

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00074
Petitioner: William Knox
Respondent: Department of Local Government Finance
Parcel: 001-25-44-0064-0019
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 February 11, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$87,200 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 February 25, 2005.
4. Special Master Brian McKinney held the hearing in Crown Point on March 30, 2005.

Facts

5. The subject property is located at 673 Delaware in Gary.
6. The subject property is a four-unit apartment building.
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 is:
Land \$17,600 Improvements \$69,600 Total \$87,200.
9. The assessed value requested by Petitioner is:
Land \$15,000 Improvements \$65,000 Total \$80,000.
10. Persons sworn as witnesses at the hearing:
Michelle Gregory, property manager,
Diane Spenos, assessor-auditor.

Issues

11. The first issue the Board must consider is the appropriateness of the property manager representing Petitioner, who was not present at the hearing.
12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The house is over assessed. The Petitioner included a list of repairs indicating the estimated cost to repair certain items. *Pet'r Ex. 3g*. The assessment should be reduced by the estimated amount the repairs would cost. *Gregory testimony*.
 - b. The photographs show the items that are in need of repair. *Pet'r Exs. 4g-7g*.
13. The Respondent stated there were no similar sales from the neighborhood. *Spenos testimony*. The Respondent presented the Neighborhood Valuation Form to support the land pricing assigned to the subject property. *Spenos testimony; Resp't. Ex. 4g*.

Record

14. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled BTR 1280,
 - c. Exhibits:¹
 - Petitioner Exhibit 3g - Summary of repairs listing five items,
 - Petitioner Exhibit 4g - Two photographs the decorative trim and overhang at the top of the building,
 - Petitioner Exhibit 5g - Two photographs of property showing a rear view,
 - Petitioner Exhibit 6g - Two photographs of the boiler and the basement,
 - Petitioner Exhibit 7g - Two photographs of basement used as storage,
 - Respondent Exhibit 1g - Form 139L,
 - Respondent Exhibit 2g²
 - Respondent Exhibit 3g - Photograph of property,
 - Respondent Exhibit 4g - Land calculation explanation and Neighborhood Valuation Form,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Sign in Sheet,
 - d. These Findings and Conclusions.

¹ No Petitioner Exhibit 1 or 2 was presented.

² The Respondent's exhibit cover sheet identified this exhibit; however, it was not included with the exhibits that actually were submitted.

Analysis

15. The Petitioner did not appear personally. Similarly, no attorney or authorized tax representative appeared for him. Michelle Gregory, identified as the property manager, attended the hearing and purported to speak for the Petitioner. No written appearance is on file to support such representation. Furthermore, such an appearance would not be permitted by the Board's procedural rules for Lake County 2002 assessment appeals. Such an attempt at representation is contrary to the generally applicable rules for tax representatives to practice before the Board. 52 IAC 1-1-4; 52 IAC 1-1-6; 52 IAC 1-2-1; 52 IAC 2-2-16; 52 IAC 2-3-2. The person who purported to represent the taxpayer failed to comply with any of the Board's rules and from the record in this case, she had no status to represent the Petitioner. Accordingly, the effect of this situation is that the Petitioner presented no argument or evidence in support of his petition. For this reason alone, the petition is denied and there should be no change in the assessment.
16. In addition, the Board would reach the same conclusion even after considering the evidence and arguments the property manager presented.
17. 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 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.
18. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
 - a. The property manager presented a list of repairs needed, the estimated cost of those repairs, and photographs of the items needing repair. In order to succeed in an appeal, the Petitioner must show the effect the needed repairs would have on the property’s market value-in-use. For example, the property manager contends that it would cost \$8,000 to replace the boiler in the subject property. There is no probative evidence to support the estimate or quantify the impact that repairs would have on the market value-in-use of the property. The property manager’s conclusory statements

do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- b. The assessment must reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how it demonstrates, or is relevant to, the subject value as of January 1, 1999, is required. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). In this case, the Petitioner does not prove how the repair work would have affected the value of the property as of January 1, 1999. Consequently, the evidence does not help to establish what the assessed value should be. *Id.*
- c. Because the Petitioner did not present evidence establishing a prima facie case, the burden of production never shifted to the Respondent to rebut the Petitioner's evidence. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1221-1222.

Conclusion

- 19. The 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 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>.