

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01062
Petitioner: Noe Pena
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0323-0029
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 not held, as the Petitioner claims to have not received a Form 11, Notice of Assessment. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$93,000.
2. The Petitioner filed the Form 139L petition on April 30, 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 at 3722 Deodor Street, East Chicago, North Township in Lake County.
6. The subject property is two-story frame dwelling with three (3) extra living units.
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 \$12,900 for the land and \$80,100 for the improvements for a total assessed value of \$93,000.

9. At hearing, the Petitioner requested a value of \$12,900 for the land and \$15,000 for the improvements for a total value of \$27,900.
10. Natividad Pena, property owner, Crucita Pena, cousin/interpreter, and Don Adair, 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. While the assessed value of the land is correct at \$12,900, the improvement value is only \$15,000. *N. Pena argument.*
 - b. The subject dwelling has been abandoned for four years, and is not livable. *N. Pena testimony.* While the siding looks good, the interior of the dwelling has no drywall or floors, the ceiling is falling down, and the water pipes are broken. *Id.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent submitted evidence regarding comparable properties that sold in 1998 through 2002 with time adjusted sale prices for 1999 of between \$46,295 and \$157,850. *Respondent Exhibit 3; Adair testimony.* The three comparable properties relied upon by the Respondent vary slightly from the subject property. *Id.* The comparables average in price per square foot from \$18.26 to \$32.78, with the subject property priced at \$28.08 per square foot. *Id.* The Respondent contends the assessed value is fair and consistent with other properties in the neighborhood. *Adair argument.*

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. 1648,
 - c. Exhibits:

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject,
Respondent Exhibit 3 – Top 20 comparable and statistics sheet,
Respondent Exhibit 4 – Property record cards and photographs for the following comparables; Fernando Alanis, Edelmiro Trevino and Juan Lule,

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.
15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends the assessment of the subject property exceeds its market value.
 - 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 her contention. The Petitioner testified that the subject property is abandoned and not livable, but made no attempt to quantify how the conditions described by the Petitioner affect the market value-in-use of the subject property. The Petitioner submitted no evidence to support the value requested. 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).
- e. 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). As a result, no change in the assessment is warranted.

Conclusion

- 16. The Petitioner 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>