

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01578
Petitioner: A-1 National Refrigeration & Heating
Respondent: The Department of Local Government Finance
Parcel #: 001-25-40-0087-0062
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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$71,700.
2. The Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated June 7, 2005.
4. Special Master Kathy J. Clark held a hearing at 3:15 P. M. on July 11, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 585 E. 45th Avenue, Gary. The location is in Calumet Township.
6. The subject property consists of a two-story brick and concrete block commercial building.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$17,500 Improvements \$54,200 Total \$71,700.
9. Assessed value requested by Petitioner is:
Land \$1,800 Improvements \$45,000 Total \$46,800.

10. Persons sworn in as witnesses at the hearing:
Richard LaMarca, Owner,
Tommy P. Bennington, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- The lot immediately adjacent to the subject, that is also similar in size, is assessed for only \$1,800. *Petitioner Exhibit 2; LaMarca testimony.*
 - The City of Gary Redevelopment Commission appraised the lot at 595 E. 45th Avenue at only \$630. *Petitioner Exhibit 3, pg 5, item 13; LaMarca testimony.*
 - The City offered the lot at 595 E. 45th Avenue for bid along with many other residential lots. The Petitioner bid \$2,600 but the church next door is believed to have secured the property with a bid of \$3,500 to \$4,000. *Petitioner Exhibit 3; LaMarca testimony.*
 - All of the area is zoned residential. The subject lot's current commercial use is a legal, non-conforming use that is grandfathered in. The Petitioner could not expand or replace the building because the City would not grant a permit for anything other than residential use in the immediate area. Even if the building was destroyed by an "act-of-God" it could not be rebuilt as a commercial building. *LaMarca testimony.*
 - The apartments in the upstairs of the building have been vacant for many years. There are no porches. *Respondent Exhibit 1; LaMarca testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- The property is currently zoned for commercial use and is assessed as a commercial property. *Respondent Exhibit 1; Bennington testimony.*
 - The subject property can not be compared to residential property, which is valued differently than commercially assessed property. *Bennington testimony.*
 - The subject lot is assessed using the incremental/decremental method of valuing land which allows for rate adjustments according to lot size. The land is being assessed properly according to the process used in Lake County that was approved by the State. *Respondent Exhibit 3; Bennington testimony.*

Record

13. The official record for this matter is made up of the following:
- The Petition,
 - The tape recording of the hearing labeled Lake County 1604,
 - Exhibits:
 - Petitioner Exhibit 1: Governmax.com assessment sheet for subject property,
 - Petitioner Exhibit 2: Governmax.com assessment sheet for 595 E. 45th Avenue,
 - Petitioner Exhibit 3: City of Gary list of unimproved property & City of Gary appraisal of 595 E. 45th Avenue,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Incremental/Decremental land summary,

- Respondent Exhibit 4: Plat map,
Board Exhibit A: Form 139L,
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 Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner contends the land value is excessive when compared to an adjacent property, 595 E. 45th Avenue. In support of this the Petitioner submitted two exhibits concerning that property and also the assessment data for the subject property. The lots are comparable in size; the subject is .168 acres and the adjacent property is .1437 acres. The lot was listed for bid by the City of Gary for \$630. *Petitioner Exhibits 1-3*.
 - b. The Petitioner stated that the lot at 595 E. 45th Avenue is zoned residential and that is supported by Petitioner Exhibit 3, page 5, item 13. The subject is assessed as commercial property. *Id.*; *LaMarca testimony*.
 - c. The Petitioner attempted to use the adjacent lot’s assessed value as proof that an error had been made on the subject assessment. The Petitioner supplied four different values for the lot at 595 E. 45th Avenue. Petitioner Exhibit 2 shows it assessed for \$1,800, which is what the Petitioner is requesting. Petitioner Exhibit 3 lists the City of Gary’s value estimate at \$630. The Petitioner testified that he submitted a bid in May 2004 for \$2,600 but the winning bid was for roughly \$4,000. *LaMarca testimony*.
 - d. While the lot at 595 E. 45th Avenue may be comparable in size to the subject, it is not comparable to the subject in zoning or in use. Commercial property is assessed using the incremental/decremental land pricing that was established for Lake County.

- Furthermore, since only one allegedly comparable property was submitted, it is not possible to determine which assessment is incorrect.
- e. The Petitioner testified that the 2nd floor was no longer used as an apartment, but as storage and that there were no porches on the property. The Petitioner failed to establish that this was the case on the assessment date.
 - f. The Petitioner failed to establish that the current assessment is incorrect or what the correct assessment should be. *Meridian Towers*, 805 N.E.2d 475, 478.
 - g. Where the Petitioner has not supported the 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 Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to establish a prima facie case. 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/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.