

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00900
Petitioner: Arlene Miles ET. AL.
Respondent: Department of Local Government Finance
Parcel #: 001-41-49-0426-0021
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 Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$3,600 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed the Form 139L petition on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated 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 3044 Approx. West 28th Avenue, 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 \$3,600 for the vacant land.
9. The Petitioner requests a value of \$2,000.

10. Raymond Crawford, property co-owner, and Tommy Bennington, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The subject property is located across the street from a junkyard. *Petitioner Exhibit 1, 2; Crawford testimony.*

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

- a. The subject property is assessed fairly and consistently 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 and all subsequent submissions by either party.
- b. The tape recording of the hearing labeled Lake Co - 1555.
- c. The following Exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Photograph of neighbor's junkyard.

Petitioner Exhibit 2 – Photograph of neighbor's junkyard.

Petitioner Exhibit 3 – Photograph of subject property.

For the DLGF:

Respondent Exhibit 1 – A copy of the subject property record card.

For the Board:

Board Exhibit A – Form 139L petition, dated April 26, 2004.

Board Exhibit B – Notice of Hearing on Petition, dated March 14, 2005.

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 Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
 - a. The Petitioner contends that 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 Petitioner did not submit any of the above described types of market evidence to support the requested value of \$2,000. Instead, the Petitioner relied solely upon conclusory statements that the value of the property is overstated because it is across the street from a junkyard. However, the Petitioner did not present any evidence to quantify how this affects the market value-in-use of the subject property. Conclusory statements, unsupported by factual evidence, are insufficient to support a claim for a change in assessment. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley*, 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 assessment is warranted.

Conclusion

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