

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00027
45-026-02-1-5-00028
45-026-02-1-5-00029A
Petitioner: Chester Martello
Respondent: Department of Local Government Finance
Parcel #: 007-26-32-0026-0054
007-26-32-0026-0051
007-26-37-0020-0046
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 December 15, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner’s property tax assessment was \$3,600 for parcel 007-26-32-0026-0054), \$7,800 for parcel 007-26-32-0026-0051, and \$81,800 parcel 007-26-37-0020-0046), and notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L petitions on April 13, 2004.
3. The Board issued notices of hearing to the parties dated February 11, 2005.
4. A hearing was held on March 15, 2005 in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject properties are located at 838 167th Street, Hammond, North Township, Lake County.
6. The subject properties consist of a 40-foot by 57-foot vacant lot (parcel 007-26-32-0026-0054), a 308 square-foot garage on a 40-foot by 55-foot lot (parcel 007-26-32-0026-

0051), and a 1,008 square-foot dwelling and a 182 square-foot utility shed on an 83-foot by 71-foot lot (parcel 007-26-37-0020-0046).

7. The Special Master did not conduct an on-site visit of the property.

8. The assessed values of the subject properties

a. As determined by the DLGF:

Petition #45-026-02-1-5-00027	Parcel #007-26-32-0026-0054
Land: \$3,600	Improvements: \$0
	Total: \$3,600

Petition #45-026-02-1-5-00028	Parcel #007-26-32-0026-0051
Land: \$4,100	Improvements: \$3,700
	Total: \$7,800

Petition #45-026-02-1-5-00029A	Parcel #007-26-37-0020-0046
Land: \$13,800	Improvements: \$68,000
	Total: \$81,800

b. As requested by the Petitioner:

\$70,000 total assessment for all three parcels together.

9. The following persons were present and sworn in at the hearing:

For Petitioner: Chester Martello, Owner

For Respondent: Stephen H. Yohler, Assessor/Auditor, DLGF

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

Wood Deck

a. The Petitioner contends the information on the property record card incorrectly list a wood deck. *Martello testimony*. The structure is actually wood with metal railings, and has never appeared on the property record card before. (Petition #45-026-02-1-5-00029A- only)

Dwelling Square Footage

b. The Petitioner contends the subject dwelling does not have 1,008 square feet. The Petitioner indicated that he and his brother measured the dwelling, and it contains only 948 square feet. The Petitioner did not remember if the measurement was of the outside or inside of the structure. *Martello testimony*. (Petition #45-026-02-1-5-00029A – only)

Assessed Value Is Overstated

- c. The Petitioner contends the assessed values are overstated in comparison with property located in the subject neighborhood. Also, the subject properties assessed values exceed the market value of the properties. The Petitioner requests the three parcels be assessed at an overall value of \$70,000 for land and improvements. *Martello testimony*. Petitioner is looking for someone to lower his taxes. *Id.*

11. Summary of Respondent's contentions in support of the assessment:

Wood Deck

- a. The property record card and photograph of the subject dwelling shows the dwelling is being correctly assessed with a four-foot by 10-foot (40 square foot) wood deck located on the front side of the dwelling. *Respondent Exhibits 2 & 3*. (Petition #45-026-02-1-5-00029A)

Dwelling Square Footage

- b. The dwelling is correctly valued as a 1,008 square foot one-story ranch, constructed in 1941. *Respondent Exhibit 2*. (Petition #45-026-02-1-5-00029A – only)

Assessed Value Is Overstated

- c. The subject properties are correctly assessed at \$3,600, \$7,800 and \$81,800 for a total assessed value of \$93,200. The assessed value is supported by comparable properties in the neighborhood. *Yohler testimony*.
- d. The Respondent submitted comparable properties demonstrating the subject property is valued fairly and consistently for the subject area. The three comparables are priced at an average of \$80.64 per square foot and the subject property is being assessed at \$81.15 per square foot. *Respondent Exhibit 4; Yohler testimony*.

Record

12. The official record for this matter is made up of the following:

- a. The Petition, and all subsequent submissions by either party.
- b. The tape recording of the hearing labeled Lake Co. #690.
- c. The following exhibits were presented:

For the Petitioner:

None

For the DLGF:

Petition #45-026-02-1-5-00027

Respondent Exhibit 1 – A copy of the Form 139L petition.

Respondent Exhibit 2 – Subject property record card for parcel #007-26-32-0026-0054.

Respondent Exhibit 3 – Plat map of the subject area.

Petition #45-026-02-1-5-00028

Respondent Exhibit 1 – A copy of the Form 139L petition.

Respondent Exhibit 2 – Subject property record card for parcel #007-26-32-0026-0051.

Respondent Exhibit 3 – Plat map of the subject area.

Petition #45-026-02-1-5-00029A

Respondent Exhibit 1 – A copy of the Form 139L petition.

Respondent Exhibit 2 – Subject property record card for parcel #007-26-37-0020-0046.

Respondent Exhibit 3 – An exterior photograph of the subject dwelling.

Respondent Exhibit 4 – Top 3 Comparable sheet, property record cards and exterior photographs for the following comparables; Carlo Labriola, Jesus Diaz, Tracey Szorc, and Simon Herrera.

Respondent Exhibit 5 – Plat map of the subject area

For the Board:

Board Exhibit A - Form 139L petitions, filed April 13, 2004.

Board Exhibit B – Notices of Hearing on Petition, dated February 11, 2005.

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

13. The most applicable laws are:

- a. A Petitioner seeking review of a determination of the Department of Local Government Finance has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. See *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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.
14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

Wood Deck

- a. The Petitioner contends that the subject’s property record card incorrectly lists a wood deck.
- b. The Petitioner testified that the 4-foot by 10-foot area located on the front of the dwelling is wood constructed. Thus, the item is correctly classified as a wood deck, and there is no change to the assessment warranted.

Dwelling Square Footage

- c. The Petitioner contends the subject dwelling has only 948 square feet of living area.
- d. The Petitioner’s testimony concerning the square footage of his home is not supported by documentary evidence. The Petitioner testified that he measured the home with his brother, and was not sure whether he measured the inside or the outside. The Respondent testified that the square footage of 1,008 shown on the property record card is correct.
- e. The Board finds the Respondent’s testimony, method of measurement, and calculation of square footage more reliable and credible. Thus, there is no change in the assessment.

Assessed Value Is Overstated

- f. The Petitioner contends that properties in the area are assessed for less than the subject.

- g. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- h. The Petitioner did not provide any information or property record cards for the neighboring properties. The Petitioner’s statement that the properties are comparable and assessed for less is a matter of opinion. Unsubstantiated conclusory statements do not constitute probative evidence of error in the assessment. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- i. The Petitioner requested that the three parcels be valued at \$70,000 for the land and improvements. The Petitioner provided no explanation or evidence to support the requested value. 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).
- j. For the reasons stated, the Petitioner failed to make a prima facie case, and there is no change to the assessment.

Conclusions

Wood Deck

- 15. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Dwelling Square Footage

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Assessed Value Is Overstated

- 17. The Petitioner 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 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>.