

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00558
Petitioners: Norman C. Campbell
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0599-0017
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 12, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$58,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is located at 4106 Deal Street in East Chicago.
6. The subject property is a single-family home on 0.092 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF is:
Land \$12,600 Improvements \$46,200 Total \$58,800.
9. Assessed value requested by the Petitioner during the hearing is:
Land \$ 3,000 Improvements \$35,000 Total \$38,000.
10. Persons sworn as witnesses at the hearing were:
Norman C. Campbell, owner,
Diane Spenos, assessor/auditor.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property has flooding in the basement every time it rains. *Campbell Testimony; Petitioner's Exhibit 1.*
 - b) The brick on the front porch of the dwelling is only a brick façade. *Campbell Testimony; Petitioner's Exhibit 2.*
 - c) The land is assessed for more than it is worth. The Petitioner purchased the land and improvements for less than \$12,000 in 1967. *Campbell Testimony.*

12. Summary of Respondent's contentions in support of assessment:
 - a) Based on the testimony and other evidence presented by the Petitioner, the Respondent recommended that the porch be assessed as having a frame and tile construction instead of brick. *Spenos Testimony; Petitioner's Exhibits 1, 2.*
 - b) The Respondent presented three comparable sales in the same neighborhood as the subject property. The comparables are similar in age, size, condition and grade. The sale price per square foot as finished living area ranges from \$44.99 to \$48.68 per square foot. The average of the sale price per square foot of living area is \$46.81. *Spenos Testimony; Respondent's Exhibit 4.*
 - c) Because the subject property has an assessed value of \$49.16 per square foot, the assessment is accurate. *Spenos Testimony; Respondent's Exhibit 4.*

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-957,
 - c) Petitioner's Exhibit 1 – Photos of subject property,
Petitioner's Exhibit 2 – Brick from façade of front porch,
Respondent's Exhibit 1 – Form 139L,
Respondent's Exhibit 2 – Subject property record card,
Respondent's Exhibit 3 – Subject photograph,
Respondent's Exhibit 4 – Comparable sales sheet,
Respondent's Exhibit 5 – Property record cards and photographs of comparables,

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 evidence establishes that the assessment must be changed. This conclusion was arrived at because:
- a) The Petitioner proved his porch is not a masonry porch. Petitioner presented a piece of the simulated brick that he used on the porch. Petitioner testified he used adhesive and attached the simulated bricks to plywood.
 - b) Respondent agreed that the porch should not be assessed as masonry construction. Accordingly, the assessment of the porch must be changed from an enclosed masonry porch to an enclosed frame porch.
 - c) The Petitioner contends his land is not worth \$12,500 and that his total market value of the subject property is \$38,000. The Petitioner stated that he paid less than \$12,500 for the property (land and improvements) in 1967. The Petitioner failed to relate that price to the value of the property as of January 1, 1999. Consequently, the 1967 purchase price has no probative value for this reassessment. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- d) The Petitioner did not present probative evidence to support his statement that the property is worth \$38,000. The Petitioner must provide probative evidence of the value and how that value was determined. The Petitioner's unsubstantiated conclusion about what his property is worth has no probative value. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e) A house in fair condition has evidence of marked deterioration. "This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
- f) The next lower condition level is poor. A house in poor condition would be "barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance." *Id.* at 60-61.
- g) The photographs and testimony establish some water problems in the basement. The Petitioner did not submit probative evidence regarding any other substantial condition problems. The dwelling currently is assessed as being in fair condition. The Petitioner did not provide probative evidence that the property is in any lesser condition.
- h) Respondent offered evidence relating to several purported comparables in an attempt to support the current assessed value of the property. Respondent provided property record cards and photographs of the comparables. Although Respondent pointed out that the properties are of similar age, size, condition, grade and are in the same neighborhood, Respondent's case remains insufficient to establish market value-in-use based on those comparables. *Long*, 821 N.E.2d at 471.

Conclusion

16. The Petitioner presented evidence showing the type of material used on his porch and proved that it is not masonry construction. Furthermore, Respondent agreed that the porch is assessed incorrectly and should be assessed as an enclosed frame porch. The assessment of the porch should be changed accordingly. The Petitioner did not make a prima facie case regarding the condition of his property. The Petitioner did not make a prima facie case that the value of his home should be \$38,000.

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>.