

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00878
Petitioner: Arvine Plemons
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0069-0024
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 subject property is \$128,500 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 2109 New York Avenue in Whiting.
6. The subject property consists of a two-story brick dwelling.
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 \$13,300 Improvements \$115,200.
9. The assessed value requested by Petitioner is:
Land \$5,000 Improvements \$60,000.
10. Persons sworn as witnesses at the hearing:
Arvine Plemons, owner,
James Hemming, assessor/auditor.

Arvine Plemons
45-026-02-1-5-00878
Findings & Conclusions
Page 1 of 5

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:

Market Value

- a) Petitioner had an informal appraisal stated the value of the subject property is \$68,000. *Plemons testimony.*
- b) A potential buyer declined to purchase at that price. *Plemons testimony.*

Condition

- c) The dwelling needs a new roof and new windows. New tuck-pointing is required on the brick exterior. The garage also needs a new roof. *Petitioner Exhibit 3; Plemons testimony.*

Number of Units/Number of Plumbing Fixtures

- d) The number of plumbing fixtures is incorrect. There are only 2 rental units in this building and each unit has one full bath and one kitchen. Only one hot water heater serves both units. The property record card incorrectly shows three extra living units with 4 full baths, 4 kitchen sinks, and 4 hot water heaters. *Petitioner Exhibit 2; Plemons testimony.*

12. Summary of Respondent's contentions:

Number of Units/Number of Plumbing Fixtures

- a) Prior to the informal hearing with Cole-Layer-Trumble the subject property record card only listed one extra living unit. The reason it would have been changed is unclear. *Hemming testimony.*
- b) The assessment should reflect only one extra living unit, which carries the value of 1 full bath, 1 kitchen sink, and 1 hot water heater. The only other plumbing value that the subject should be assessed for is another full bath and another kitchen sink. *Respondent Exhibit 2; 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 502,

- c) Petitioner Exhibit 1: Form 11/Notice of Final Assessment/139L,
 Petitioner Exhibit 2: Property record card,
 Petitioner Exhibit 3: Photographs,
 Respondent Exhibit 1: Form 139L,
 Respondent Exhibit 2: Property record card,
 Respondent Exhibit 3: 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 and regulations 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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, are not sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - d) 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.
 - e) Condition – A rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject’s neighborhood. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A*, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).

- f) In average condition, “[t]he structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. GUIDELINES, app. B at 7, table B-1.
15. Petitioner did not provide sufficient evidence to support the contentions regarding market value or condition. This conclusion was arrived at because:
- a) Petitioner’s statement that an informal appraisal established value at \$68,000 is unsupported by any probative evidence. This conclusory statement has no value in making a determination. *Whitley Products*, 704 N.E.2d at 1119. Furthermore, Petitioner failed to prove how that appraisal’s opinion might relate to the valuation date of January 1, 1999. Therefore, that opinion of value has no relevance to this case. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - b) The two photographs of the property submitted by Petitioner show a portion of a building, presumably the dwelling, and the back of the garage. The garage is assessed as being in “poor” condition. The other photograph is insufficient to prove a change in condition for the dwelling. Photographs without detailed explanation and conclusory statements do not prove a claim. Petitioner failed to offer probative evidence that the condition is not typical for the majority of the structures in the same neighborhood. *See* GUIDELINES, app. B at 5, 7.
 - c) Where Petitioner has not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
16. Nevertheless, the evidence established error in the current assessment. The subject is being assessed incorrectly for four living units when there are only two units. This fact must be corrected on the property record card. As a result of that error, the number of plumbing fixtures is incorrect. Respondent accepted Petitioner’s testimony about these facts as being correct. The assessment should reflect only one extra living unit, which carries the value of one full bath and one kitchen sink. There is only one hot water heater for the two units. Thus, the total number of plumbing fixtures in this property must be reduced from 20 to 9.

Conclusion

17. Petitioner failed to make a prima facie case on the issues of market value and condition. The Board finds in favor of Respondent on these issues.
18. Errors exist in the number of units and the number of plumbing fixtures assessed on this property. The total number of living units is two. The total of plumbing fixtures is 9.

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>.