

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00597
Petitioner: Gloria J. Freeman
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0231-0026
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 February 10, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$241,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated June 20, 2005.
4. A hearing was held on July 20, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located on 227 Carroll Street, Hammond, North Township, in Lake County.
6. The subject property is four-story brick apartment building.
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 \$22,900 for the land and \$218,900 for the improvements for a total assessed value of \$241,800.

9. At hearing, the Petitioner requested a value of \$22,900 for the land and \$206,000 for the improvements for a total value of \$228,900.
10. Gloria J. Freeman, property owner, and Don Adair, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The subject building is 76 years old. *Freeman testimony*. The plumbing and radiator repair costs for the building are high, and the furnace is old. *Id; Pet'r Ex. 1*. The utility bills are approximately \$1,500 per month. *Freeman testimony*. The windows are in need of replacement. *Id; Pet'r Ex. 2*. The improvements are best described as being in average condition. *Freeman testimony*.
 - b. The subject building is four stories, and lacks an elevator. *Freeman testimony*. Therefore, fourth floor rents have to be \$50-\$60 less. *Id*.
 - c. The subject is located in a poor area. *Id*. Tenants that apply either have bad credit or trouble with the law. *Id*.
 - d. As a result of the informal hearing, the subject's assessment was increased from \$228,900 to \$241,800. *Id*. The Petitioner requests that the assessment be returned to \$228,900. *Id*.
 - e. Generally, about three or four of the subject's 14 apartments are vacant. *Id*. The Petitioner averages just under \$5,000 per month income. *Id*.
 - f. The subject building has fire-resistant steel beams. *Id*.
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject's assessment was increased after the informal hearing because it was learned that the building was of fire resistant construction. *Adair testimony*.
 - b. The subject building is correctly classified as being in average condition. *Adair argument*.
 - c. The subject's assessment is fair and consistent with other properties in the subject's neighborhood. *Id*.

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. 1649,
- c. Exhibits:

Petitioner Exhibit 1 – Two interior photographs of subject property,
Petitioner Exhibit 2 – Nine exterior photographs of the subject property,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject,
Respondent Exhibit 3 – Plat and aerial maps of the subject area,
Respondent Exhibit 4 – The Incremental/Decremental Land Pricing in Lake
County, Indiana and the Commercial and Industrial Neighborhood Valuation
Form for neighborhood #02699,

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
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.

Issue 1 – Condition Rating

15. During the hearing, the parties agreed that the improvements are in average condition for their age. *Freeman testimony; Adair testimony*. The Board accepts the testimony of the parties that the improvements should be classified in average condition. This agreement has no affect on the assessed value of the subject property for March 1, 2002.

Issue 2 – Framing Type Classification

16. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
 - a. The Petitioner is not certain that the subject building should be assessed as having fire resistant construction.
 - b. Fire resistant construction is defined as “fire resistant structural floor and roof components consisting of formed concrete or steel framing or light concrete, metal deck, flexicore, gypsum, or similar materials on open steel joist and supported by load bearing walls of steel frame.” REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION A, glossary at 7 (incorporated by reference at 50 IAC 2.2-1-2).
 - c. Wood joist construction is defined as “construction means nonfire resistant structural floor and roof components of wood subflooring or decking on wood joists, raters or purlins that are supported by either load bearing walls constructed of timber or steel framing.” *Id.*, glossary at 23.
 - d. An adjustment was made at the informal hearing. The framing type was changed to fire resistant. *Resp't Ex. 1; Adair testimony*. This change resulted in an increase in the assessed value of the apartment building.
 - e. The Petitioner testified the apartment building is constructed with mesh metal, steel and concrete beams. *Freeman testimony*. Petitioner's testimony shows that the subject building's construction is consistent with the fire resistant framing type classification as described in the guideline.

- f. Consequently, the Petitioner failed to establish a prima facie case that the fire resistant framing type classification is incorrect. Thus, no change in the assessment is warranted.

Issue 3 – Improvement Value

17. 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. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject property to rebut their assessment and to establish the actual true tax value of the property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2). The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
 - c. The Petitioner did not submit any of the above described types of market evidence to support her contention. Instead, the Petitioner relied solely upon her conclusory statements that the subject property is in need of repairs such as windows and furnace, the installation of an elevator, and is located in undesirable area. The Petitioner then concluded that the assessment should be returned to \$228,900, which was the assessed value prior to the informal hearing. However, the Petitioner submitted no market evidence to support this value. Consequently, the Petitioner’s 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).
 - d. 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 Indus v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (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 assessment is warranted.

Conclusions

Condition Rating

- 18. The parties agreed that the improvements should be classified in average condition. This agreement has no affect on the assessed value of the subject property for March 1, 2002.

Framing Type Classification

- 19. The Petitioner failed to make a prima facie case regarding the framing type classification. The Board finds in favor of the Respondent.

Improvement Value

- 20. The Petitioner failed to make a prima facie case regarding the valuation of the subject improvements. 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>