

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-01124
Petitioners: Joel Morales & Jesus E. Garcia
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0546-0006
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$123,600 and notified the Petitioners.
2. The Petitioners filed Form 139L on June 28, 2004.
3. The Board issued a notice of the hearing to the parties dated May 20, 2005.
4. Special Master Kathy J. Clark held a hearing on June 22, 2005, in Crown Point, Indiana. The Board and the Respondent agreed to continue the original hearing until July 7, 2005. Both the Petitioner and the Respondent executed a release form waiving the thirty day notice of hearing and the second hearing was held before Special Master Ellen Yuhan on July 7, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 1102 Carroll Street, East Chicago. The location is in North Township.
6. The subject property is a single-story commercial building assessed as auto service.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$31,000 Improvements \$92,600 Total \$123,600.
9. Assessed value of the subject property requested by the Petitioners:

Total: \$56,500.

10. Persons sworn in as witnesses at the hearings:
Jesus E. Garcia, Co-Owner,
Joseph Lukomski, Jr, Assessor/Auditor, DLGF, June 22, 2005 hearing,
James Hemming, Assessor/Auditor, DLGF, July 7, 2005 hearing.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The subject property has been over-assessed as compared to other properties in the area. The subject is not a gas station and was used only as an auto repair shop. 5228 Columbia Avenue is a convenience store/gas station and is only assessed at \$116,500. 1402-1406 Carroll Street, another convenience store/gas station located only two blocks from the subject, is only assessed at \$69,700. *Petitioner Exhibit 3; Garcia testimony.*
 - b. The Petitioners purchased the subject property in June 2002. The gas pumps that existed at the time of purchase were removed. The Petitioners painted the building to make it look better, a shed was added, and a wooden fence was built. *Garcia testimony.*
 - c. The Petitioners closed the business and marketed the property for eight months using word-of-mouth and finally sold the property for \$110,000 on May 12, 2004. Included in the sale price were an air compressor and a lift. *Id.*
 - d. An appraisal done by Howard O. Cyrus, of Cyrus Realtors, Inc. determines the subject property's value as of January 1, 1999, to be \$56,500 by using the sales approach to value. *Petitioner Exhibit 4; Garcia testimony.*

12. Summary of Respondents contentions:
 - a. The land was assessed using the Incremental/Decremental pricing method, which uses a base land rate determined for the neighborhood, and applying adjustments to account for the property's size. *Respondent Exhibit 3; Lukomski testimony.*
 - b. The Cyrus appraisal notes that the property was inspected June 22, 2005. No mention is made in the appraisal of the existence of asphalt paving as of January 1, 1999. If the appraisal sets the value of the subject property at \$56,500 as of January 1, 1999, the Board should note that \$30,400 worth of improvements were added since that time. *Respondent Exhibit 1; Petitioner Exhibit 4; Hemming testimony.*
 - c. The Petitioner testified that they paid \$150,000 for the property in June 2002 and that that purchase price included approximately \$4,000 to \$5,000 in personal property like the lift and air compressor. *Id; Hemming testimony.*
 - d. The Petitioners paid \$150,000 in June of 2002. The assessed value is \$123,600 as of March 1, 2002. The Petitioners sold the subject property May 12, 2004, for \$110,000. The assessment would seem to be in range of the sales. *Hemming 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 County 1566,
 - c. Exhibits:
 - Petitioner Exhibit 1: Information sheets for subject property from Lake County/DLGF web site,
 - Petitioner Exhibit 2: Information sheets for comparable property,
 - Petitioner Exhibit 3: Property record cards for subject and two comparable properties,
 - Petitioner Exhibit 4: Cyrus Realtors, Inc. appraisal for January 1, 1999,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Incremental/Decremental Summary,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Hearing Notice,
 - Board Exhibit C: Hearing Sign-In Sheet,
 - d. These Findings and Conclusions.

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. The Petitioners provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. The Petitioners contend that the subject property is over-assessed. The Petitioners presented an appraisal of the subject as of January 1, 1999, and property record cards for two comparable properties.
 - b. Indiana’s assessment regulations state that a property’s assessment was to 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).

- c. A taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- d. The Cyrus appraisal dated June 22, 2005, determines that the subject property's value on January 1, 1999, was \$56,500. The appraisal is felt to carry the most weight as to value on January 1, 1999. *Petitioner Exhibit 4.*
- e. The appraisal does not include the 12,159 square feet of asphalt paving listed on the subject's property record card as having been added in 2000. The asphalt paving is currently assessed for a depreciated value of \$23,600. *Petitioner Exhibit 4; Respondent Exhibit 1.*
- f. The Petitioners purchased the property in June 2002, three months after the assessment date of March 1, 2002, for \$150,000. Mr. Garcia testified that they needed the property for their business at that time and had no choice but to pay that price. The property contained two gas pumps and a lift at the time of sale. These items would be considered personal property for assessment purposes. No value estimate specific to either of these items was discussed by the Petitioner or Respondent. *Respondent Exhibit 1; Garcia testimony; Hemming testimony.*
- g. After the June 2002 purchase of the property, the Petitioners added a utility shed and a wooden fence. These two items are currently assessed on the property record card as having been built in 2002 and are valued at a total of \$6,800. By testimony and other evidence these two items did not exist as of the assessment date of March 1, 2002, and should not be included on the subject's assessment under appeal at this time. These items would be assessed as of March 1, 2003. *Respondent Exhibit 1; Garcia testimony.*
- h. The May 12, 2004, sale of the subject property is too far removed from both the January 1, 1999, valuation date and the March 1, 2002, assessment date to be considered by the Board in making its determination.
- i. Starting with the January 1, 1999, value determined by the Cyrus appraisal (\$56,500) the \$23,600 depreciated value of the asphalt paving put in place in 2000 should be added. This establishes that the assessed value of the subject property as of the valuation date of January 1, 1999, was \$56,500 and the assessed value of the subject property as of the assessment date of March 1, 2002 would be \$80,100. The assessment value under appeal is that of 2002. The Board finds the assessment should be changed from \$123,600 to \$80,100.

Conclusion

16. The Petitioners established a prima facie case. The Respondent failed to rebut the Petitioners' case with substantial evidence. The Board finds for the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the current assessment should 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>.