

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-041-02-1-5-00302
Petitioner: Paul W. Turner
Respondent: Department of Local Government Finance
Parcel: 003-03-07-0044-0014
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$95,300 and notified Petitioner on March 12, 2004.
2. Petitioner filed Form 139L on March 18, 2004.
3. The Board issued a notice of hearing to the parties dated October 28, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 2, 2004.
5. Persons sworn as witnesses at the hearing:
Paul Turner, owner,
Everett Davis, assessor/auditor.

Facts

6. Subject property is a single-family residence at 14611 Clark Street in Crown Point.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value as determined by the DLGF:
Land \$32,500 Improvements \$62,800 Total \$95,300.
9. Assessed value requested by Petitioner:
Land \$16,800 Improvements \$53,000 Total \$69,800.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The property is over-assessed due to numerous repairs that are needed. *Turner testimony.*
 - b) Several photographs show the improvements are in poor condition. *Id.*
11. Summary of Respondent's contentions in support of the assessment:
 - a) The property is fairly assessed. *Davis testimony.*
 - b) Comparable sales data supports the assessment. *Id.*

Record

12. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 939,
 - c) Petitioner Exhibit 1 - Photographs,
Respondent Exhibit 1 - Form 139L,
Respondent Exhibit 2 - Subject Property Record Card,
Respondent Exhibit 3 - Subject Photograph,
Respondent Exhibit 4 - Comparable Sales Summary,
Respondent Exhibit 5 - Comparable Sales PRCs and Photographs,
Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

13. The generally applicable law is:
 - a) A Petitioner seeking review of a determination of the DLGF 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 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. 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) Conclusory statements are not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
 - d) 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 probative evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Petitioner provided photographic evidence of wall cracking and some deterioration, but did not provide any evidence of what the correct market value should be based on this evidence. *Turner Testimony; Petitioner Exhibit 1.*
 - b) The photographs and testimony that Petitioner offered do not prove that the current condition ratings for the house (average), the garage (fair) or the dairy barn (poor) are wrong or that they should be anything less. Mere references to photographs, without explanation, do not constitute probative evidence of what the assessment should be. *See Lacy Diversified Indus. v. Dept of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003); *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133, 1136 (Ind. Tax Ct. 2000).
 - c) In this case, Petitioner provided various photographs and explained that they showed faults such as ceiling cracks, an uneven floor, problems with basement walls, and cracks in his patio, but he failed to explain how those faults established any lower condition for the improvements or an overall lower market value for his property. Thus, Petitioner failed to make a prima facie case.
 - d) 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*, 799 N.E.2d at 1222.

Conclusion

15. Petitioner failed to make a prima facie case. Respondent satisfactorily supported the value as assessed. The Board finds in favor of 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

- 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>.