

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00321
Petitioners: Kosta & Velika Petrov
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0321-0031
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was not held, as the Petitioner did not receive a Form 11, Notice of Assessment. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$392,200.
2. The Petitioners filed a Form 139L on April 15, 2004.
3. The Board issued a notice of hearing to the parties dated March 14, 2005.
4. A hearing was held on April 12, 2005, in Crown Point before Special Master Joseph Stanford.

Facts

5. The subject property is located at 6699 Adams, Merrillville in Ross Township.
6. The subject property consists of a 16,161 square-foot building sitting on .371 acres of commercial/industrial land.
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 \$40,600 for the land and \$351,600 for the improvements for a total of \$392,200.
9. The Petitioners did not request an assessed value in their Form 139L.

10. Nancy Baldyga, daughter of property owner, Joseph Baldyga, son-in-law of property owner, and Tommy Bennington, representing the DLGF, were present at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The GCR Schedule should be used rather than the GCM Schedule. *Board Ex. A.*
 - b) As of March 1, 2002, the subject building was only 62% complete. *Nancy & Joseph Baldyga testimony.* An employee in the assessor's office acknowledged this on February 25, 1998. *Petitioner's Ex. 1.* No work was done on the building between February 25, 1998 and March 1, 2002. Joseph Baldyga finished the building himself between 2003 and 2004. *Joseph Baldyga testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent agrees that the GRC Schedule should be used. This lowers the assessed value of the improvements from \$351,600 to \$322,330. *Bennington testimony; Respondent 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 -1512.
 - c) Exhibits:
 - Petitioner Exhibit 1: Building permit.
 - Petitioner Exhibit 2: 2004 property record card.

 - Respondent Exhibit 1: Subject property card.
 - Respondent Exhibit 2: Photograph of subject property.
 - Respondent Exhibit 3: Neighborhood land value summary sheet.
 - Respondent Exhibit 4: Calculation of improvement assessed value using GCR Schedule.

 - 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 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 by 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) 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 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 Petitioners did provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the GCR Schedule should be used to assess the subject property, instead of the GCM Schedule that is currently being use. Further, the Petitioners contend that on March 1, 2002, the building was only 62% completed and should not have been typed as a finished divided building. *N. Baldyga testimony*.
 - b) According to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A (GUIDELINES), ch.6 at 12, finish type describes the extent to which the interior finish is determined in the base rate. There are four categories of finish type, unfinished, semi-finished, finished open, and finished divided. *Id.*
 - c) Here the original type assigned to the property was finished divided. *Petitioner’s Exhibit 2*. Finished divided is usually used to classify apartments or offices with permanent dividing walls, with finished walls, ceilings, and floors. GUIDELINES, ch.6 at 13. However the Petitioners contend that at the time of 2002 assessment the subject property should have been categorized as an unfinished building. An unfinished structure type consists of walls, ceilings and floors that are unfinished. *Id.*
 - d) To support this point, the Petitioners submitted a building permit that was entered on December of 2003, when the building was completed. *Petitioner’s Exhibit 1*. Joseph Baldyga also testified that the subject property remained untouched between 1998

and 2002, when he started working on it and eventually finished it in 2003. The Petitioners also submitted documentation from a local assessing official that in 1998 the building was only 62% completed. *Petitioner's Exhibit 1.*

- e) Furthermore the Petitioners contend that GCR Schedule should be used instead of the GCM Schedule. These schedules are used to determine the base rate of a structure. GUIDELINES, ch.6 at 8. GCM are typically associated with mercantile districts, and are usually characterized as property with multiple uses. *Id.* at 9. GCR are generally commercially-operated residential accommodations, such as apartment or hotels, and are constructed as residential-type buildings. *Id.*
- f) Here, the Petitioner and the Respondent both agree that the GCR Schedule should be used to assess the subject building.
- g) Based on the foregoing, the Petitioners established a prima facie case for a change in the finish type from finished divided to unfinished. The burden, therefore, shifted to the Respondent to impeach or rebut that evidence. The Respondent failed to do so. Further, the agreement between the Petitioner and the Respondent is sufficient to support the change from GCM Schedule to GCR Schedule. The Board finds that the preponderance of the evidence supports the change in the finish type from finished divided to unfinished and the change from GCM to GCR.

Conclusion

- 16. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner.

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

- 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>.