

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00709
Petitioners: George Glendening/Lois Mudge
Respondent: Department of Local Government Finance
Parcel #: 007263501240032
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 January 7, 2004 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$80,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated May 26, 2005.
4. A hearing was held on June 28, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is a commercial office building located at 49 Muenich Court, Hammond, North Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land \$23,500 Improvements \$56,700 Total \$80,200
8. Assessed Value requested by Petitioners on the Form 139L petition:
Land \$23,500 Improvements \$43,000 Total \$66,500
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: George Glendening, Owner

For Respondent: Steve McKinney, DLGF

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) Mr. Glendening presented a portion of a divorce decree dated April 21, 1993, which valued the subject property at \$43,000. There has been no appreciation of properties in the area and no major improvements to the subject building since that time. *Glendening testimony; Pet'r Ex. 1.*
- b) Upon questioning by the Respondent, Mr. Glendening stated that no appraisal was presented to the Judge, nor did the Judge inspect the subject property prior to determining the value. *Glendening testimony.*
- c) The subject property is not in good condition. At March 1, 2002, the roof of the subject building leaked. The subject building has no air conditioning and an antiquated electrical system that is not 220. Mr. Glendening presented photographs which show cracked paint, water damage to the walls and ceiling, missing floor tile, and a back door crack. *Glendening testimony; Pet'r Ex. 3.*
- d) The building next door at 53 Muenich Court is identical to the subject building. The buildings were built as residences around 1901. Mr. Glendening testified that the building next door has a "D" grade, while the subject building has a "C" grade. Mr. Glendening stated that 53 Muenich has always been kept up, has air conditioning, 220 electrical and doesn't leak. Mr. Glendening stated the subject building should also have a "D" grade. *Glendening testimony; Pet'r Ex. 2.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the property record card and a photograph of the subject property. The assessment is fair and consistent with the neighborhood. *McKinney testimony; Resp't Exs. 1, 2.*
- b) The Respondent pointed out that the divorce decree valuation is just a settlement value. There were no appraisals done and the Judge did not view the property. *McKinney testimony.*
- c) The Respondent stated that there was no evidence presented on the issue of grade. *McKinney 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 BTR #1793
 - c) Exhibits:
 - Petitioner Exhibit 1: Portions of the divorce decree showing the value of the subject property
 - Petitioner Exhibit 2: Property Record Card of building at 53 Muenich Court
 - Petitioner Exhibit 3: Photographs of the subject property (a through k)

 - Respondent Exhibit 1: Subject Property Record Card
 - Respondent Exhibit 2: Subject Photograph
 - Respondent Exhibit 3: Incremental/Decremental Land Summary

 - Board Exhibit A: Form 139L Petition
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
 - d) These Findings and Conclusions
14. At the hearing, Mr. Glendening testified that he had requested a copy of the property record card for 53 Muenich Court but did not receive it. The ALJ gave Mr. Glendening until noon the day of the hearing to submit the property record card. Mr. Glendening submitted the property record card prior to the deadline. The property record card was accepted and labeled as Petitioner Exhibit 2.

Analysis

15. 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 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) 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.

16. The Petitioners did not provide sufficient evidence to support their contentions for establishing value. This conclusion was arrived at because:

Valuation

- a) Mr. Glendening contends the subject property is overstated based on a valuation from a 1993 divorce decree. *Pet'r Ex. 1*.
- b) The 2002 Real Property Assessment Manual (hereinafter "Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2).
- c) Mr. Glendening presented portions of a divorce decree dated April 21, 1993. The divorce decree values Mr. Glendening's one-half interest at \$21,500, which means the total value of the subject property was \$43,000. As the Respondent noted this value was determined as a result of a divorce settlement and no appraisal was done.
- d) Even if the divorce decree was probative of the subject property's market value, the divorce decree values the subject property as of April 21, 1993, almost six years prior to the relevant valuation date of January 1, 1999. The divorce decree therefore lacks probative value.

Condition

- e) Mr. Glendening contends the subject property has not been kept up and presented photographs to show the condition of the subject property. *Glendening testimony; Pet'r Ex. 3*. The property record card shows the subject property is valued in "Average" condition. *Resp't Ex. 1*.
- f) The Real Property Assessment Guidelines for 2002 – Version A ("Assessment Guidelines") recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). However, the manner in which owners maintain structures can influence their rate of depreciation. *Id.* Consequently, the Assessment Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7.
- g) The Assessment Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. These descriptions are

based largely upon a comparison of the subject structure to other structures in its neighborhood. For example, a structure in “Average” condition “has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood.” *Id.* at 7.

- h) Here, Mr. Glendening identified several problems with the subject building that might be viewed as the result of deferred maintenance. However, Mr. Glendening did not present any evidence regarding the condition of other structures in the subject property’s neighborhood. Mr. Glendening merely stated the building next door was kept up better. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Therefore, the Petitioners did not establish a prima facie case that the subject property was entitled to a lower condition rating under the GUIDELINES.

Grade

- i) Mr. Glendening contends the subject property is identical to the building next door which has a “D” grade; therefore the subject property should also have a “D” grade. The property record card shows the subject property has a “C” grade. *Glendening testimony; Resp’t Ex. 1.*
- j) To establish a prima facie case on grade, Petitioners must submit probative evidence that the assigned grade was incorrect and probative evidence establishing the correct grade. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003).
- k) In this case, no probative evidence was presented to show the current grade is wrong or to establish what the correct grade should be. Mr. Glendening simply concludes the grade should be “D” just like the property next door.
- l) A Petitioner cannot establish a prima facie case on grade based only on conclusory statements. *Sollers Pointe*, 790 N.E.2d at 191; *See also Whitley*, 704 N.E.2d at 1119 (taxpayer can offer probative evidence tied to the descriptions of the various grades).
- m) Further, the Petitioners offered no comparison of the features of the subject property to the descriptions of the various grade classifications.
- n) The Petitioners have not established a prima facie case that the grade of "C" is wrong or that the proper grade is "D."

Conclusion

Valuation

17. The 1993 divorce decree lacks probative value. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Condition

18. The Petitioners failed to make a prima facie case that the subject property was entitled to a lower condition rating. The Board finds in favor of the Respondent.

Grade

19. The Petitioners failed to make a prima facie case that the grade is incorrect. 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>>.