

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00480
Petitioner: Florence Pietrzak
Respondent: Department of Local Government Finance
Parcel #: 007-26-35-0257-0040
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on January 14, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$14,500, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties on October 4, 2004.
4. A hearing was held on November 9, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1136 – 175th Street, Hammond, North Township, Lake County.
6. The subject property is a garage on 0.066 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$10,100 Improvements \$4,400 Total \$14,500
 - b) The Petitioner did not request a specific value for the subject property:

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:
 - For Petitioner: Florence Pietrzak, Owner
 - For Respondent: John Toumey, DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property is a lot with a garage, adjacent to the Petitioner's residence. *Pietrzak testimony; Resp't Ex. 2.*
 - b) The property cannot be sold separately from the Petitioner's residence, because the sewer line for the Petitioner's residence runs through the subject property. *Peitrzak testimony.*
 - c) The garage is unfinished and has a dirt floor. *Id.*
11. Summary of Respondent's contentions in support of assessment:
 - a) The subject lot could be developed if combined with the adjacent lot owned by the Petitioner. *Toumey argument.*
 - b) The Respondent recommends changing the assessment to reflect the presence of a dirt floor. *Toumey testimony.*

Record

12. The official record for this matter is made up of the following:
 - a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co - 584.
 - c) Exhibits:

Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Photograph

Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

13. 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, by preponderance of the evidence, 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 at 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. Wash. 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.
14. The Petitioner did not provide sufficient testimony to support the Petitioner's contentions. The Respondent, however, agreed that the assessment should be changed. This conclusion was arrived at because:
- a) The Petitioner contends that the subject parcel cannot be sold separately from an adjacent parcel containing the Petitioner's residence, and that the garage is unfinished and has a dirt floor.
 - b) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c) The record is devoid of evidence showing that the current assessed market value-in-use of the property is incorrect, or of any evidence showing what the correct assessment should be.
 - d) The Petitioner did, however, testify that the subject garage has a dirt floor. The Respondent agreed that the assessment should be changed to reflect the fact that the garage has a dirt floor.

Conclusion

17. The Respondent agreed that the assessment should be changed to reflect the fact that the subject garage has a dirt floor. The Board finds in favor of the Petitioner on this issue. The assessment should be changed to reflect the presence of a dirt floor in the garage.

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>.