

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-4-00142
Petitioner: Isakson Realty
Respondent: Department of Local Government Finance
Parcel #: 006-42-18-0396-0001
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 on January 27, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$1,262,300, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Joseph Stanford.

Facts

5. The subject property is located at 3530 North Hobart Road, Hobart, in Hobart Township.
6. The subject property is a car dealership on a 2.95-acre parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$309,100 for the land and \$953,200 for the improvements for a total assessed value of \$1,262,300.
9. The Petitioner did not request a specific assessed value.

10. William Isakson and Robert Isakson, officers of the Petitioner, and Robert Heikema, accountant for the Petitioner, appeared at the hearing and were sworn as witnesses. Tommy Bennington, representing the DLGF, also appeared and was sworn.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The value of the subject land seems high. *Heikema testimony.*
 - b) The subject building is a limited use facility, used for vehicle sales and repair. *Heikema testimony.*
 - c) Consideration should be given for sizable losses suffered by both the dealership and Isakson Realty. *Heikema testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The current assessment is correct. *Bennington testimony; Resp't Ex. 4.*

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 -1531.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition.
 - Petitioner Exhibit 2: Letter of Authorization.
 - Petitioner Exhibit 3: Notice of Final Assessment.
 - Petitioner Exhibit 4: Notice of Original Assessment.
 - Petitioner Exhibit 5: Three year schedule of losses for car dealership and Isakson Realty.

 - Respondent Exhibit 1: Subject Property Record Card.
 - Respondent Exhibit 2: Photograph of Subject Property.
 - Respondent Exhibit 3: Plat Map.
 - Respondent Exhibit 4: Neighborhood Land Summary Sheet.

 - Board Exhibit A: Form 139 L.
 - Board Exhibit B: Notice of Hearing.
 - Board Exhibit C: Sign in Sheet.

- d) These Findings and Conclusions.

Analysis

14. The most applicable laws are:
- a) A petitioner seeking a review of a determination of the Department of Local Government Finance 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 failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject land assessment is too high. *Heikema testimony*. The Petitioner also contends that the subject improvement is a limited use facility, and that consideration should be given to losses suffered by both Isakson Realty and the car dealership, Isakson Motor Sales. *Id.*
 - 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). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through cost and income capitalization approaches).

- c) Here the only evidence Petitioner submitted were tax schedules for the car dealership purportedly showing a loss for that operation. *Heikema testimony; Petitioner Exhibit 5*. The full tax returns for the dealership were not submitted. While “true tax value” may be determined by the income method, the schedules submitted by the Petitioner were not related to any form of valuation for the property. The Petitioner submitted no documentary evidence that the assessed value of the land is too high. Nor did the Petitioner testify or submit evidence relating to what the Petitioner alleged the proper assessment of the subject property should be. Thus, the Petitioner’s assertions in that regard 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). As a result, the Petitioner failed to make a prima facie case that the assessment is incorrect.
- d) The Petitioner also testifies only that the subject is a “limited use facility,” but does not identify a specific error in the assessment. The subject appears to be correctly assessed with sections containing an auto showroom, general office, and auto service. We find no error here. Further, the Petitioner must prove both 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). The Petitioner here did not testify or provide evidence as to what he alleged the proper assessment for the subject property should be. Thus, for the reasons set forth, the Petitioner failed to make a prima facie case that the assessment is incorrect.
- e) In addition, Robert Heikema attended the hearing and purported to speak on behalf of the Petitioner. No evidence was submitted evidencing Mr. Heikema’s status as a certified “Tax Representative” as contemplated by Title 52 of the Indiana Administrative Code. *52 IAC 1 et seq.* Further, no written appearance is on file to support such representation. Such appearance or representation is contrary to the generally applicable rules for tax representatives to practice before the Board. *See 52 IAC 1-1-4; 52 IAC 1-1-6; 52 IAC 1-2-1; 52 IAC 2-2-16; 52 IAC 2-3-2.* The Petitioner’s tax representative failed to comply with any of the Board’s rules and, therefore, had no status to represent the Petitioner. Accordingly, the effect of this failure is that the Petitioner presented no argument or evidence in support of his petition. For this reason alone, the petition is denied and there should be no change in the assessment.
- f) Where the Petitioner has not supported his 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 Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

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