

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00334
Petitioner: Dukan Latinovic
Respondent: The Department of Local Government Finance
Parcel #: 008-33-23-0112-0027
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 held February 4, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$142,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated July 15, 2005.
4. Special Master Kathy J. Clark held a hearing at 8:15 A.M. on September 9, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 9546 Arthur Street, Crown Point. The location is in Ross Township.
6. The subject property consists of a two-story brick, single family dwelling.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$25,800 Improvements \$116,400 Total \$142,200.
9. Assessed value requested by Petitioner:
Total \$85,000.

10. Persons sworn in as witnesses at the hearing:
Dukan Latinovich, Owner,
Phillip E. Raskosky, II, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. The first floor of the dwelling has no finish at all. While an integral garage was in the original plans, it was never built. Only four exterior walls exist at this level. The Petitioner had photographs to show this but could not find them to bring to this hearing. *Latinovich testimony.*
 - b. There is no heat in the first floor. *Id.*
 - c. There is no foundation on the dwelling. The dwelling is built on slab, which is the floor of the first floor basement/garage area. *Id.*
 - d. Prior to this hearing, a Ms. Sharon Elliott, an employee of the DLGF's contractor, offered to consider the entire first floor unfinished which would change the dwelling assessment to \$105,800 and result in a new total assessment of \$131,600. The Petitioner still did not agree that this would be a correct assessment so did not sign the stipulated offer. *Petitioner Exhibit 1; Latinovich testimony.*
 - e. The second floor has no finish trim, frames or doors at all. In the past a 7% deduction has been applied to past assessments to account for this unfinished condition. This same discount should be applied to the new assessment because nothing has changed. *Latinovich testimony.*
 - f. The subject land should not be priced like neighboring properties because the water has been drained from the other property so that basements could be built on the new dwellings. Twenty seven years ago when the Petitioner purchased the subject property and built his dwelling, this was not the case; that is why the subject dwelling has no basement. *Id.*
12. Summary of Respondent's contentions:
- a. Any previous offers of a value adjustment alluded to by the Petitioner have been withdrawn and have no bearing on this hearing. *Raskosky testimony.*
 - b. The Respondent agrees that the first floor level of the subject dwelling is unfinished and contends that this has been considered in the current assessed value of \$142,200. *Respondent Exhibit 1; Raskosky testimony.*

- c. Not only does the current assessment reflect 1,767 square feet of unfinished first floor, it also discounts for the integral garage and no heat in the lower level. *Respondent Exhibit 1; Raskosky testimony.*
- d. The subject's current per square foot value, reflecting in some ways a one story house with a basement, is \$57.78. Bi-level homes with finished lower levels partially above ground located within the subject's neighborhood have sales prices ranging from \$50.10 to \$58.31. The subject's assessment is accurate as presented. *Respondent Exhibits 3 and 4; Raskosky 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 1143,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Note from Sharon Elliot offering to the value to \$131,600,
 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – Subject photograph,
 - Respondent Exhibit 3 – Top 20 comparable sales sheet,
 - Respondent Exhibit 4 – Comparable property record cards and photographs,
 - 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 Petitioner failed to provide evidence to establish a prima facie case. This conclusion was determined due to the following:
- a. The Petitioner provided no probative evidence to support a further reduction in the assessment than was given as a result of informal meetings held prior to this hearing. The Respondent's evidence clearly shows that consideration has been given for the unfinished first floor of the dwelling and for the lack of heat in that area. The Petitioner has failed to show the current assessment is incorrect. *Meridian Towers*, 805 N.E.2d 475, 478.
 - b. The Petitioner further failed to prove that the second story of the dwelling is in anyway unfinished or in what monetary way that might affect the current assessment. Again, the Petitioner has not supported his claim with probative evidence or successfully met the burden of proof required for the Board to use the information in making its determination.
 - c. Similarly, the Petitioner's contention that the land assessment is incorrect because it is based on faulty marketing data that is irrelevant to the subject property was unsupported by any probative evidence. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
 - d. The hand written note supplied by the Petitioner contains insufficient detail to allow the Board to determine how the value written on the document was calculated. Even allowing that it may be a note from an earlier meeting with other parties, it is insufficient on its face to qualify as probative evidence of an error in value or a possible "correct" value.
 - e. Where the Petitioner has 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).

Conclusion

16. The Petitioner failed to establish a prima facie case. The Board finds for 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>