

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-037-02-1-5-00113
45-037-02-1-5-00114
Petitioner: Ruth N Bowman
Respondent: The Department of Local Government Finance
Parcel #s: 010-21-02-0020-0007
010-21-02-0020-0008
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 in November 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties are \$53,800 and \$6,100 and notified the Petitioner on March 23, 2004.
2. The Petitioner filed Form 139L petitions on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated November 16, 2004.
4. Special Master Kathy J. Clark held a hearing at 8:15 a.m. on December 16, 2004, in Crown Point, Indiana.

Facts

5. The subject properties are located at 23626 and 23628 Euclid, Schneider in West Creek Township.
6. The subject properties consist of a one story frame dwelling located on a 40' by 150' residential lot (the 23626 property) and a vacant 40' by 150' lot (the 23628 property).
7. The Special Master did not conduct an on-site visit of the property.

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8. The DLGF determined that the assessed value is \$7,600 for the land and \$46,200 for the improvements on the 23626 property. The assessed value is \$6,100 for the land on the 23628 property.
9. No specific assessed value was requested by the Petitioner in its Form 139L. At hearing the Petitioner's witness alleged the property would be worth no more than \$40,000.
10. Ruth Bowman, the owner of the property, and her son, Ray E. Bowman were sworn as witnesses. John Toumey with the DLGF was also sworn as a witness.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that her lots were assessed too high. The Petitioner states that the base land rate applied to her lots is \$185 per front foot while the neighbor across the street is assessed at a rate of only \$165 per front foot. *Ruth and Ray Bowman testimony*. The Petitioner was told at the informal hearing that the land rate would be corrected, but when the Petitioner received the Notices of Final Assessment the land values had not changed. *Petitioner Exhibit 2; Ray Bowman testimony*.
 - b. The Petitioner also contends that her house was assessed too high. The Petitioner states that she is being assessed for a carport valued at \$2400 that would only cost \$300 to \$400 to build. *Petitioner Exhibit 1; Ray Bowman testimony*. Further, the Petitioner states that the furnace is old and needs to be replaced and the dwelling is in need of many repairs. *Petitioner Exhibit 1; Ruth and Ray Bowman testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. Neighborhood number changes were made as a result of the informal hearing and the Petitioner is being assessed at \$165 per front foot. The new rate is reflected on the property record cards dated December 1, 2004. *Respondent Exhibit 2; Toumey testimony*.
 - b. The combined assessed values of the subject properties is \$56.97 per square foot. A comparable sales analysis demonstrates that the subject's total assessed values fall within an acceptable market range. *Respondent Exhibit 4; Toumey testimony*.

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 County 1140,

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c. Exhibits:

Petitioner Exhibit 1 - Photographs of subject property,
Petitioner Exhibit 2 - Notices of Final Determination,
Respondent Exhibit 1 - Form 139L petitions,
Respondent Exhibit 2 - Subject property record cards,
Respondent Exhibit 3 - Subject property photograph,
Respondent Exhibit 4 - Comparable sales sheet,
Respondent Exhibit 5 - Property record cards and photographs of comparables,
Board Exhibit A - Form 139L petitions,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign in Sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing 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 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 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 Parties both agreed that the appropriate base rate for the Petitioner’s land is \$165. The land values derived from a front foot rate of \$165, a depth factor of 1.00, and a front foot measurement of 40’ would be \$6,600 per parcel. Therefore, the total assessed land value for both the 23626 property and the 23628 property is \$6,600 each. To the extent that this value is not reflected in the current assessment, the total land value for parcels 010-21-02-0020-0007 and 010-21-02-0020-0008 should be changed to \$6,600.

16. As to the Petitioner's contention that the carport was incorrectly assessed, the Board finds that the Petitioner failed to provide probative evidence and therefore did not establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner's statement that the cost of erecting a carport similar to that which is being assessed would only be \$300 to \$400, along with the Petitioner's claims as to the general condition of the dwelling, were unsupported by any factual evidence. As determined in *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 890, 893 (Ind. Tax Ct. 1995), 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.
 - b. When 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 Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. Based on the Parties' agreement as to the base rate on the land, the Board finds that the land assessment values should be changed as follows:
- Parcel 010210100100007 – Change from \$7,600 to \$6,600,
Parcel 010210100100008 – Change from \$6,100 to \$6,600.
18. The Petitioner failed to establish a prima facie case as to the remaining issues and the Board finds that no changes should be made to the assessed value of improvements.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the land assessment of each parcel should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

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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>.