

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00210
Petitioner: Paul Pietraszak
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0527-0003
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 (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$80,900. The DLGF's Notice of Final Assessment was sent to the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated May 25, 2005.
4. A hearing was held on June 27, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is Unit #3 located at 1136 Camellia Drive, Munster, in North Township, Lake County.
6. The subject property is one of four residential condominium units within an apartment building.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$80,900 for the improvements. There is no assessed value assigned to land for condominium units.
9. The Petitioner requested an assessed value of \$79,000.

10. Paul Pietraszak, the condominium owner, and Steve McKinney, representing the DLGF, attended the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contends that the assessed value of the subject property is excessive when compared to similar properties. *Pietraszak testimony*. According to the Petitioner, Units #2, #3 (subject) and #4 are exactly the same and should be assessed the same. However, while Units #3 and #4 upstairs are assessed at \$80,900 each, Unit #2 with the same square footage is assessed for \$2,500 less. *Pietraszak testimony & Petitioner Exhibit 1*.
 - b) According to the Petitioner, no improvements have been made to the subject property. *Pietraszak testimony*.
 - c) Finally, the Petitioner argued that a listing showing another comparable sales price, in a comparable area, sold for \$500 - \$600 less than the subject. *Pietraszak testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent testified that the structure consists of four units - two upper units and two lower units. The upper units are assessed higher than the lower units. *McKinney testimony*. According to the Respondent, the difference in the assessment lies between a slightly different allocation percentage between the upper and lower units established by the condominium contract. *McKinney testimony*.
 - b) The Respondent also argued that Unit #2 sold on August 21, 1998 for \$78,000. The time adjusted sales price (TASP) to January 1, 1999, is \$79,833. *McKinney testimony & Respondent Exhibit 3*. According to the Respondent, this sales price supports the assessed value of the units. *Id.*

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 # 1556.
 - c) Exhibits:

Petitioner Exhibit 1: DLGF property profile of Unit #2 at 1136 Camellia Dr.

Respondent Exhibit 1: Subject property record card (PRC)
Respondent Exhibit 2: Subject photograph
Respondent Exhibit 3: PRCs of other condo units and condo master
Respondent Exhibit 4: North Township Sales (Neighborhood #1882)

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

d) These Findings and Conclusions.

Analysis

14. 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 Board of Tax Commissioners*, 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.

15. The Petitioner failed to provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

- a) The Petitioner testified that Units #2, #3 (subject), and #4 in the building were all the same size and that Unit #1 was larger. *Pietraszak testimony*. The Respondent testified that Units #1 and #2 were lower units, and Units #3 and #4 were upper units. *McKinney testimony*. According to the Petitioner, since Units #2, #3, and #4 were the same, they should then be assessed the same. The Petitioner concluded that the three similar units should be valued at \$78,500. *Pietraszak testimony & Petitioner Exhibit 1*. Units #3 and #4 are currently valued at \$80,900 each. *Respondent Exhibits 1 and 3*.
- b) According to Indiana law, each condominium unit owner owns the owner's condominium unit and an undivided interest in the common areas and facilities. Ind.

Code § 32-25-4-1(a). The unit owner's undivided interest in the common areas and facilities, by statute, "must be expressed as a percentage interest based on: (1) the size of the unit in relation to the size of all units in the condominium; (2) the value of each condominium unit in relation to the value of all condominium units in the condominium; or (3) the assignment of an equal percentage undivided interest to each condominium unit." Ind. Code § 32-25-4-3(a). This percentage allocation is "indicated in a schedule of undivided interests in the Declaration."¹

- c) The Petitioner failed to submit the Articles of Incorporation or any condominium contract to show how the percentage of common area is assigned to the individual units. Nor did the Petitioner submit a "schedule of undivided interests" to show that his particular allocation was incorrect. The Petitioner merely alleged that Unit #2 was the same size and assessed lower. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Further, because condominium interests can be assigned based on unit size or "unit value," which would take into account characteristics other than size – such as view or location, there is no evidence that the allocation among units was incorrect. Thus, the Petitioner failed to raise a prima facie case that his assessment was incorrect.
- d) Where the Petitioner has not supported his 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).

Conclusions

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

¹ The "Declaration" is the "instrument by which the property is submitted to this article [Article 25 Condominiums]." Ind. Code § 32-25-2-13.

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.