

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-01043
Petitioners: Algue & Bessie Summar
Respondent: Department of Local Government Finance
Parcel: 001-41-49-0484-0005
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$17,300 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on October 12, 2004.

Facts

5. The subject property is located at 2439 Sherman Street in Gary.
6. The subject property has a detached garage on it.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the property as determined by the DLGF:
Land \$5,500 Improvements \$11,800.
9. The assessed value requested by Petitioners is \$13,500 for land and improvements.
10. Persons sworn as witnesses at the hearing:
Algue Summar, Sr., owner,
Algue Summar, Jr., son of owner,
David Depp, appraiser, Cole-Layer-Trumble.

Issue

11. The Petitioners contend the subject parcel should not be separated from another parcel across the street with a dwelling. Both parcels were purchased together for \$19,000 in 2002. They contend the property is over assessed. The Petitioners do not dispute the land value, but they claim the improvement value is too high for a garage.
12. The Respondent contends that the DGLF did not separate the subject parcel from the related parcel and the subject parcel is assessed correctly according to the assessment guidelines. The garage was built in 1999. It is not entitled to any depreciation for the 2002 reassessment. Furthermore, it is assessed as D grade, fair condition.

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. 238,
 - c) Petitioner Exhibits: None,
Respondent's Exhibit 1: 139L Petition,
Respondent's Exhibit 2: Subject Property Record Card,
Respondent's Exhibit 3: Subject Photograph,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The conclusory testimony that a garage in this area would not be worth \$11,800 has no probative value. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- b) Market value-in-use may be proved in several ways. Taxpayers are permitted to establish that value with evidence such as actual construction costs, sales information regarding the subject or comparable properties, appraisals, and other information compiled in accordance with generally accepted appraisal principles. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- c) The Petitioners made no attempt to prove that the assessment guidelines were applied improperly in assessing the garage. Instead, the Petitioners attempted to prove that value based on purchase price. Under many circumstances, purchase price is a good indication of market value-in-use. *Id.*
- d) Alque Summar testified that he purchased this garage and the home across the street from it for \$19,000 in 2002. The home is on a different parcel and is assessed separately. The Petitioners did not support this transaction with documentary evidence. The Petitioners did not relate the purchase price to value as of January 1, 1999. In addition, the Petitioners failed to prove or explain how much of the purchase price should be attributed to each of the properties. The Petitioners presented almost no probative evidence about the house other than the fact that it is across the street and was purchased at the same time as the garage. This information is not sufficient to give the purchase price any probative value. These failures are problematic and together they leave the purchase price with no probative value regarding the proper assessment.
- e) The Petitioners did not present a prima facie case, therefore the burden did not shift to the Respondent to rebut or impeach the evidence presented by the Petitioner. *Lacy Diversified*, 799 N.E.2d at 1222.

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