

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00879
Petitioners: Arvine & Shirley A Plemons
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0069-0004
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$66,300 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 9, 2004.

Facts

5. The subject property is located at 1542 121st Street in Whiting.
6. The subject property consists of a two-story, frame apartment building.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF is:
Land \$25,500 Improvements \$40,800.
9. The assessed value requested by Petitioners is:
Land \$9,000 Improvements \$30,000.
10. Persons sworn as witnesses at the hearing:
Arvine Plemons, owner,
James Hemming, assessor/auditor.

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Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a) The porches assessed for \$2,200 do not exist. *Plemons testimony.*
 - b) Only one of the units is occupied. The rest of the units have no plumbing, substandard wiring, falling plaster, exposed stud walls, and no flooring. *Petitioner Exhibit 1; Plemons testimony.*
 - c) There are only four living units in the building. The property is being assessed for five units. *Plemons testimony.*

12. Summary of Respondent's contentions:
 - a) A porch structure is shown in the photograph of the subject offered as Respondent Exhibit 3. *Hemming testimony.*
 - b) The subject is currently assessed as being in fair condition. Although the photographs submitted by Petitioners show construction in progress, the fair condition rating already reflects this situation. *Respondent Exhibit 2; Hemming testimony.*
 - a) The assessment is incorrect. The assessment should reflect that there are two units on the first story and only two units on the second story. *Respondent Exhibit 2; 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 573,
 - c) Petitioner Exhibit 1: Thirteen photographs,
Petitioner Exhibit 2: Form 11/Notice of Final Assessment/139L petition,
Petitioner Exhibit 3: 1995 Form 11,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Property record card,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Neighborhood Land Summary Sheet,
Respondent Exhibit 5: Land value calculation explanation,
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 and regulations 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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, are not sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - d) 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.
 - e) Condition is rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject’s neighborhood. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A*, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - f) In fair condition, the structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. *GUIDELINES*, app. B at 7, table B-1.
 - f) In poor condition, the structure suffers from extensive deferred maintenance. *Id.*
 - h) In very poor condition, the structure is unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value. *Id.*

15. The weight of the evidence is not sufficient to support Petitioners case about the porch and Petitioners failed to make a prima facie case about condition. The evidence is sufficient to support a change regarding the number of units in the building. This conclusion was arrived at because:

Porch Assessment

- a) The evidence contradicted the Petitioners' claim that there are no porches on the building. Petitioner Exhibit 3, the 1995 Form 11, shows a porch of the same size as shown on the 2002 property record card. Only one porch is being assessed. The porch is clearly shown in Petitioner Exhibit 1 at 4 and Respondent Exhibit 3.
- b) The 2002 property record card incorrectly shows it as an enclosed frame porch, but the value assigned is for an open masonry porch of 96 square feet. All the evidence submitted supports the existence of the masonry porch. The property record card should be changed to show an open masonry porch, but that change will not change the assessed value of the property.

Condition

- c) The photographs submitted by Petitioners as Exhibit 1 demonstrate major construction/ renovation work in progress on the interior of the building. Petitioners failed to establish that this was the condition of the property as of March 1, 2002. Without evidence that they demonstrate condition on the assessment date, the photographs are not probative evidence.
- d) In addition, Petitioners did not prove or explain how their evidence establishes that the current condition of fair is wrong or what the correct condition should be.
- 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).

Number of Units

- f) Petitioners introduced testimony that there are only four units in the building. Respondent did not rebut or impeach that testimony. In fact, Respondent accepted that there are only four units in the building, two on the first floor and two on the second floor. The assessment should be changed to reflect this fact.

Conclusion

- 16. There will be no change in the assessment of the porch. The condition will not be changed. The number of dwelling units in the building, however, must be corrected. Respondent agreed that an error had been made. The total number of dwelling units assessed should be changed to four.

Final Determination

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