

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-01115
Petitioner: Sharyn Rankin
Respondent: Department of Local Government Finance
Parcel #: 007263700160002
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 December 22, 2003, 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 \$315,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004
3. The Board issued a notice of hearing to the parties dated May 26, 2005.
4. Special Master Joan Rennick held a hearing in Crown Point on June 28, 2005.

Facts

5. The subject property is located at 1745 165th Street in Hammond.
6. The subject property is a vacant 12.995 acre industrial parcel of land.
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 \$315,000 Improvements \$-0- Total \$315,000.
9. Assessed Value requested by Petitioner:
Land \$28,420 Improvements \$-0- Total \$28,420.

10. Persons present and sworn in at hearing:
For Petitioner – Sharyn Rankin, property owner,
For Respondent – Steve McKinney, assessor/auditor.

Issues

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The subject property, which is located between an industrial park and the rail road companies, is undeveloped and is unuseable without substantial investment in clean up. *Rankin testimony*. Additionally, the subject property suffers from being landlocked making access to utilities and roadways unfeasible. *Rankin testimony*.
 - b) The prior owners used the subject property as the dumping grounds for debris and metal drums since at least the mid 1970’s. *Rankin testimony; Petitioner Exhibit 5*. Over the years, the subject property has also been used by the general public as a dumping ground for trash and debris such as old mattresses. *Rankin testimony*.
 - c) As a result of a fire at the subject property, the subject property was investigated by the Indiana Department of Environmental Management (“IDEM”). IDEM sent the Petitioner an order to cease dumping at the subject property and instituted a clean-up program for the subject property. *Petitioner Exhibit 5, 6, 7, 8*. Approximately \$61,000 was spent to clean up the metal drums and large waste during the first 2 years of clean up. In the years following, the clean up continues of lesser items such as mattresses and the like. *Rankin testimony*.
 - d) The City of Hammond Urban Development and the Northwest Forum have actively worked to develop the site for some sort of manufacturing facility. *Rankin testimony*. Although the rail system is nearby, both agencies were unable to generate interest because access to utilities and the lack of roadway. *Rankin testimony*.
 - e) The subject property could gain access to utilities and roadways if it was brought into the industrial park; however, this is a possibility only if a viable user was found. *Rankin testimony*. The request for a crossing on the Norfolk Southern Rail Company rail was denied citing safety concerns because the crossing would be across their largest yard and the rail already carries too many crossings. *Rankin testimony*.
 - f) Logging the subject property was considered as one way to make the subject property useable. However, a Purdue University forestry class determined that the timber located on the subject property had no value. The Norfolk Southern Rail Company was contacted about a possible crossing into the site, but they stated there were too many crossings and their biggest yard area is right there and it would be dangerous. *Rankin testimony*.

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

- a) The subject property is currently valued as undeveloped/usable land. McKinney testimony. The subject property fits the description of undeveloped/useable land. *McKinney 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 1796,
- c) Exhibits:
 - Petitioner Exhibit 1 – A copy of the Form 139L petition with the notice of assessment, notice of final assessment, the subject property record card reflecting the 2002 assessment, the subject property record card reflecting the 1999 assessment, and a diagram of an unidentified property attached,
 - Petitioner Exhibit 2 – The subject property record card reflecting the 1999 assessment,
 - Petitioner Exhibit 3 – The subject property record card reflecting the 2002 assessment,
 - Petitioner Exhibit 4 – A comparison of property tax bills for properties in Hammond, East Chicago, Merrillville, and Munster,
 - Petitioner Exhibit 5 – A copy of a newspaper article concerning the discovery chemical dumping at the subject property,
 - Petitioner Exhibit 6 – A copy of the photograph of the subject property showing drums found at the subject property,
 - Petitioner Exhibit 7 – A copy of an open dump inspection report made regarding the subject property,
 - Petitioner Exhibit 8 – A copy of a letter from the Indiana Dept. of Environmental Management regarding the use of the subject property as an open dump,
 - Respondent Exhibit 1 – The subject property record card,
 - Respondent Exhibit 2 – The Incremental/Decremental Land Summary for the subject neighborhood,
 - Respondent Exhibit 3 – A copy of the plat map showing the subject property,
 - 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 provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) 2002 REAL PROPERTY ASSESSMENT MANUAL at 1 (incorporated by reference at 50 IAC 2.3-1-2) defines Usable Undeveloped land as the amount of acreage that is vacant and held for future development and Unusable Undeveloped land as the amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes. The MANUAL further defines True tax value 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.” MANUAL at 2.
 - b) The evidence presented tends to show that the subject property suffers by being landlocked making access to roadways and utilities unfeasible. *Rankin testimony*. The evidence presented also tends to show that, because of the years of dumping waste at the site, the subject property will not be useable until substantial clean up is completed. *Rankin testimony; Petitioner Exhibit 5, 6, 7, 8*.
 - c) This evidence along with the Petitioner’s personal knowledge of the subject property and the circumstances surrounding the inability to develop it for industrial use regardless of the efforts made by the local industrial development agencies is sufficient to establish a prima facie case that the subject property is

undeveloped/unuseable land rather than undeveloped/useable land. The burden has shifted to the Respondent to present evidence rebutting or impeaching the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.

- d) The Respondent simply presented the subject property record card, an incremental/decremental land summary, and a plat map and stated that the subject property fits the description of undeveloped useable land. *McKinney testimony; Respondent Exhibit 1, 2, 3*. The Respondent did not explain how or why the evidence presented establishes that the subject property is best described as undeveloped/useable. The evidence does nothing to rebut or impeach the Petitioner's evidence that the subject property is landlocked, lacks access to utilities and roadways, and requires substantial cleanup of the debris dumped on the subject property.

Conclusion

- 16. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of Petitioner.

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: _____

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>>.