

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00443
Petitioners: Anthony M. & Peggy Anthony
Respondent: Department of Local Government Finance
Parcel: 007-26-33-0003-0002
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held January 26, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$40,800 and notified the Petitioners on March 31, 2004.
2. Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 8, 2004.

Facts

5. The subject property is located at 1712 Indianapolis Boulevard in Whiting.
6. The subject property is a one-story, brick, commercial building.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value as determined by the DLGF is:
Land \$34,800 Improvements \$6,000.
9. Petitioners did not state what they felt the assessment should be.
10. Persons present and sworn as witnesses at the hearing:
Anthony M. Anthony, owner,
Stephen H. Yohler, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a) The building has no electric, no water system, the subfloor is unsafe and the ceiling is collapsing. The building has been vacant for 16 years. *Petitioner Exhibit 2; Anthony testimony.*
 - b) The land assessment went from \$11,000 to \$34,800 after the informal hearing. Surrounding lots are assessed from \$8,000 to \$10,000. *Petitioner Exhibit 1; Anthony testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) The building was given added obsolescence of 90 percent to account for its condition and for the vacancy. *Respondent Exhibit 2; Yohler testimony.*
 - b) The value of the land assessment cannot be considered separately from the total assessment. The assessment is to represent the total market value of the property. *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 1028,
 - c) Petitioner Exhibit 1: Subject property record card prior to the informal hearing,
Petitioner Exhibit 2: Photographs to show condition,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photograph,
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 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 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. Petitioners failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) The photographs offered as evidence are not sufficient to prove that the building's assessed value should be lower than the current assessment. They fail to substantiate that the market value is anything less than the current assessment. *See Meridian Towers*, 805 N.E.2d at 478.
 - b) Petitioners also disagree with the land value and contend that other properties are assessed between \$8,000 and \$10,000. Petitioners did not present any probative evidence to support this contention based on the comparative values of other lots. Again, the Petitioners' failed to show that the land assessment was incorrect or what a correct assessment should be. *Id.* Conclusory statements do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Prods. 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*, 799 N.E.2d at 1221-1222.

Conclusion

16. Petitioners did not provide sufficient evidence to establish 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

- 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>.