

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00314
Petitioners: Thomas & Agnes Vahey¹
Respondent: Department of Local Government Finance
Parcel: 009-20-13-0205-0005
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 on January 6, 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$157,900 and notified the Petitioner on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 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 341 Springhill Court in Schererville.
6. The subject property is a single-family home on 0.301 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF:
Land \$43,800 Improvements \$114,100 Total \$157,900.
9. The assessed value requested verbally by the Petitioners during hearing:
Land \$43,000 Improvements \$82,800 Total \$125,800.

¹ On some Board documents the Petitioner's name was misspelled as Vahley. The correct spelling of the Petitioner's name is Vahey.

10. Persons sworn as witnesses at the hearing:
Thomas J. and Agnes Benita Vahey, owners,
Diane Spenos, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The measurements used to determine the assessment are incorrect and this error resulted in an incorrect assessment. The Petitioner testified that the correct lower level area is 1,344 square feet and that the actual finished area on this level is only 945 square feet. The Petitioner calculated the base area using the measurements on the property record card. *T. Vahey testimony; Pet'r Ex. 2.*
 - b) The fireplace is unusable and the top has been blocked off. At most, the fireplace is worth \$1,000. The value assigned to air conditioning is also incorrect. In 1996, the air conditioning was added at a cost of \$1,611. Therefore, the value should be \$1,600 or less. *T. Vahey testimony; Pet'r Ex. 2, p. 5.*
 - c) The Petitioner testified that the photographic evidence presented shows that the condition of the subject property is below average. *T. Vahey testimony; Pet'r Ex. 3.*
 - d) The assessed value of the subject property is too high in comparison to other home sales. The Petitioner presented the sale date and selling price of 17 homes sold in Schereville. The sale dates ranged from August of 1997 to October of 2001. The sale prices ranged from \$104,549 to \$131,000. *T. Vahey testimony; Pet'r Ex. 5.*
 - e) The assessed value of the subject property is too high in comparison to two other assessments located very close to subject. The total assessed value for the comparables presented were \$121,500 and \$132,200. *T. Vahey testimony; Pet'r Ex. 6.*
12. Summary of Respondent's contentions regarding assessment:
- a) The Respondent agreed that the amount of unfinished living area on the lower level of the dwelling should be corrected. Thus, 229 square feet should be changed to unfinished. *Spenos testimony; Resp't Ex. 2.*
 - b) Three comparable sales in the same neighborhood as the subject property are similar in style, age, grade and condition to the subject property. The subject property is assessed fairly in comparison to those comparable sales. The Respondent did note, however, that the calculations shown on the worksheet are based on the current finished living area of 2,770 square feet. If the amount of finished living area changed, then the worksheet would need to be adjusted. *Spenos testimony; Resp't Ex. 2.*

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 946,
 - c) Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – Improvement data and values,
Petitioner Exhibit 3 – "House is Below Average Condition" with photographs,
Petitioner Exhibit 4 – Subject property record card,
Petitioner Exhibit 5 – Home sale records,
Petitioner Exhibit 6 – "Comparable home appraisals",
Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Subject property record card,
Respondent Exhibit 3 – Subject photograph,
Respondent Exhibit 4 – Top three comparables,
Respondent Exhibit 5 – Top twenty comparables,
Respondent Exhibit 6 – Story height design sheet,
Respondent Exhibit 7 – 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 evidence supports changing the assessment. This conclusion was arrived at because:
- a) On the Form 139L, the Petitioners state the land value should be \$43,000. They did not present any probative evidence or argument regarding land value. Consequently, they did not make a prima facie case. There is no change to the land value.
 - b) The Petitioners presented purportedly comparable sales between August of 1997 and October 2001. They also presented the assessments of other purportedly comparable property. The Petitioners did not provide sufficient comparison between the comparables and the subject property to establish how those sales or assessments might help to prove the value of their own property. Statements that another property "is similar" or "is comparable" are nothing more than conclusions. Conclusory statements do not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners are "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For example, the two assessments presented are different sizes, have integral garages, and more plumbing fixtures. There is no explanation about how the size, integral garage, and extra plumbing fixtures affected the relevant market value-in-use of the properties. The record is devoid of such explanation, and therefore, the Petitioners' evidence has no probative value toward determining the proper assessment in this case. *Id.*
 - c) Similarly, the Respondent attempted to support the current assessment with sales and assessment information relating to several purportedly comparable properties. That evidence, however, suffers from the same kinds of problems as the Petitioners' comparables. Again, there is a failure to explain the characteristics of the subject with the comparables and to establish how any differences affected the relative market value-in-use of the properties. Therefore, the Respondent's comparables also have no probative value for this case. *Id.*
 - d) Based on the measurements on the property record card, the area of the first floor should be 1344 square feet. The Respondent did not present any information to rebut the measurements on the property record card. The parties agree that the amount of finished area on the first floor is incorrect. The Petitioners contend there is 399 square feet of unfinished area. The Respondent contends there is 229 square feet of unfinished area. The Petitioners presented a break down of specific measurements of the unfinished rooms. The mudroom, furnace room, electrical room, and storage room are all unfinished. The Petitioners provided photographs showing the unfinished areas. The Respondent did not present any probative evidence to rebut the Petitioners' evidence. The Respondent did not present evidence or explanation to

support 229 square feet of unfinished area. For these reasons, the Board finds the Petitioners' evidence to be more reliable. The amount of finished space on the first floor should be changed to 945 square feet and the remaining 399 square feet should be assessed as unfinished area.

- e) The Petitioners contend the value assigned to the fireplace and the air conditioning is incorrect. They presented a bill indicating they paid \$1,611.70 for the air conditioning in 1996. They contend the fireplace is not usable because the chimney is closed. They failed, however, to establish that either item was valued incorrectly under the generally applicable assessment guidelines. Furthermore, the Petitioners did not present probative evidence establishing how these items might reduce the market value-in-use of their property. For this reason, there is no change to the value assigned to the fireplace or the air conditioning.
 - f) The assessment guidelines define average and fair condition as:
 - Average: Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.
 - Fair: Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. 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 in 50 IAC 2.3-1-2)
- g) The Petitioners presented numerous photographs showing cracks in plaster, broken doors that do not close properly, windows in need of repair, and flooring that needs redone. Thus, they provided evidence showing the property has many items that need refurbished, overhauled, or improved. They provided evidence that there is deferred maintenance that is obvious. The Petitioners provided probative evidence that the subject is in fair condition.
 - h) The Respondent did not provide any evidence regarding condition, and therefore, failed to rebut the Petitioners' evidence. The Board finds for the Petitioners. The condition should be changed to fair.

Conclusion

- 16. The Petitioners did not establish a prima facie case indicating the value assigned to the land was incorrect. The burden never shifted to the Respondent to rebut.

17. The Petitioners established a prima facie case with regard to the size and amount of finished space of the first floor. The Respondent did not rebut the evidence. The Board finds in favor of the Petitioners and concludes that the base area of the lower level is 1,344 square feet and the finished living area of the lower level is 945 square feet.
18. The Petitioners did not establish a prima facie case indicating the subject was assessed higher than comparable properties in the neighborhood. The burden never shifted to the Respondent to rebut.
19. The Petitioners did not establish a prima facie case showing the value assigned to the fireplace or air conditioning is incorrect. The burden never shifted to the Respondent to rebut.
20. The Petitioners made a prima facie case that condition should be fair. The Respondent did not rebut the Petitioners' evidence.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed regarding the finished and unfinished square footage of the lower level and condition.

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>.