

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01896
Petitioners: Harold E. & Anna Van Gorp
Respondent: Department of Local Government Finance
Parcel: 007-16-27-0108-0005
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. The Department of Local Government Finance (the DLGF) determined the tax assessment is \$38,200. The Petitioners allegedly did not receive a notice of final assessment.
2. The Petitioners filed a Form 139L on August 10, 2004.
3. The Board issued a notice of hearing to the parties dated June 20, 2005, and July 20, 2005, both were rescheduled. The rescheduled notice of hearing applicable to this appeal was issued to the parties on August 23, 2005. The 30-day notice requirement was waived for that hearing.
4. Special Master Patti Kindler held the hearing in Crown Point on September 8, 2005.

Facts

5. The subject property is located at 2819 Lincoln Avenue in Highland.
6. The subject property is a single-family dwelling built in 1943 with 798 square feet of living area on a triangular lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
Land \$9,400 Improvements \$28,800 Total \$38,200.
9. The assessed value requested by Petitioners is:
Land \$5,000 Improvements \$20,000 Total \$25,000.

10. The following persons were present and sworn as witnesses at the hearing:
Jack Tangerman,¹
Stephen H. Yohler, assessor/auditor.

Issue

11. Summary of Petitioners' contentions regarding error in the assessment:
- a) The assessment does not reflect the interior condition of the sixty-two year old home. The assessment is based solely on an exterior inspection of both the subject property and the comparable properties. The assessment does not consider the physical analysis of the neighborhood. *Tangerman testimony; Pet'r Ex. 3.*
- b) The value of the subject property is overstated because:
- the dwelling is 62 years old and it had little maintenance,
 - the dwelling has approximately 800 square feet and only two bedrooms, not three as listed on the property record card,
 - the air conditioning is disconnected and unusable,
 - the dwelling needs a new roof,
 - the property sits on a 4.5' utility easement,
 - the land is zoned for C2 business use; therefore, if the house were torn down or destroyed in some manner, it could not be rebuilt,
 - a sale was pending on the property a few years ago, but the buyers could not get financing due to the encroachment of the easement on the property,
 - the item listed on the property record card as a two car detached garage is actually two sheds connected by a common wall, and one of those sheds was formerly a chicken coup,
 - roof leaks in the shed have caused water damage to the wood structure, and,
 - according to local zoning codes, the lot is too small to accommodate a commercial structure, thereby lowering the value of the land considerably and rendering it almost useless.
- Tangerman testimony; Pet'r Ex. 2.*
- c) The appraisal by Shoreline Appraisal Services estimated the value of the property at \$22,000 as of September 7, 2005. *Pet'r Ex. 4.* The appraisal report utilized one comparable that is in much better condition than the subject. That comparable is located in the subject's neighborhood and sold for \$37,000 on October 30, 2000. *Tangerman testimony; Pet'r Ex. 4.* Mr. Tangerman would sell the property for \$20,000 immediately, if he could find a buyer. *Tangerman testimony.*

¹ The Petitioners did not appear personally. Similarly no attorney or authorized representative appeared for the Petitioners. Jack Tangerman is not an authorized tax representative. He appeared on behalf of the Petitioners as "legal representative." No power of attorney, or any other information was provided to show Mr. Tangerman had authority to represent the Petitioners in this case. The Board has clear, specific rules for representation and would normally insist they be followed. *See* 52 IAC 1. Nevertheless, the parties have not raised this issue. Absent objection, in this case the Board will consider the merits of the case that was presented.

12. Summary of Respondent's contentions:
- a) Three one-story homes identified as Respondent's comparables are from similar neighborhoods with approximately the same square footage, age and grade factor as the subject. *Yohler testimony: Resp't Ex. 4*. The price per square foot for the subject property is about half of the price per square foot for those comparables. This fact shows the subject is assessed at the low end of value and is a fair assessment. *Yohler testimony*.
 - b) The Petitioners identified the item labeled as a detached garage on the property record card as being two attached sheds. Respondent does not dispute that testimony. *Id.*
 - c) Respondent assessed the subject property according to applicable guidelines. The evidence supports the current assessment. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Form 139L,
 - Petitioner Exhibit 2 – Summary of Arguments,
 - Petitioner Exhibit 3 – "Evidentiary of the Relevancy" [sic],
 - Petitioner Exhibit 4 – Desktop Restricted Use Appraisal Report,
 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – Subject photograph,
 - Respondent Exhibit 3 – Plat and aerial maps of the subject property,
 - Respondent Exhibit 4 – A grid showing three comparable sales,
 - Respondent Exhibit 5 – Property record cards and photographs for three comparable sales,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Sign in Sheet,
 - Board Exhibit D – Waiver of hearing notice requirement,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 Respondent admitted the garage assessment is incorrect. The Petitioners did not make a prima facie case in support of their other contentions. This conclusion was arrived at because:

Garage

- a) The Petitioners contend the structure currently assessed as a garage is nothing more than two sheds that are connected by a common wall. The Respondent did not contest the point, and stated “I have no problem if an adjustment is made because it doesn’t sound like a garage to me...” *Yohler testimony*. Based on this statement, the 520 square foot garage should be valued as a utility shed. The Board finds for the Petitioners regarding this item.

Land Value

- b) The Petitioners contend that zoning restrictions and an easement reduce the land value. They failed to present probative evidence supporting their contention. It is possible that the easement and zoning restrictions have a negative affect on the property value, but no probative evidence was submitted to ascertain how those factors affect value or how much value might be lost as a result.
- c) To successfully claim a negative influence factor, Petitioners must provide probative evidence both establishing and quantifying any such factor. *See Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999). The Petitioners did not do so. Petitioners offered only conclusory statements regarding the zoning and

easement. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Even if the conclusions were accepted at face value regarding the causes for a negative influence factor, the Petitioners' argument would still fail. The Petitioners failed to quantify any negative influence factor.

- d) Thus, the burden never shifted to the Respondent to rebut the Petitioners' evidence on this issue. Accordingly, there is no change to the assessment of the land. The Board finds for the Respondent.

The Appraisal Report

- e) Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment and to establish the actual true tax value of the property using evidence of market value including, but not limited to, actual construction costs, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- f) The most effective method to show the value assigned by the Assessor is incorrect is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
- g) The Petitioners presented a Desktop Restricted Use Appraisal Report prepared by Shoreline Appraisal Services that estimates value at \$22,000 as of September 7, 2005. The Petitioners claimed the appraisal was more representative of the value because the assessment analysis was based solely on an exterior inspection and did not consider the interior of the home. The appraiser, however, certified that no personal inspection, interior or exterior, was made of the subject property or the comparables used in his report. *Petitioner Exhibit 3-4*. This point undercuts Petitioners' claim that the appraisal is more reliable.
- h) In addition, the appraisal shows only one comparable sale that sold for \$37,000 in October of 2000. *Petitioner Exhibit 4*. The appraiser did not make any adjustments to the comparable sale or show any adjustments to the comparable for differences between it and the subject property. The appraiser identified both homes as being in poor condition, but otherwise failed to account for differences or explain their relative values. For that reason, the desktop appraisal appears to have little, if any, relevance and probative value.
- i) A more fundamental problem with the appraisal, however, leaves it with no relevance or probative value whatsoever. For the 2002 general reassessment, a property's assessment was to reflect its value as of January 1, 1999. MANUAL at 4. The appraisal indicates a property value as of September 7, 2005, which is approximately

six and a half years after the required valuation date. Petitioners are required to provide some explanation as to how the appraised value demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Because the Petitioners provided no such explanation, the appraisal carries no probative value. *Id.*

- j) The burden never shifted to the Respondent to rebut the Petitioners' evidence. The Board finds for the Respondent.

Errors on the Property Record Card

- k) The Petitioners claimed the subject property record card erroneously lists the subject property as having three bedrooms and central air conditioning. A review of the property record card indicates no central air conditioning is included in the valuation and only two bedrooms are reported. No corrections are required for the property record card regarding the central air conditioning or the number of bedrooms. The Board finds for the Respondent.

Conclusion

- 16. The evidence is sufficient to establish that the item listed on the property record card as a detached garage should be changed to a utility shed. The Board finds the assessment should be corrected for that item. The Board finds in favor of the Respondent in all other issues.

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>.