

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01623
Petitioners: Lewis L. & Deborah A. Thornton
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0322-0003
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 not held, as the Petitioners claim to have not received a Form 11, Notice of Assessment. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment is \$3,000.
2. The Petitioners filed the Form 139L petition on August 3, 2004.
3. A notice of hearing was not sent to the Petitioners for the subject parcel, but was sent only for two related parcels. The parties agreed to waive the thirty day minimum advance notice of hearing for the subject parcel, established by Ind. Code § 6-1-1-15-4. The Waiver of Notice was signed March 14, 2005.
4. A hearing was held on April 14, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 2690 Pierce Street, Gary, Calumet Township, in Lake County.
6. The subject property is vacant land.
7. The Special Master did not conduct an on-site visit of the property.

8. The DLGF determined that the assessed value of the subject property is \$3,000 for the parcel of vacant land.
9. The Petitioners request the parcel be assessed at \$700.
10. Lewis L. Thornton, property owner, and Tommy Bennington, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The assessed value of the subject property of \$3,000 is overstated. *Thornton argument.* The current assessment represents an increase of 329% in assessed value over the previous assessment of \$700. *Thornton testimony.* The assessment should be returned to \$700. *Thornton argument.*
 - b. The subject's neighborhood has experienced a decline in values due to homes being abandoned. *Petitioner Exhibit 4 & 5; Thornton testimony.* The subject property is overgrown with brush and trees. *Id.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property is correctly assessed at \$3,000 each. The assessed value is fair and consistent with other properties in the neighborhood. *Bennington 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 Co. 1554,
 - c. Exhibits:

Petitioner Exhibit 1 – Form 139L petition for #45-001-02-1-5-01338,
Petitioner Exhibit 2 – Form 139L petition for #45-001-02-1-5-01337,
Petitioner Exhibit 3 – Form 139L petition for #45-001-02-1-5-01623,
Petitioner Exhibit 4 – Two photographs of the subject area,
Petitioner Exhibit 5 – Two photographs of the subject properties,
Petitioner Exhibit 6 – Real property maintenance report for parcel #25-45-0322-0001,

Petitioner Exhibit 7 – Real property maintenance report for parcel #25-45-0322-0002,

Petitioner Exhibit 8 – Real property maintenance report for parcel #25-45-0322-0003,

Petitioner Exhibit 9 – 2003 payable 2004 tax statements for property numbers #25-45-0322-0001, #25-45-0322-0002 and #25-45-0322-0003,

Respondent Exhibit 1 – The subject property record card,

Board Exhibit A – Form 139L petition,

Board Exhibit B – Waiver of Notice,

Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Company 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 Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

- a. The Petitioners contend the subject property is overvalued in its assessment.

- b. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject properties to rebut their assessment and to establish the actual true tax value of the property. MANUAL at 5. The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subjects or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
- d. The Petitioners did not submit any of the above described types of market evidence to support their contention. Instead, the Petitioners relied solely upon their conclusory statements that the subject property is located in a declining neighborhood due to abandoned homes in the area, and that the subject property is overgrown with brush and trees. However, the Petitioners did not present any evidence to quantify how those factors affect the market value-in-use of the subject property. Consequently, the Petitioners’ statements amount to little more than conclusory statements, which, when unsupported by factual evidence, are insufficient to support a claim for a change in assessment. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e. Where the Petitioner fails to make a prima facie case, the Respondent’s burden of proof is not triggered. *Lacy Diversified Indus. v. Dept. of Local Government Finance*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. Of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement). Thus, no change in the current assessments is warranted.

Conclusion

16. The Petitioners failed to make a prima facie. 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 assessments 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>