

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition #: 45-026-02-1-5-01814
Petitioners: John & Ann Hakos
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0235-0001
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 tax assessment for subject property is \$108,000 and notified Petitioners.
2. Petitioners filed Form 139L on August 4, 2004.
3. The Board issued a notice of hearing to the parties dated June 10, 2005.
4. Special Master Barbara Wiggins held the hearing in Crown Point on July 13, 2005.
5. Persons present and sworn as witnesses at the hearing:
For Petitioners – Ann Hakos, owner,
For Respondent – Tommy Bennington, assessor/auditor.

Facts

6. The subject property is a single-family residence located at 8435 Delaware Street in Highland.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF:
Land \$26,100 Improvements \$81,900 Total \$108,000.
9. Petitioners did not request a specific assessed value.

Issues

10. In support of an alleged error in the assessment, Petitioners contend that property taxes for the subject property are more than double the property taxes for property located at 8424 Delaware Street. Prior to the reassessment, the property taxes for both properties had a difference of approximately \$50. *Hakos testimony.*
11. Respondent contends the square foot cost of the subject property is \$102.56 and the average square foot cost of the three most comparable properties is \$106.96. Comparables used for this comparison have the same size, style, age, and grade factor as subject property. *Bennington testimony, Respondent Exhibit 3, 4.*

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 1638,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Property record card for 8424 Delaware Street,
 - Petitioner Exhibit 2 – Subject property record card,
 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – Photograph of the subject property,
 - Respondent Exhibit 3 – List of the top twenty comparable property sales,
 - Respondent Exhibit 4 – Property record cards and photographs for three property sales identified as the most comparable,
 - 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 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, a party 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.
14. Petitioners did not provide sufficient evidence to support their contention. Therefore, Respondent’s obligation to support the assessment was not triggered. This conclusion was arrived at because:
- a) Property record cards for the subject property and neighboring property show the assessed value of subject property is \$8,900 higher than the neighboring property. *Petitioner Exhibit 1, 2*. Petitioners did not, however, explain how and why the subject property and the neighboring property are comparable. Without an explanation and probative evidence to establish the properties are comparable and to account for how any differences affected the relevant market value-in-use of the properties, the evidence has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *Whitley Products, Inc. v. State Bd. Of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b) The fact that property taxes for the subject property more than doubled this assessment period and the fact that the property taxes for the subject property and the neighboring property were within \$50 of each other in prior years does not support a finding that the current assessment is incorrect. There are several factors that may affect a property’s taxes such as the types of deductions or exemptions available. Therefore, the fact that the property taxes of the subject property are higher than a neighboring property is not probative of an assessment error.
 - c) When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

15. Petitioner did not make a prima facie case. 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

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>>.