

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00043
Petitioner: Frank & Bernadine Bella
Respondent: Department of Local Government Finance
Parcel #: 009221201050003
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 Petitioners received a Form 11- Notice of Assessment of Land and Structures dated November 4, 2003 for the March 1, 2002 assessment date. The assessed value determined on this form for the Petitioner's land and improvements was \$216,500. The Petitioners subsequently received from the Department of Local Government Finance (DLGF) a Notice of Department Assessed Value Determination issued on March 31, 2004 increasing the assessed value from \$216,500 to \$227,800.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was held on August 27, 2004, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is located at 9401 Olcott Avenue, St. John, St. John Township, Lake County.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site visit of the property.
8. The Assessed Values of subject property as determined by the DLGF are:

Land \$40,500 Improvements \$187,300

The Assessed Values requested by Petitioner per the Form 139L are:

Land \$40,500 Improvements \$175,800

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. Persons sworn in at hearing:

For Petitioners: Frank Bella, Petitioner

For Respondent: Larry Vales, Cole-Layer-Trumble (CLT), representing the DLGF

Issue

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The Petitioners do not contest the land value of the subject property. *Bella testimony.*
 - b) The Petitioners contend that the values on the improvement data section (back) of the property record card (PRC) do not match the values on the front of the PRC. The back of the PRC shows a total value of \$178,600 for improvements as opposed to \$187,300 on the front of the PRC. *Bella testimony & Petitioner Exhibits 1 and 2.* According to the Petitioners, the lower value on the back of the PRC is the result of a prior correction and it appears that the Respondent inadvertently failed to change the front of the PRC to reflect the corrected value. *Bella testimony.*
 - c) The Petitioners contend that they were told by Hank Adams and other employees of the assessor's office that brick patios are not taxable unless they are in concrete. *Id.* The Petitioners contend that their patio rests in crushed limestone and that the bricks could be picked-up at any time. *Id.* The Petitioners therefore contend that their patio should not have been assessed. *Id.*
 - d) The Petitioners also contend that the size of the patio as reflected on the PRC is incorrect. *Bella testimony & Petitioners Exhibit 5.* The PRC shows the patio as being 13 feet by 23 feet (299 square feet). *Bella testimony & Petitioners Exhibit 2.* The Petitioners contend that they measured the patio and determined it to be 250 square feet rather than 299 square feet as shown on the PRC. *Bella testimony & Petitioner Exhibits 1 thru 5.*
13. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent acknowledged that there is an error on the PRC, and that the total improvements value of \$178,600 on the back of the PRC should have been carried over to the front of the PRC. *Vales testimony.*

- b) The Respondent further agreed that the correct area of the subject patio is 250 square feet. *Vales testimony.*
- c) The Respondent disagreed with the Petitioners concerning whether the patio is assessable as real property. The Respondent contends that the patio is subject to assessment as real property. *Vales 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 Lake Co. #381.
 - c) Exhibits:
 - Petitioners Exhibit 1: Front portion of subject PRC with corrections
 - Petitioners Exhibit 2: Back portion of subject PRC - Improvement Data and Computations
 - Petitioners Exhibit 3: Three (3) photographs of patio showing construction
 - Petitioners Exhibit 4: Nine (9) photographs of patio showing lack of grouting
 - Petitioners Exhibit 5: Sketch of patio showing measurements and calculations to determine the area
 - Petitioners Exhibit 6: Summary of Petitioners' arguments
 - Petitioners Exhibit 7: Form 139L Petition

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Subject photograph
 - Respondent Exhibit 4: Information on comparable properties
 - Respondent Exhibit 5: Administrative Correction Worksheet
 - Respondent Exhibit 6: Copy of total value screen printout

 - Board Exhibit A: Form 139 L Petition
 - Board Exhibit B: Notice of Hearing on Petition
 - 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 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 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.
 - d) Under Indiana law, all tangible property within the jurisdiction of the state on the assessment date of a year is subject to assessment. I.C. § 6-1.1-2-1. Tangible property is defined to include real property, which in turn includes land located within the state together with buildings or fixtures situated on such land and appurtenances to such land. I.C. § 6-1.1-1-15 and 19.
 - e) The Real Property Assessment Guidelines for 2002 – Version A (incorporated by reference at 50 IAC 2.3-1-2)(hereinafter “Guidelines”) provide for the assessment of brick patios as real property. *See Guidelines at Book 1, Appendix C, Schedule E.2.*
16. At the hearing, the Petitioner presented testimony and evidence including documentation regarding errors on the PRC, which included the size of the patio. The Respondent reviewed the Petitioner’s documentation and agreed that values on the back portion of the PRC should be carried to the front of the PRC. In addition, the Respondent agreed that the listed area for the brick patio was incorrect and that the correct area is 250 square feet.
17. The Petitioner failed to present a prima facie case that the Respondent erred by assessing the patio as real property. The Petitioners contend that the patio should not be assessed, because the bricks are not set in concrete and are readily removable. However, the subject patio constitutes a fixture situated on land and therefore should be assessed for taxation as real property. *See I.C. § 6-1.1-2-1; I.C. § 6-1.1-1-15 and I.C. § 6-1.1-1-19.* This conclusion is supported by the Guidelines, which contemplate the assessment of brick patios without making any distinction between those set in concrete and others where the bricks are more readily removable. *See Guidelines at Book 1, Appendix C, Schedule E.2.*

Conclusion

18. The parties agreed that the area of the brick patio as listed on the PRC for the subject property is incorrect and that the correct area is 250 square feet. The PRC should be

changed to reflect the correct area and the value of the patio should be recalculated accordingly.

19. The parties further agreed that the total value of improvements on the front of the PRC does not match the previously corrected value set forth on the back of the PRC. The PRC and all other appropriate records should be changed to reflect the previously corrected value for improvements, including any additional changes resulting from a recalculation of the value of the subject patio. The total assessed value and true tax value of the subject property should be adjusted accordingly.

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.