

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00353
Petitioners: Joseph P. and Carol Allegretti
Respondent: The Department of Local Government Finance
Parcel #: 009-12-14-0220-0002
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. Pursuant to a Notice of Department Assessed Value Determination (the Notice), the Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$476,900 and notified the Petitioners on March 31, 2004.
2. The 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 Peter Salveson held a hearing on December 8, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 900 Royal Dublin Lane, Dyer, in St. John Township.
6. The subject property consists of a single-family dwelling on 0.402 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of subject property is \$114,000 for the land and \$362,900 for the improvements for a total value of \$476,900.
9. The Petitioners requested an assessed value of \$92,600 for the land and \$333,700 for the improvements for a total value of \$426,300.

10. Mr. Joseph Allegretti, one of the owners of the property, and Ms. Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses. Further, Mr. John P. Reed attended the hearing and purported to represent the Petitioners in this proceeding.¹

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The Petitioners argue that because Petitioners were unable to participate in an informal hearing, Petitioners' due process rights were denied. *Reed comment*. According to Petitioners' representative, Petitioners were denied rights granted other taxpayers in their assessment. *Id.*
 - b. The Petitioners further allege that the assessed value on the Notice of Department Assessed Value is higher than the assessment noticed originally. *Allegretti testimony*. According to Petitioners, the current assessment is higher than the market value of the property. *Id.*
 - c. Finally, the Petitioners argue that the tax burden was shifted to the homeowners during the reassessment which reduced the value of homes in the area. *Allegretti testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent presented three comparable properties in the Petitioners' neighborhood. *Spenos testimony; Respondent Exhibits 4 and 5*. According to the Respondent, the comparables are similar in condition and grade to the subject property. *Id.*
 - b. The Respondent contends that the assessment of the subject is comparable to the value of other homes in the same neighborhood. *Spenos testimony*. The Respondent, therefore, concludes that the subject property's assessment is correct. *Id.*

¹ Petitioners' purported representative failed to adhere to the Board's procedural rules for practice before the Board. *See* 52 IAC 2 *et seq.* Authorized representatives, including attorneys, "must file a notice of appearance with the board, stating that the party has authorized the representative to appear on the party's behalf. 52 IAC 2-3-2(b). The notice appearance "must contain the authorized representative's name address and telephone number." 52 IAC 2-3-2(c). No such appearance was filed by Petitioners' representative. Such an attempt at representation is contrary to the generally applicable rules to practice before the Board. 52 IAC 2-3-2.

Record

13. The official record for this matter is made up of the following:
- a. The Petition;
 - b. The tape recording of the hearings labeled Lake County 995;
 - c. Exhibits:

Petitioners submitted no exhibits in support of their Petition,

Respondent Exhibit 1 – Form 139L Petition,
Respondent Exhibit 2 – Property record card for subject property,
Respondent Exhibit 3 – Subject property photograph,
Respondent Exhibit 4 – Comparable sales sheet,
Respondent Exhibit 4 – Comparable property record cards and
photographs,

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

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. The Petitioners failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
 - a. The Petitioners were assessed \$426,300 for their property on November 4, 2003. Pursuant to a Notice of Department Assessed Value Determination on March 31, 2004, the Petitioners' assessed value increased to \$476,900 based upon a change of neighborhood assignment. *Reed comment; Board Exhibit 1*. The Petitioners argue that because Petitioners were unable to participate in an informal hearing, Petitioners' due process rights were denied. *Reed comment*. According to Petitioners' representative, Petitioners were denied rights granted other taxpayers in their assessment. *Id.* Thus, Petitioners seek the reinstatement of the former assessment. *Id.* Petitioners submitted no case law and cited to no statutory or regulatory authority for these claims.
 - b. Petitioners allege that their due process rights were denied by the reassessment notice because they were unable to participate in the informal hearings provided other taxpayers. Due process requires "an opportunity to meet and rebut adverse evidence." *See Castello v. State Bd. of Tax Comm'rs*, 638 N.E.2d 1362, 1365 (Ind. Tax Ct. 1994). Here, the Petitioners had an opportunity for a comprehensive review of their assessment at the hearing before the Special Master. Petitioners presented no evidence of an error in the assessment or evidence of the market value of their property. Further, the Notice of Department Assessed Value Determination offered informal procedures for determining the basis of the assessment. Pursuant to that Notice, Petitioners were offered "an explanation of [their] new assessment determination" by calling CLT within the time frame provided. Petitioners were offered "an opportunity to meet and rebut adverse evidence" both informally, through the opportunity to discuss the reassessment with CLT, and formally through the opportunity to be heard at this appeal. Due process requires no more than this.
 - c. Petitioners, however, allege that they were denied the "informal hearing" as provided for by Indiana Code §§ 6-1.1-4-33. Pursuant to Indiana Code §§ 6-1.1-4-33, the department of local government may contract for a contractor to afford to taxpayers an opportunity to attend an informal hearing for the purposes of discussing the specifics of the assessment; reviewing the property record card; explaining how the assessment was determined; providing information to the taxpayer regarding the statutes, rules and guidelines that govern the determination; and considering the objections and errors alleged by the taxpayer. Here, Petitioners were offered a substantially similar opportunity by calling CLT within the

timeframe provided in the Notice. Thus, Petitioners were provided the opportunity to informally discuss the basis of the new assessment and determine if any errors were made in that reassessment. There is no evidence that Petitioners took advantage of this opportunity.

- d. The Petitioners also allege that the assessed value on the Notice of Department Assessed Value is higher than the assessment noticed originally. *Allegretti testimony*. According to Petitioners, the current assessment is higher than the market value of the property. *Id.* However, Petitioners presented no evidence of the market value of the subject property or evidence of comparable properties. That Petitioners chose not to present any evidence regarding the value of Petitioners' property "does not mean that [they] had no reasonable opportunity to do so." *See Canal Realty-Indy Castor v. State Board of Tax Commissioners*, 744 N.E.2d 597, 605 (Ind. Tax Ct. 2001). Petitioners were afforded both an informal review by the Notice of Department Assessed Value Determination and the administrative appeals process here. Petitioners' due process rights were not denied.
- e. During cross-examination, however, the Respondent was unable to answer Petitioners' questions regarding the basis for the new assessment. While this may have limited Petitioners' ability to raise issues of error in the assessment, the Petitioners made no use of the discovery procedures provided by the Rules. Thus, Petitioners cannot be heard to complain about Respondent's inability to state the basis for the land or any other part of the assessment. Petitioners neither requested a copy of Respondent's evidence pursuant to the Lake County Rules. *See* LSA Document No. 04-261(E), Section 10(c).² Nor did Petitioners serve discovery on Respondent pursuant to 52 IAC 2-8-3. Also, the Notice of Department Assessed Value Determination offered informal procedures for determining the basis of the assessment. Thus, while Respondent's limited knowledge of the factual bases of the assessment may have impeded Petitioners' ability to present evidence of error in the assessment, this error was of Petitioners' own making. Petitioners had a variety of procedures available to them to obtain such information, but Petitioners did not attempt to seek such information until the time of the hearing. A party cannot take advantage of an error that it commits, invites or that is the natural consequence of its own conduct. *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005). Petitioners' due process rights were not denied here.

² "The parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the hearing." Section 10(c). The Board interprets the language "make available" as requiring the parties to have documentary evidence available and produce such evidence if requested.

- f. Finally, the Petitioners argue that the tax burden was shifted to the homeowners during the reassessment which reduced the value of homes in the area. *Allegretti testimony*. However, Petitioners presented no evidence to support this allegation. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Thus, Petitioners failed to raise a prima facie case that the assessment of the subject property was in error. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

20. Petitioner failed to establish a prima facie case on all issues. The Board finds for the 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

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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.