

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00109
Petitioners: James & Ruth Berger
Respondent: Department of Local Government Finance
Parcel #: 002020301050038
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$37,400 and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 5, 2004.
3. The Board issued a Notice of Hearing to the parties dated July 16, 2004.
4. A hearing was held on August 27, 2004, at 10:05 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 224 Island Drive, Lowell, Cedar Creek Township in Lake County.
6. The subject property is a 27' x 26' frame detached garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land: \$27,300 Improvements: \$10,100 Total: \$37,400
9. The assessed value of the subject as requested by the Petitioners on the Form 139L:
Land: \$15,000 Improvements: \$4,500 Total: \$19,500
10. The following persons were present and sworn in at the hearing:
For the Petitioners: Sharon Ilijanich, Owner's Daughter
For the Respondent: Sharon S. Elliott, Staff Appraiser, CLT
11. At the hearing, Sharon Ilijanich, the Petitioners' Representative was requested to present a power of attorney from James Berger. September 3, 2004, was the deadline established for the submission of this information. The request for additional evidence was entered into the record as Board Exhibit C.

12. On September 3, 2004, the requested power of attorney allowing Sharon Ilijanich to represent James Berger was received by mail. The power of attorney has been entered into the record as Petitioner Exhibit 9.

Issues

13. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend the assessed value of the land and garage are overstated. The Petitioners requested the property be assessed at \$15,000 for the land and \$3,000 or \$4,000 for the improvements. *Ilijanich testimony*.
 - b. The Petitioners argued that (2) comparable lots located within the same neighborhood as the subject have assessed values that are lower than the subject's assessed value.
 - c. The Petitioners testified that the assessed value of the garage is overstated. The garage is used as storage only and was constructed in 1976. At the hearing, the Petitioners stated the garage should be assessed for \$3000 or \$4000. *Ilijanich testimony*. On the Form 139L, the Petitioners had contended the value of the garage should be \$4,500.
14. Summary of Respondent's contentions in support of assessment:
 - a. The subject land is valued with the same base land rate as the adjoining lots in the area and has received a negative influence factor of 32% for excessive frontage and not being located on the lake. The subject land does have a lake view. The subject land is being fairly and accurately assessed at \$27,300.
 - b. The Respondent contends the subject garage is being assessed in accordance with the 2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A as a 27' x 26' (702 sq. ft.), "D" grade, fair condition, constructed in 1976. *Elliott testimony*.

Record

15. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #157.
 - c. The following exhibits were presented:

For the Petitioners:

Petitioner Exhibit 1 – Property record card (PRC).

Petitioner Exhibit 2 – Plat map of the subject area.

Petitioner Exhibit 3 – Two photographs of the subject property.

Petitioner Exhibit 4 – Lake County summary sheet on Ruth Berger's property parcel number 002020301050036.

Petitioner Exhibit 5 – A copy of the Notice of Hearing on Petition dated July 16, 2004.

Petitioner Exhibit 6 – A list of thirty-two (32) properties in the subject area with their assessed values.

Petitioner Exhibit 7 – Plat map of the subject area.

Petitioner Exhibit 8 – A copy of the Form 139L petition.

Petitioner Exhibit 9 – Power of Attorney from James Berger to Sharon Ilijanich, dated August 27, 2004.

For the Respondent:

Respondent Exhibit 1 – A copy of the 139L petition dated April 5, 2004.

Respondent Exhibit 2 – James Berger’s 2002 property record card (PRC).

Respondent Exhibit 3 – Photograph of the subject property.

For the Board:

Board Exhibit A – Form 139L petition dated April 5, 2004.

Board Exhibit B – Notice of Hearing on Petition dated July 16, 2004.

Board Exhibit C – Request for additional evidence from Sharon Ilijanich dated August 27, 2004.

Analysis

16. The most applicable governing cases are:
- a. It is the taxpayer’s duty to walk the Indiana Board ...through every element of the analysis; arguments that (1) generically claim without explanation that the taxpayer made a prima facie case and (2) cite to large portions of the record as though the evidence speaks for itself do not constitute probative evidence. *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (citing *Clark v. State Board of Tax Commissioners*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)).
 - b. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - c. The petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).
17. The Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioners contend that the comparable properties are larger in size, one is located on a lake, and all have assessed values lower than the subject property. Petitioners did not provide the square footage or property record cards (PRC) for

the comparable lots. The Petitioners statement that the lots are similar is a matter of opinion. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- b. The Petitioners failed to provide sufficient information regarding the value of the garage. The statements that the assessed value of the garage should be \$3,000 or \$4,000 are simply a matter of opinion. The Petitioners provided no evidence to demonstrate the value of the garage was incorrect. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c. The Petitioners requested a value of \$15,000 for the land and \$3,000 or \$4,000 for the improvements. The Petitioners provided no explanation or evidence to support the requested values. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).

Conclusions

- 18. The Petitioners failed to make 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 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.