

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00667
Petitioner: Leon V. Leckavicius
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0073-0011
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in December 2003. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$112,400 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 September 17, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on October 19, 2004.

Facts

5. The subject property is located at 1938 White Oak Avenue, Whiting. The location is in North Township.
6. The subject parcel has two structures. The front building is a two-story brick structure that was constructed as a dwelling, but currently is used only for storage. The rear building is a two-story brick structure constructed and currently used as Petitioner's dwelling.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land \$17,400 Improvements \$95,000 Total \$112,400.

9. Petitioner did not request a specific assessed value on the Form 139L petition, but at the hearing Petitioner contended the total assessed value of the property should be \$68,800.
10. The following persons were sworn as witnesses at the hearing:
Leon V. Leckavicius, Owner,
Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. An appraisal prepared on October 18, 2004, indicates a total market value of \$68,800. This analysis was prepared to establish the market value of the subject property for the assessment valuation period of March 1, 1999. *Petitioner Exhibit 2; Leckavicius testimony.*
 - b. The rear building is used as a dwelling. It needs to be tuck-pointed. The roof has water damage. The wiring needs to be updated. Petitioner submitted photographs in support of this testimony. *Petitioner Exhibit 1; Leckavicius testimony.*
 - c. The appraisal describes the rear structure as follows: "The rear building is a 2 story brick residence approximately 1624 square feet in size, in fair condition and currently occupied by [the Petitioner]." *Petitioner Exhibit 2, transmittal letter.*
 - d. Petitioner testified that the front structure is boarded up, has no electricity or heat, and is used only for storage. *Leckavicius testimony.*
 - e. The appraisal describes the front structure as follows: "The front building is a 2 story brick, 2,304 square foot structure in poor condition that has not been inhabited or rented for 25 years. The building is gutted and has no electric or gas service or meters. The interior has no kitchens or baths and the plaster is removed or cracked and falling. The building is used for unheated storage only and has no residential value." *Petitioner Exhibit 2, transmittal letter.*
 - f. Petitioner testified that the structures are unique and there are no other properties comparable to the subject property. *Leckavicius testimony.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property is correctly valued at an overall assessed value of \$112,400. *Elliott testimony.*
 - b. The condition rating of the rear building was changed to poor to address the needed structural repairs. The condition rating of the front structure was also changed to poor. Furthermore, the assessment was changed to account for the lack of heating and electricity. Therefore both structures are being assessed in

accordance with the Real Property Assessment Guidelines for 2002 – Version A.
Respondent Exhibit 2; Elliott testimony.

- c. The appraisal incorrectly compared the front structure used for storage to two car garages. There are no properties that are comparable to the subject property.
Elliott 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 Co. 288,
 - c. The following exhibits were presented:
 - Petitioner Exhibit 1 – Eleven interior and exterior photographs of the subject property,
 - Petitioner Exhibit 2 – Appraisal,
 - Petitioner Exhibit 3 – Copy of Petitioner's 2000 and 2002 property record cards,
 - Respondent Exhibit 1 – Form 139L petition,
 - Respondent Exhibit 2 – Copy of Petitioner's 2002 property record card,
 - Respondent Exhibit 3 – Two photographs of the subject property,
 - Board Exhibit A – Form 139L petition,
 - Board Exhibit B – Notice of Hearing on Petition,
 - Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

- 14. The most applicable governing laws 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 Petitioner made a prima facie case in support of his proposed assessment. This conclusion was arrived at because:
 - a. In support of his contention that the total assessed value of the parcel should be \$68,800, Petitioner presented an appraisal to establish the value as of March 1, 1999. The appraised value of \$68,800 was primarily derived using the sales comparison approach. Its opinion of value is close to the correct valuation date for the reassessment, January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). Therefore, the appraisal is relevant, probative evidence of value for the subject property. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - b. Both the Petitioner and Respondent testified that the property under appeal is unique and there are no similarly situated structures to compare to the Petitioner's improvements. The impact on the appraisal of this absence of comparable properties is apparent. For example, the three adjusted sales prices selected by the appraiser range from \$51,660 to \$78,340. Further, as the Respondent indicated, the analysis concluded that two car garages are comparable to a gutted two-story former dwelling.
 - c. Those differences, however, do not prove that a valid appraisal is impossible. The appraisal documents the adjustments it made to account for those differences. Respondent failed to offer anything other than conclusory opinions to challenge the appraisal. Those conclusory opinions attacking the appraisal are not probative evidence and do not effectively rebut or impeach the appraisal. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
 - d. The Petitioner made a prima facie case for the total value of \$68,800 based on the appraisal. Therefore, the other issues raised by Petitioner do not need to be addressed.

Conclusion

16. The Board finds in favor of the Petitioner. There is a change in the assessment as a result of this appeal.

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

- 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>>.