

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-016-02-1-5-00355
Petitioner: 1626 E. 33rd Place Trust
Respondent: Department of Local Government Finance
Parcel: 006-35-50-0183-0001
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 January 2004. The Department of Local Government Finance (the DLGF) determined that the assessment for the property is \$90,200 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 9, 2004.

Facts

5. The subject property is located at 1626 E. 33rd Place, Hobart. The location is in Hobart Township.
6. The subject property is a duplex located on a 60 by 100 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$10,500 Improvements \$79,700 Total \$90,200.
9. Assessed value requested by Petitioner on Form 139L:
Land \$8,000 Improvements \$56,000 Total \$64,000.¹

¹ Petitioner Exhibit 12 shows a proposed assessment of \$50,000.

10. Persons sworn as witnesses at the hearing:
Neil Wingate with a Power of Attorney for 1626 E. 33rd Place Trust,
Terry Knee, Assessor/Auditor.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. In 1999, Petitioner tried marketing the property for \$89,900 and received no offers. *Wingate testimony.*
 - b. A four-unit property at 1550 34th Avenue is assessed at about 50% more than the two-unit subject property. *Wingate testimony.*
 - c. Petitioner argued that the property record card is incorrectly showing 936 square feet of living area upstairs and on the lower level. Stairways and the utility room take away from the living area. *Petitioner Exhibit 3; Wingate testimony.*
 - d. The value of the subject property, based on the income approach, is substantially lower than the current assessed value. *Petitioner Exhibits 4-10; Wingate testimony.*
 - e. Recent listings and sales of income producing properties in Lake Station show properties selling for less than the assessed value of the subject property. *Petitioner Exhibit 11; Wingate testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. In Indiana, outside dimensions are used in figuring square footage for assessment purposes. *Knee testimony.*
 - b. Values used in the Petitioner's income approach calculations are opinions, not verifiable facts. *Knee testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent submissions by either party,
 - b. The tape recording of the hearing labeled Lake Co. 554,
 - c. Exhibits:
Petitioner Exhibit 1: Notice of Hearing,
Petitioner Exhibit 2: Power of Attorney,
Petitioner Exhibit 3: Property record card,

Petitioner Exhibit 4: Value by capitalization summary,
Petitioner Exhibit 5: Federal Income Tax, Schedule E for 1999,
Petitioner Exhibit 6: Federal Income Tax, Schedule E for 1998,
Petitioner Exhibit 7: Expense summary 1999,
Petitioner Exhibit 8: Expense summary 1998,
Petitioner Exhibit 9: Income posting 1998,
Petitioner Exhibit 10: Income posting 1999,
Petitioner Exhibit 11: Comparable properties,
Petitioner Exhibit 12: Summary sheet,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Photograph of 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.

Additional Information

- e. Respondent asked Petitioner for certified copies of Petitioner Exhibits 5 and 6 and the income and expenses for 2000. Mr. Wingate mailed copies of the requested evidence with a notarized statement from his Certified Public Accountant on December 4, 2004, to the DLGF and to the Hearing Officer.
- f. On December 8, 2004, the DLGF filed a motion to extend the time to submit rebuttal regarding Petitioner's evidence.
- g. On December 15, 2004, the Board issued an order extending time for rebuttal to December 31, 2004.
- h. The DLGF responded on December 30, 2004, claiming Petitioner's evidence of value is unsupported.

Analysis

- 14. 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 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. Petitioner did not provide sufficient evidence to support Petitioner’s contentions. This conclusion was arrived at because:
- a. Petitioner claimed it tried unsuccessfully to sell the property for \$89,900 in 1999. Petitioner stated the files regarding the attempt to sell had been disposed of more than two years ago. Petitioner did not provide sufficient probative facts about that attempt to give it any relevance in determining a market value for the property. Mere allegations or unsupported opinions will not be considered sufficient to establish an alleged error in assessment. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998); *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 890 (Ind. Tax 1995).
 - b. Petitioner testified that a four-unit property at 1550 34th Avenue is assessed at about 50% more than the two-unit subject property. Petitioner failed to provide probative evidence or explanation to establish the relevance of this point. *Id.*; *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
 - c. Petitioner contends that the square footage of living area is erroneous because the entry, stairways and utility room take away from the living area. Outside dimensions, however, are used to compute square footage for assessment purposes in Indiana. “Use the following guidelines to determine the base area of the dwelling unit: Measure the exterior of each full or partial floor...” *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, ch. 3 at 9-10 (incorporated by reference at 50 IAC 2.3-1-2). Petitioner failed to prove that the living area measurements are not correct.
 - d. Values of \$44,276 to \$102,275 for the subject property were generated by Petitioner’s income approach using capitalization rates from 9% to 14%. Petitioner did not provide probative evidence to prove that the income and expenses used are typical for the area. Petitioner did not provide documentation or credible evidence that would establish an appropriate capitalization rate for properties similar to the subject. Respondent correctly pointed out that much of the information Petitioner incorporated into the income approach to valuation was admittedly based on what some realtors had allegedly said, and therefore, in this case the income approach did not provide sufficient probative evidence or explanation to establish the relevance or credibility of the opinion of value based on income.

- e. Petitioner provided listings and sales information for income producing properties selling for less than the current assessed value of the subject. These sales took place on December 2003 and August 2004. Indiana's assessment regulations state that a property's assessment is to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Petitioner did not provide any explanation of why the sales would be relevant to the January 1, 1999, valuation date and, therefore, that evidence has no probative value.
- f. Petitioner failed to make a prima facie case for any change regarding assessed value.
- g. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.