

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00016
Petitioner: Leon L. Bailey Ltd.
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0014-0004
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$2,600 and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 8, 2004.
3. The Board issued a notice of hearing to the parties dated November 16, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 16, 2004.

Facts

5. The subject property is located at 20285 Calumet in Lowell.
6. The subject property is a vacant 15-acre woodlands parcel.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is \$2,600.
9. The Petitioner did not request a specific assessed value.
10. Persons sworn as witnesses at the hearing:
Michael McIntire, general partner,
Phillip Raskowski, assessor/auditor.

Issues

11. Petitioner's contends the property is over-assessed because there is less acreage than shown on the property record card.
12. The Respondent contends the acreage cannot be corrected at a tax hearing.

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 658,
 - c) Petitioner's Exhibits: None,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Plat/aerial map,
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 Insurance 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.
 - d) The petitioner must submit probative evidence that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be

considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *see also Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

15. The weight of the evidence does not support Petitioner's contentions because:
- a) The Petitioner provided testimony that 1.5 acres of the original land parcel was sold in the last 10 years. Therefore, according to the Petitioner the total acreage should be reduced to 13.5 acres. The record contains no documentation to support that claim. While this testimony has some relevance and limited probative value, it is not much.
 - b) Except for a lease term that does not exceed three years, such conveyances of land must be by written deed. Ind. Codes 32-21-1-13. While the Board recognizes that this statute may not be controlling in this case, it is an indication that the lack of any documentation seriously diminishes the credibility of Petitioner's testimony.
 - c) The Respondent noted the Petitioner did not provide proof of the land sale or the current value of the property. The property record card still indicates that Petitioner owns 15 acres with this parcel. This record rebuts the very limited weight of Petitioner's testimony.
 - d) Neither side has presented the kind of substantial, probative evidence that would assist the Board in making a well-informed determination about how much land the Petitioner actually owns with this parcel. Nevertheless, after considering all the evidence the Board is not convinced that the measured acreage should be changed.

Conclusion

16. 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: _____

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>>.