

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00076
Petitioner: William Knox
Respondent: Department of Local Government Finance
Parcel: 001-25-41-0247-0001
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$140,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 25, 2005.
4. Special Master Brian McKinney held the hearing in Crown Point on March 30, 2005.

Facts

5. The subject property is located at 7836 Forest Avenue in Gary.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$32,300 Improvements \$107,700 Total \$140,000.
9. The assessed value requested by Petitioner is:
Land \$20,000 Improvements \$100,000 Total \$120,000.
10. The persons sworn as witnesses at the hearing:
Michelle Gregory, property manager,
Diane Spenos, assessor-auditor.

Issues

11. The first issue the Board must consider is the appropriateness of the property manager representing Petitioner, who was not present at the hearing.
12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The house is over assessed. The Petitioner included a list of repairs indicating the estimated cost to repair certain items. *Pet'r Ex. 3c*. The assessment should be reduced by the estimated amount the repairs would cost. *Gregory testimony*.
 - b. A portion of the interior is unfinished, the exterior needs repainting, and the deck is incomplete. *Gregory testimony; Pet'r Exs. 4c-7c*.
13. Summary of Respondent's contentions in support of the assessment:
 - a. The assessment is correct. As a result of the informal hearing, an adjustment was made for the unfinished interior and the deck was assessed as "fair" because it was incomplete. *Spenos testimony; Resp't Ex. 2c*.
 - b. Other properties from the same neighborhood are comparable and show the assessment is correct. *Spenos testimony; Resp't. Ex. 4c*.

Record

14. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled BTR 1280,
 - c. Exhibits:¹
 - Petitioner Exhibit 3c - Summary of Repairs, listing three items,
 - Petitioner Exhibit 4c - Two photographs showing deck and siding,
 - Petitioner Exhibit 5c - Two photographs showing unfinished areas,
 - Petitioner Exhibit 6c - Two photographs showing unfinished room,
 - Petitioner Exhibit 7c - One photograph showing unfinished walls,
 - Respondent Exhibit 1c - Form 139L,
 - Respondent Exhibit 2c - Property record card for subject property,
 - Respondent Exhibit 3c - Photograph of subject property,
 - Respondent Exhibit 4c - Data sheet with 20 other properties with photographs and property record cards for three properties,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Sign in Sheet,

¹ No Petitioner Exhibit 1 or 2 was presented.

d. These Findings and Conclusions.

Analysis

15. The Petitioner, William Knox, did not appear personally. Similarly, no attorney or authorized tax representative appeared for him. Michelle Gregory, identified as the property manager, attended the hearing and purported to speak for the Petitioner. No written appearance is on file to support such representation.² Furthermore, such an appearance would not be permitted by the Board's procedural rules for Lake County 2002 assessment appeals. Such an attempt at representation and practice before the Board is contrary to the generally applicable rules for tax representatives to practice before the Board. 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 person who purported to represent the taxpayer failed to comply with any of the Board's rules and from the record in this case, she had no status to represent the Petitioner. Accordingly, the effect of this situation 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.
16. In addition, the Board would reach that same conclusion even after considering the evidence and arguments the property manager presented.
17. The generally 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 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 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.

² If the party is represented by a tax representative, the tax representative must file a power of attorney with the board. Other authorized representatives, including attorneys, must file a notice of appearance with the board, stating that the party has authorized the representative to appear on the party's behalf. The power of attorney or notice of appearance must contain the authorized representative's name, address, and telephone number. 52 IAC 2-3-2.

18. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The property mangager presented a list of repairs needed, the estimated cost of those repairs, and photographs of the items needing repair. In order to succeed in an appeal, the Petitioner must show the effect the needed repairs would have on the property's market value-in-use. For example, the property mangager contends that it would cost \$35,000 to finish the interior of the home. There is no probative evidence to support the estimate or quantify the impact that repairs would have on the market value-in-use of the property. The property manager's conclusory statements do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b) The assessment must reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how it demonstrates, or is relevant to, the subject value as of January 1, 1999, is required. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). In this case, the Petitioner does not prove how the repair work would have affected the value of the property as of January 1, 1999. Consequently, the evidence does not help to establish what the assessed value should be. *Id.*
 - c) Where a 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.*, 799 N.E.2d at 1221-1222.

Conclusion

19. 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 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>>.