued at \$85,000.

Conclusion

15. Petitioner failed to make a prima facie case. 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: _____

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 petitioner'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 the 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>.