

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00078A
Petitioners: Steven & Laura Loudenber
Respondent: Department of Local Government Finance
Parcel #: 001-15-26-0122-0014
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$71,800 and notified the Petitioners.
2. The Petitioners filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties on February 21, 2005.
4. Special Master Peter Salveson held a hearing on March 23, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 418 N. Dwiggins, Griffith. The location is in Calumet Township.
6. The subject property is a single-family home on 0.142 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$14,500 Improvements \$55,800 Total \$71,800.
9. The Petitioners did not request a specific value.
10. Persons sworn in as witnesses at the hearing:
Laura M. Loudenber, Owner,

Terry Knee, Field Representative, DLGF.

Issue

11. The Petitioners contend that the current assessment is incorrect because the area of the basement is incorrect. The Petitioners contend that the correct measurement of the basement is approximately 17 feet by 10 feet smaller than shown on the property record card. This 170 square feet section is actually a crawlspace. *Loudenber testimony; Petitioner Exhibits 1-3.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent presented the purportedly comparable sales. These comparable sales are located in the same neighborhood as the subject property, and are similar in style, size and age. The comparable properties sold in the range of \$78.42 to \$88.07 per square foot. The subject property is currently assessed at \$72.60 per square foot. *Knee testimony; Respondent Exhibit 4 and 5.*
 - b. The Respondent contends that the comparable sales presented support the current assessment. *Knee testimony.*
 - c. The Respondent questioned whether the measurements of the property were interior or exterior measurements. The Respondent testified that he had not personally inspected the property. *Knee 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 County 1366,
 - c. Exhibits:
 - Petitioner Exhibit 1: Photo of subject property-exterior,
 - Petitioner Exhibit 2: Photo of subject property-interior,
 - Petitioner Exhibit 3: Sketch of basement with measurements,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photo,
 - Respondent Exhibit 4: Top 20 comparable sales list,
 - Respondent Exhibit 5: Comparable property record cards and photos,
 - Board Exhibit A: Form 139L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: 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 did provide sufficient testimony to support the Petitioners’ contentions. The Respondent did not rebut the Petitioners’ testimony and other evidence. This conclusion was arrived at because:
- a. The Petitioners provided sufficient evidence to show that the current assessment is incorrect in the measurement of the basement. The Petitioners showed that the basement area is approximately 170 square feet less than the current assessment. This 170 square feet is actually a crawlspace. The subject property record card incorrectly shows a basement area of 989 square feet. The correct area to use to value the basement is 819. *Loudenber testimony; Petitioner Exhibits 1-3.*
 - b. The Petitioners established a prima facie case. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *American United Life Ins. Co.*, 803 N.E.2d 276. The Respondent was required to rebut the Petitioners’ evidence of a factual error and failed to do so.

Conclusion

16. The Petitioners did establish a prima facie case that the assessment is in error. The Respondent did not rebut the Petitioners’ evidence. The Board finds in favor of the Petitioners and concludes that the area of the basement should be changed to 819 square feet and 170 square feet of crawlspace should be added.

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

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>.