

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01186
Petitioner: Aaron L. Berry, Sr.
Respondent: Department of Local Government Finance
Parcel: 007-24-30-0252-0002
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 assessment for the subject property is \$38,600 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 November 8, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 9, 2004.

Facts

5. The subject property is located at 3593 Block Avenue, East Chicago. The location is in North Township.
6. The subject property consists of one unit of a four-unit building.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$6,500 Improvements \$32,100 Total \$38,600.
9. Assessed value of subject property requested by the Petitioner:
Land \$1,500 Improvements \$25,000 Total \$26,500.

10. Persons sworn as witnesses at the hearing:
Aaron L. Berry, Sr., owner,
Stephen H. Yohler, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) The quality of this living environment has declined. The subject property is surrounded by public housing. The crime rate, including murders, has increased significantly over the years. As a result, Petitioner does not believe that he could sell the property for \$38,600. *Petitioner Exhibits 1-4; Berry testimony.*
 - b) The building is old and in need of repairs. *Petitioner Exhibit 1; Berry testimony.*
 - c) The comparables presented by Respondent are not four-unit buildings and the construction is not the same. *Respondent Exhibit 5; Berry testimony.*
12. In support of the assessment, Respondent contends that a sales analysis comparing the subject property with three other properties. Those properties are similar to the subject in size and style. They are located either in the subject's neighborhood or the neighborhood immediately south of the subject. They establish that the subject's assessed value is within an acceptable market range. *Respondent Exhibits 4, 5; Yohler 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 861,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Photograph of subject property,
 - Petitioner Exhibit 2-4 – Photographs showing area surrounding subject property,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Subject photograph,
 - Respondent Exhibit 4 – Sales analysis,
 - Respondent Exhibit 5 – Property record cards and photographs of the comparable properties used in the analysis,
 - Board Exhibit A – Form 139L,
 - 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 Board 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 Petitioner did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) Petitioner presented evidence concerning the neighborhood decline and its effect on the subject property.
 - b) Petitioner failed to meet his burden of proof. Petitioner’s statements concerning neighborhood decline and its effect on the subject’s marketplace were unsupported by probative evidence. Such conclusory statements are of no use to the Board in making a determination. *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - c) Where 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

16. The Petitioner failed to establish a prima facie case. The Board finds in favor of the 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>.