

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00344
Petitioner: DW & P, LLC
Respondent: Department of Local Government Finance
Parcel #: 001254400860001
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 (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$634,100.
2. The Petitioner filed a Form 139L on June 28, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 12, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

Facts

5. The subject property is located at 201 E. 5th Avenue, Gary, Calumet Township.
6. The subject property is a one story commercial office building containing utility storage and general office.
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 \$40,200 Improvements \$593,900 Total \$634,100
9. Assessed Value requested by Petitioner on the Form 139L petition:
Land \$35,000 Improvements \$182,900 Total \$217,900
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Dharathula T. Harris, Manager
John McGrath, Employee

For Respondent: James S. Hemming, Assessor/Auditor, DLGF

Issues

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:

a) The subject property is not properly assessed. The improvements are not worth the assessed value of \$593,000. *Harris argument.*

b) DW & P got the building in October 2001. A mortgage of \$150,000 was taken out to renovate the building. The subject building was built in 1955. *Harris testimony.*

c) The income and expenses for the years 2001 through 2004 were as follows:

<u>Year</u>	<u>Income</u>	<u>Expenses</u>
2001	\$ 11,679	\$ 8,744
2002	106,795	104,076
2003	107,485	107,557
2004	109,361	106,187

Harris testimony.

d) The subject property is an old building, even with the renovations there are always problems. They have a hard time keeping tenants in two (2) suites. When a tenant moves out the maintenance costs can be quite prohibitive especially with the amount of money coming in. *Harris testimony.*

e) In the area you cannot get more than \$10.50 per square foot. Most of the subject property rents range from \$8.85 to \$10.50 which is the market in the area. *Harris testimony.*

f) In the block next to the subject property is a building that has not been occupied for the last 3 or 4 years. Across the street is an apartment building and next to it is a vacant lot that has not been redeveloped for the last 4 or 5 year. *Harris testimony.*

g) The largest tenant's lease will expire next October and the tenant will not be renewing. *Harris testimony.*

h) Market value is what you can get for the property and no one would purchase the subject property for \$600,000, and maybe not even for \$300,000. The income you receive will not allow you to keep up the property. *Harris testimony.*

13. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the property record card for the subject property. The subject building has a 4,200 square foot basement area. The 1st floor is general office, C grade quality, built in 1955, and in “Good” condition probably due to renovations. *Hemming testimony; Resp’t Ex. 1.*
- b) The subject property is located in neighborhood 2594. The standard lot size for neighborhood 2594 is 7,500 square feet; the subject lot is 33,750 square feet. The land value has been used consistently through out neighborhood 2594. *Hemming testimony; Resp’t Exs. 1, 3.*
- c) The subject structure is valued as a C grade office building at 100% complete because that is what it was on the March 1, 2002, assessment date. *Hemming testimony.*

Record

14. The official record for this matter is made up of the following:
 - a) The Petition and all subsequent submissions by either party.
 - b) The tape recording of the hearing labeled BTR #1456.
 - c) Exhibits:
 - Petitioner presented no exhibits
 - Respondent Exhibit 1: Subject Property Record Card
 - Respondent Exhibit 2: Subject photograph
 - Respondent Exhibit 3: Incremental/Decremental Land Pricing
 - Board Exhibit A: Form 139L petition
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
 - d) These Findings and Conclusions.

Analysis

15. The most applicable laws 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. Wash. 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.
16. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner contends the subject property was not properly assessed. The Petitioner did not point to any specific errors in the assessment. The Petitioner did briefly discuss the income and expenses, and the rents received.
 - 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)
 - c) Traditionally, the appraisal profession has used three approaches in determining the value of real property. The income approach is used for income producing properties that are typically rented. It converts an estimate of income, or rent, the property is expected to produce into value through a mathematical process known as capitalization. 2002 REAL PROPERTY ASSESSMENT MANUAL at 3.
 - d) While the Petitioner briefly discussed the income and expenses of the subject property, the Petitioner did not go so far as to estimate the value based on the income approach.
 - e) On the Form 139L petition, the Petitioner referred to an appraisal valuing the subject property at \$312,000. *Board Ex. A*. The Respondent questioned the Petitioner about that appraisal and whether or not the appraisal would be submitted. The Petitioner stated the original appraisal was an unfair evaluation. The Petitioner did not present that appraisal. The Petitioner testified that she had contacted a certified government appraiser, but that person did not have time to do the appraisal correctly. *Harris testimony*.
 - f) The Respondent questioned the Petitioner about the subject property at the March 1, 2002, assessment date. The Petitioner stated the renovations were completed in December 2001 and tenants moved in. *Harris testimony*.

- g) The only evidence presented by the Petitioner was testimony that the subject property was not worth the assessed value. *Harris testimony*. However, the Petitioner neither explained how the subject property was incorrectly assessed nor attempted to establish the correct value. Thus, the Petitioner's assertions amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

Conclusion

17. The Petitioner failed to make a prima facie case. The Board finds in favor of 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>>.