

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00833
Petitioner: John C. Scopelite
Respondent: Department of Local Government Finance
Parcel #: 007263502920020
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 ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$136,700 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 15, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 15, 2004.

Facts

5. The subject property is located at 1439 Myrtle Avenue in Whiting.
6. The subject property consists of a one and one half story brick dwelling with an extra living unit and a one and one half story frame dwelling.
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 \$12,000 Improvements \$124,700 Total \$136,700.
9. Petitioner requested a total assessed value of \$104,000.

10. Persons sworn as witnesses at the hearing:
For Petitioner — John Scopelite, owner,
Dale Scopelite, owner's brother,
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The property is a three-unit rental property. Therefore, the property should be assessed using the income approach to value. *D. Scopelite testimony.*
 - b) The frame dwelling had a rental rate of approximately \$400 per month in 1999. The larger brick dwelling contains two units and the rental rate per month for each unit in 1999 was also approximately \$400. *J. Scopelite testimony.* Total expenses for the property were between \$4,391 and \$5,071 in 1999. Using an income amount of \$13,730 (potential rent minus vacancy estimates) and deducting \$5,071 of expenses leaves a net operating income of \$8,659. Dividing the net operating income by the national average rate of return of 10 percent establishes an income value of \$86,590. *Petitioner Exhibits 5, 6; D. Scopelite testimony.*
 - c) Current assessed values of comparable properties on Myrtle Avenue as compared to sales disclosures for the same properties prove that the assessment is incorrect. *Petitioner Exhibits 3, 7; Scopelite testimony.*
 - d) The property was offered for sale in 2000 with an asking price of \$110,000. It was advertised "For Sale by Owner" in the local newspaper for six months. No offers were received. *Board Exhibit A.*
 - e) The Notice of Final Assessment states that an error was made in the assessment of the property. *Petitioner Exhibit 4; D. Scopelite testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The subject property did not meet the requirements of a commercial property and was not assessed as such. A cost approach to value with consideration for market influences was used to assess the subject. *Respondent Exhibit 2; Elliott testimony.*
 - b) If the property had been assessed as commercial, the land would have been assessed using a square foot method of value, not a front foot method of value, and the income approach may have been considered. *Elliott testimony.*
 - c) The error that was corrected on the Notice of Final Assessment was a result of reviewing photographs provided by the Petitioner at the informal hearing. The condition of both dwellings was corrected from average condition to fair condition, which decreased the total assessed value. *Elliott testimony.*

Record

13. 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 County 506 and 271,
 - c) Exhibits:
 - Petitioner Exhibit 1: Summary of Arguments,
 - Petitioner Exhibit 2: Form 11,
 - Petitioner Exhibit 3: Current Assessed Values of Comparable Properties,
 - Petitioner Exhibit 4: Notice of Final Assessment/Form 11 for 1995/2002 property record card,
 - Petitioner Exhibit 5: 1999 Income and Expense Information from IRS Form,
 - Petitioner Exhibit 6: Summary of Income Approach,
 - Petitioner Exhibit 7: Sales Disclosures and Parts of Property Record Cards for comparables,
 - Petitioner Exhibit 8: Summary List of Expense Items for Subject,
 - Respondent Exhibit 1: Form 139L petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Respondent Exhibit 4: Comparable sales analysis and supporting property record cards,
 - 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 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 Township 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 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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered 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.
15. The Petitioner failed to provide sufficient evidence in support of his contentions. This conclusion was arrived at because:
- a) “Mass appraisal and single-property appraisal methods are based on what are known as the three approaches to value. These approaches are the cost approach, the sales comparison approach, and the income approach. They are three distinct ways of looking at property and estimating value. The approaches to value offer three different alternatives” 2002 REAL PROPERTY ASSESSMENT MANUAL at 13 (incorporated by reference at 50 IAC 2.3-1-2). In this case, the Petitioner’s claim touches on all three approaches.

Income Approach To Value

- b) The Petitioner submitted evidence regarding the income generated and the expenses incurred through rental of the subject property; however, the evidence was incomplete and conclusory. No records of rental amounts collected during the assessment period were offered. No evidence was provided to establish a vacancy history. Such conclusory evidence is not probative. *Whitley Products*, 704 N.E.2d 1119. The Petitioner produced original expense receipts at the hearing, but no attempt was made to offer them to the Board in a manner that would enable the Board to use them in its final determination. The evidence presented by Petitioner and the manner in which it was presented was insufficient to walk the Board through every element of the analysis. Therefore, Petitioner did not satisfy his burden to prove a prima facie case through the use of the income approach. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- c) The Petitioner presented a calculation of value based on the income approach using a 10 percent rate of return, which the Petitioner stated was the national average. This rate is fundamental to use of the income approach, but no documentation was presented to support it. Because of the conclusory use of the 10 percent rate of return, the information and opinion based on the income approach to value is not probative in this case. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Sales Comparison Approach To Value

- d) The difference between the assessed values and the sale prices of five “comparable” properties on Myrtle Avenue is not proof of an incorrect assessment. The conclusion that those properties are comparable carries no weight unless specific reasons are established to prove why they are comparable. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005); *Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d at 1119. Furthermore, the comparables are not comparable to the subject property. Property record cards included as part of Petitioner Exhibit 7 show that only one of the five “comparables” is a multi-unit; the rest are single-family dwellings with no additional living units assessed.
- e) While the assessed values are higher than the sale prices, Petitioner failed to explain how this proves the assessment of the subject property is incorrect. Such a presentation does not satisfy the burden of one seeking a change in assessment. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- f) The Petitioner contends that the property was offered for sale in 2000 for \$110,000, but no documentation was offered to support that allegation. Testimony indicated, however, that the Petitioner simply advertised the property in the paper himself as being “for sale by owner.” The evidence does not indicate that this attempted sale would be credible or reliable evidence of market value because the concept assumes that buyer and seller are typically motivated and that the property had reasonable exposure on the open market. MANUAL at 10.

Cost Approach To Value

- g) While the Notice of Final Assessment is a notice of correction, the correction of a single error or even multiple errors is not a sign that the entire assessment is incorrect. The evidence indicates that during the informal hearing process an error in the assessment was recognized and corrected. The fact that this change was made and the total assessment already was reduced from \$170,800 to \$136,700 has no probative value in proving any error still exists. Similarly, this fact does not establish a prima facie case for Petitioner.
 - h) Petitioner failed to offer probative evidence of any specific error based on the current assessment guidelines or what a correct assessment using those guidelines would be. Petitioner has not made a prima facie case based on the cost approach. *Meridian Towers*, 805 N.E.2d at 478; *Clark*, 694 N.E.2d 1230.
16. 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*, 799 N.E.2d at 1222.

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 value 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.