

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01737
Petitioners: Francisca & Filiberto G. Morado
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0342-0014
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 not held, as the Petitioners claim to have not received a Form 11, Notice of Assessment. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment is \$65,200.
2. The Petitioners filed the Form 139L petition on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated August 10, 2005.
4. A hearing was held on September 15, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 3827 Catalpa Street, East Chicago, North Township, in Lake County.
6. The subject property is a two-story dwelling located on a 35-foot by 123-foot lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property is \$12,900 for the land and \$52,300 for the improvements for a total assessed value of \$65,200.

9. The Petitioners request a value of \$3,000 for the land and \$45,000 for the improvements for a total value of \$48,000.
10. Imelda Morado, spouse of owner, and Phillip E. Raskosky II, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The assessed value of the subject property is too high. *Morado argument.*
 - b. The subject property is located in an area of very high criminal activity. *Morado testimony.* Many houses are for sale in the area. *Id.*
 - c. The subject property has been listed for sale for two years. *Id; Pet'r Ex. 3.* Originally, the Petitioner asked \$72,000, and included personal property and a vacant, adjacent lot. *Id.* The asking price has been lowered twice, to \$67,900 and then to \$64,900. *Id.* The Petitioner has only received a verbal agreement for \$55,000. *Id.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property's assessment is based primarily on comparable properties in the neighborhood. *Raskosky testimony.*
 - b. Two comparables are assessed at \$42.28 and \$50.56 per square foot, respectively, while the subject property is being assessed at \$36.22 per square foot. *Resp't Ex. 3, 4; Raskosky testimony.* Therefore, the subject's assessment is fair and equitable. *Raskosky argument.*

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. 1664,
 - c. Exhibits:

Petitioner Exhibit 1 – Page 1 of the 139L petition,
Petitioner Exhibit 2 – Amendment to Listing Contract sheet, dated June 29, 2005,

Petitioner Exhibit 3 – Real property tax statements for parcels #24-30-0342-0014 and #24-30-0342-0015,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject,
Respondent Exhibit 3 – Top 20 Comparables and Statistics sheet,
Respondent Exhibit 4 – Two comparable property record cards and exterior photographs for Betty Isabell property and Robert Hoggs property,

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:
 - a. A Petitioner seeking review of a determination of assessing officials 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 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.
15. The Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
 - a. The Petitioners contend that the subject property is overvalued in its assessment.

- b. 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.
- c. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject properties to rebut their assessment and to establish the actual true tax value of the property. MANUAL at 5. The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subjects or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
- d. The Petitioners submitted a listing contract in an attempt to show the market value of the subject property. A listing, however, is not equivalent to an actual sale. Furthermore, even if the listing were to be considered probative evidence of the market value of the property, the listing is dated over six years subsequent to the statutory January 1, 1999, valuation date for the 2002 reassessment. For this additional reason, the listing lacks probative value. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- e. Even if the Board were to consider the property listing to be probative evidence of the market value of the subject property, the Board notes that the listing prices are nearly identical to the current assessment, and do not support the \$48,000 assessment requested by the Petitioners.
- f. The Petitioners also testified the neighborhood is high in criminal activity. The Petitioners assert that the condition of their neighborhood affects the market value of the subject property.
- g. The Petitioners did not provide any neighborhood market evidence to support their contention. Petitioners’ conclusory statement that the area is high in criminal activity and that has affected the market value of the subject property does not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- h. Where the Petitioners have 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). Thus, no change in the assessment is warranted.

Conclusion

16. The Petitioners 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.