

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00765
Petitioner: Philip Roe
Respondent: Department of Local Government Finance
Parcel #: 007282900700027
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 December 11, 2003 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$57,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated February 7, 2005.
4. A hearing was held on March 9, 2005 in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is a single family residential property located at 2127 Indianapolis Blvd., Whiting in North Township.
6. The Special Master did not conduct an on-site visit of the property.

The DLGF determined the assessed value of subject property to be \$13,300 for the land and \$44,200 for improvements for a total assessed value of \$57,500.

The Petitioner requested an assessed value of \$13,300 for the land and \$38,800 for the improvements for a total assessed value of \$52,100.

7. Philip Roe, the property owner, and Steve Yohler, with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

8. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The value of the garage is too high and the Petitioner is being assessed for a patio that does not exist. *Roe argument.*
 - b) The Petitioner built the garage in 1997 for approximately \$3,000 not including labor. The Petitioner stated he could have the garage replaced by a local outfit for around \$6,000. The garage cost less to build than the assessed value. *Roe testimony.*
 - c) The replacement cost of the garage is \$8,970 and the assessed value of the garage is \$9,600. No one has explained to the Petitioner why the assessed value is higher than the replacement cost. *Roe testimony; Pet'r Ex. 3.*
 - d) The subject property does not have a patio. The property record card (PRC) is in error. *Roe testimony.*
 - e) The Petitioner discussed the patio with a gentleman from the DLGF and believes the patio error has been remedied. *Roe testimony.*

9. Summary of Respondent's contentions in support of the assessment:
 - a) Market value-in-use was the goal of the reassessment. The garage adds value to the subject property. If you sold the property, you would want the market value and not the cost to construct. *Yohler testimony.*
 - b) The Respondent explained that the neighborhood factor of 1.16 was applied to the replacement cost of \$8,970 to arrive at the assessed value of \$9,600 for the garage. *Yohler testimony.*
 - c) The Respondent presented three comparable properties from the neighborhood. The comparable properties are of similar age and size to the subject property. The land values are similar and all have a "D2" grade. The subject property is in "fair" condition whereas the comparables are in "average" condition. The assessments are all in line. *Yohler testimony; Resp't Ex. 4.*
 - d) The Respondent stated that the patio had not been removed. The Respondent has no objection to the removal of the assessment for the patio.

Record

10. 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 #1192.

c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition.
Petitioner Exhibit 2: Notice of Final Assessment.
Petitioner Exhibit 3: Property information sheet from Lake County Assessor.
Petitioner Exhibit 4: Back page of the PRC.
Petitioner Exhibit 5: Photographs of garage and yard.
Petitioner Exhibit 6: Building permit for garage.
Petitioner Exhibit 7: Concrete bill for garage.

Respondent Exhibit 1: Form 139L.
Respondent Exhibit 2: Subject Property Record Card (PRC).
Respondent Exhibit 3: Subject Photo.
Respondent Exhibit 4 Comparable sales, PRC's, and Photos.

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

d) These Findings and Conclusions.

Analysis

11. 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.

12. The Petitioner did not provide sufficient evidence to support his contention with regard to the value of the garage but Petitioner and Respondent reached agreement on the issue of the patio. This conclusion was arrived at because:
- a) The Petitioner contends that the assessed value of the garage is too high because the cost is less than the assessed value. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Indiana Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter “Manual”). Upon learning that the assessed value of his garage was based on market value-in-use as opposed to cost, the Petitioner stated that he did not have any objection to the assessment.
 - b) The Petitioner testified that the subject property does not have a patio. The Respondent stated there was no objection to the removal of the \$800 assessment for a patio.

Conclusions

13. The Board finds that insufficient evidence was presented to support a change to the assessment of the garage. However, the Petitioner and Respondent both agreed that the patio should be removed from the assessment. Thus, the assessment should be changed to reflect the removal of the patio.

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. 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>>