

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition: 45-026-02-1-4-01118
Petitioners: Robert & Norma Jean Tippy
Respondent: Department of Local Government Finance
Parcel: 007-18-28-0303-0001
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 in December 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$244,300 and notified Petitioners.
2. Petitioners filed Form 139L on June 9, 2004.
3. The Board issued a notice of the hearing to the parties dated May 19, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on June 21, 2005.
5. Persons present and sworn as witnesses at the hearing:
For Petitioners - John Teibel, property manager with a power of attorney,
For Respondent - Joseph Lukomski, Jr., assessor/auditor.

Facts

6. The subject property is a single-story commercial building located at 8314 Calumet Avenue in Munster. This location is in North Township.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$185,800 Improvements \$58,500 Total \$244,300.
9. Assessed value of subject property requested by Petitioner:
Land \$145,000 Improvements \$45,000 Total \$190,000.

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The subject property is subject to a long-term lease that began January 1, 2000, and potentially can run through 2020. It currently is used as a donut store. Petitioners have no legal ability to disturb the lease. Any future sales of subject property would be subject to the lease. Petitioner contends the income approach to value would be more representative of the property's value than the cost approach or sales approach. *Petitioner Exhibit 1; Teibel testimony.*
 - b) The income analysis provided in support of this claim uses very reasonable vacancy and collection estimates, replacement reserves, and direct capitalization rate to arrive at a rounded value of \$190,000. *Petitioner Exhibit 2; Teibel testimony.*
 - c) Mr. Teibel is a certified general appraiser in the State of Indiana and has been appraising commercial and industrial properties in the state for over 14 years. As the property manager for the subject, and a relative of Petitioners, he is very familiar with the positive and negative attributes of the property. *Teibel testimony.*

11. In support of the assessment, Respondent contends the subject property is assessed in accordance with established Guidelines and is correct. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A (incorporated by reference at 50 IAC 2.3-1-2). *Lukomski testimony.*

Record

12. The official record for this matter consists of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 1697,
 - c) Exhibits:
 - Petitioner Exhibit 1 - Lease,
 - Petitioner Exhibit 2 - Income approach to value,
 - Respondent Exhibit 1 - Subject property record card,
 - Respondent Exhibit 2 - Subject photograph,
 - Respondent Exhibit 3 - Plat map,
 - Respondent Exhibit 4 - Land calculations/neighborhood land summary sheet,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Hearing Notice,
 - Board Exhibit C - Hearing Sign-In Sheet
 - d) These Findings and Conclusions.

Analysis

13. 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”).
14. Petitioners did not establish a prima facie case. This conclusion was arrived at because:
- a) The Board first addresses the appropriateness of the property manager representing Petitioners. Petitioners did not appear personally. Similarly, no attorney or authorized tax representative appeared for them.¹ Mr. Teibel, identified as the property manager, attended the hearing and purported to speak for Petitioners based on a power of attorney. Such an appearance would not be permitted by the Board's procedural rules for Lake County 2002 assessment appeals. Such an attempt at representation 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. Mr. Teibel failed to comply with the Board's rules and from the record in this case, has no status to represent Petitioners. For this reason alone, the petition is denied and there should be no change in the assessment.
 - b) Despite the fatal error in Mr. Teibel's representation of Petitioners, the Board would reach the same conclusion after considering the evidence and arguments he presented.
 - c) Mr. Teibel submitted the current lease for subject property as well as a value based on the income approach to value. *Petitioner Exhibits 1-2*.
 - d) Mr. Teibel presented an income approach summary showing the value of subject property to be \$190,000. Petitioners based the calculation on the income and expenses of the subject. *Petitioner Exhibit 2*. Mr. Teibel, appraiser and property manager, testified that the income approach to value was the best indicator of value for the subject property because it reflects the terms of the lease. Mr. Teibel testified that he used standard, or lower than standard, expenses, and a capitalization rate of 10%, which is in the middle of industry rates. *Petitioner Exhibits 1-2; Teibel testimony*.

¹ John E. Teibel signed the Form 139L as a tax representative, but there is no record or evidence that he has been certified as such.

- e) “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property...than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 14 (incorporated by reference at 50 IAC 2.3-1-2).
- f) The income approach to value focuses on the intrinsic value of the property, not upon Petitioner’s operation of the property. Thus, it is important to know, not only what Petitioner’s income and expenses are, but also the amount of income and expenses attributable to similar properties. The financial data supplied was conclusory and solely from the subject property, without any evidence to demonstrate whether they were typical for comparable properties.
- g) More importantly, Petitioners did not supply any support documentation for the capitalization rate. Petitioners testified that 10% was the middle of industry rates, but failed to provide probative evidence to support that statement. The Board has no way of determining if this number is the correct rate to use for this type of property in this location.
- h) Petitioners failed to support their contentions with anything more than conclusory statements that have no probative value. *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).
- i) Where Petitioner has not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Id.*

Conclusion

15. Petitioners failed to establish a prima facie case. The Board finds for Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the current 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>.