

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00875
Petitioner: Arvine Plemons
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0069-0002
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 tax assessment for the property is \$148,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 9, 2004.

Facts

5. The subject property is located at 1546 121st Street in Whiting.
6. The subject property is a two-story brick and frame apartment building.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$25,500 Improvements \$122,800.
9. The assessed value requested by Petitioner is:
Land \$9,000 Improvements \$100,000.
10. Persons sworn as witnesses at the hearing:
Arvine Plemons, owner,
James Hemming, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a) Both the first and second floors of the building are brick on two sides and frame on two sides. *Plemons testimony.*
 - b) The basement is only a 6' by 35' area. The rest has crawl space. *Plemons testimony.*
 - c) There are only three living units in the building; two on the first floor and one on the second floor. *Plemons testimony.*
 - d) No land in the subject's area has sold for a price as high as this assessment. *Plemons testimony.*

12. Summary of Respondent's contentions:
 - a) The assessment is incorrect as to exterior construction materials used on the second story. The subject property should be reassessed as having 50 percent frame construction and 50 percent brick construction on the second story. *Respondent Exhibit 2; Hemming testimony.*
 - b) The subject property should only be assessed for a basement that is 11 percent of the building's footprint (only 202 square feet) of basement utility/storage. *Respondent Exhibit 2; Hemming testimony.*
 - c) The assessment is incorrect. The assessment should have only two units on the first floor and one unit on the second floor. This correction will change the square footage of each unit, and lead to a change of the plumbing value. *Respondent Exhibit 2; Hemming testimony.*
 - d) The building was considered a commercial structure in the past. Perhaps it originally was a commercial structure. Perhaps the number of units dictated that it be considered a commercial property. Being classed as commercial required that the Lake County commercial land pricing system be used to value the land. *Respondent Exhibits 2, 3; Hemming 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 575,
 - c) Petitioner Exhibit 1: Form 11/Notice of Final Assessment/139L petition,
Respondent Exhibit 1: Form 139L petition,
Respondent Exhibit 2: Property record card,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Neighborhood Land Summary Sheet,
Respondent Exhibit 5: Land value calculation explanation,
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 and rules 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. The evidence supports changes on the assessment. This conclusion was arrived at because:

Construction Materials of Exterior

- a) The undisputed evidence established that the second story should be changed to 50 percent frame wall type and 50 percent brick wall type. The first story is already assessed as 50 percent brick and 50 percent frame and should remain as such.

Basement Square Footage

- b) Respondent accepted Petitioner's testimony that the basement contains only 202 square feet that is used as utility/storage. The assessment should be change to indicate only 202 square feet of basement. The balance of the building (1638 square feet) should be assessed as crawl space, rather than basement.

Number of Units/Number of Plumbing Fixtures

- c) Petitioner and Respondent agreed that the property has two living units on the first floor and one living unit on the upper floor. The assessment must be changed so that is based on the correct number of living units, which is a total of three.

Land Value

- d) The building contains only three living units. Therefore, the property does not meet the requirement of a Property Class 401, which applies to 4 to 19 family apartments. 2002 REAL PROPERTY ASSESSMENT MANUAL, app. A at 24.
- e) A three family dwelling on a platted lot should be classified as a property class code 5 (which represents residential taxable land and improvements used primarily for residential purposes) with a subclass of 30. *Id.* at 25. Therefore, the property must be reclassified as a property class code 530. This change will require that the land valuation be changed to the appropriate Lake County residential method.

Conclusion

16. The assessment should be changed.
- The wall type of the second story should be changed to reflect that it is 50 percent frame construction and 50 percent brick construction.
 - The basement square footage should be changed to 202 square feet of utility/storage space. The balance of the building is on crawl space.
 - The number of living units on the first floor should be changed to a total of two.
 - The number of living units on the second floor should be changed to only one.
 - The subject's Property Class should be changed to 530 from 401.
 - The land value should be changed to residential land value.

Final Determination

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